



Michael Monahan
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February 15, 2012

Ms. Leslie Seidman, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed ASU, Real Estate – Investment Property Entities (Topic 973)

Dear Ms. Seidman:

Thank you for the opportunity to comment on the “Real Estate – Investment Property Entities (Topic 973) – Exposure Draft,” issued October 21, 2011 (“ED”). The American Council of Life Insurers (“ACLI”) represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States. Our member companies represent over 90 percent of the assets and premiums of the U.S life insurance and annuity industry.

GENERAL COMMENTS

While we recognize the Board’s extensive effort on this project, which includes addressing the diversity in practice of entities that invest in real estate, we do not see the benefit of carving out a specialized definition of an investment company as an investment property entity (“IPE”) and believe that separate guidance should not be issued. We feel the requirements of the proposed guidance as currently written would not provide more relevant or meaningful information to investors / users of the financial statements. Both the operational resources required to evaluate all entities of an organization and update the appropriate documentation would exacerbate an already burdened financial reporting environment. We strongly urge the Board to reconsider the cost/benefit of this additional complexity in both the consolidation guidance and the financial reporting for similar and non-similar companies.

The ED creates a new concept of “investment property entities” based on five criteria. Only entities meeting the five criteria in the ED would be required to measure their investment properties at fair value; however fair value accounting is not extended to those investment properties for entities that do not meet the five criteria. It appears that the ED is following a rules-based approach that could lead to misinterpretations and inconsistencies, which is a deviation from the principles-based approach that the Board has otherwise been striving to institute.

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We propose eliminating separate IPE guidance because a distinction for entities that invest in real estate is unnecessary. We believe that the evaluation of an entity should be more of a principle based approach with a focus on the nature of its activities and not, primarily, on the type of investments or structures used to conduct those activities. As indicated in our comment letter on the Investment Company (“IC”) proposal¹, we believe a more principle based evaluation of investment company criteria is warranted. Because of the widely varying types and uses of investment company entities, we believe that evaluation should be qualitative and criteria used as guidelines for management’s judgment rather than making all of the criteria required boundary lines. Entities investing in real estate should be evaluated under the same lens of investment company criteria, and we propose converged guidance with IFRS 10 (as amended) based on the principles of an entity’s business purpose, strategy and structure. By eliminating the separate IPE guidance and thereby incorporating those types of entities in the IC proposal, you effectively achieve such convergence for investment company accounting— because investment property entities that meet the proposed IC criteria would fall under the IC guidance and those investment property entities that don’t meet the six IC criteria would follow other U.S. GAAP. This proposal is developed further in our comment letter on the IC proposal.

Although the IASB has agreed to subsequently assess the FASB’s conclusions and determine whether opportunities exist to eliminate differences between IFRS and U.S. GAAP, we believe both Boards should reassess the proposals to achieve a converged standard. We recommend the FASB’s proposal be limited to clarifying the definition of an investment company and its accounting, inclusive of investment property entity accounting.

We encourage the Boards to continue to reach out to a broader base of the investor community to obtain feedback from investors in these types of entities.

In the appendix, below, are responses to the specific questions in the proposal.

Sincerely,



Michael Monahan
Senior Director, Accounting Policy

¹ Proposed ASU, *Amendment to Financial Services – Investment Companies (Topic 946)* issued October 21, 2011.

APPENDIX
RESPONSE TO FASB PROPOSED ASU 2011-210, REAL ESTATE – INVESTMENT PROPERTY ENTITIES
(TOPIC 973)

QUESTIONS FOR RESPONDENTS

Scope

Question 1: The proposed amendments would require an entity that meets the criteria to be an investment property entity to measure its investment property or properties at fair value rather than require all entities to measure their investment properties at fair value. Should all entities measure their investment properties at fair value or should only an investment property entity measure its investment properties at fair value? Why? Is fair value measurement of investment properties operational? Please describe any operational concerns.

We do not believe there should be separate guidance for investment property entities (IPE). In addition, only a real estate entity that meets the criteria of an investment company (IC) should report exclusively at fair value. Those real estate entities that do not meet the definition of an investment company should follow other GAAP guidance.

Question 2: The proposed amendments would require an investment property entity to measure its investment property or properties at fair value rather than provide an option to measure its investment property or properties at fair value or cost. Should fair value measurement of investment properties be required or permitted? Please explain.

Only a real estate entity that meets the criteria of an Investment Company Entity should report exclusively at fair value. Those real estate entities that do not meet the definition of an investment company should follow other GAAP guidance. We believe this approach will allow for appropriate accounting results based on the business purpose and design of the entity rather than an inappropriate distinction based on assets held.

Question 3: Do the criteria in the proposed amendments appropriately identify those entities that should be required to measure their investment property or properties at fair value, and, therefore, should be excluded from the scope of the lessor accounting model in the proposed Update on leases? If not, what changes or additional criteria would you suggest, and why are those criteria more appropriate?

Yes, those real estate entities that fall within the definition of an investment company entity, managing their investments for capital appreciation or investment income, should be required to measure their investment properties at fair value, and therefore, should be excluded from the scope of the lessor accounting model in the proposed update on leases. We believe that including investment property entities in the investment company guidance will achieve the correct outcome since real estate investments and entities that do not meet the investment company criteria will fall under other consolidation and accounting guidance and may receive cost-like accounting under this other guidance, if appropriate.

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Question 4: The proposed amendments would require an entity to reassess whether it is an investment property entity if there is a change in the purpose and design of the entity. Is this proposed requirement appropriate and operational? If not, why?

We do not believe that assessment as an investment property entity is an appropriate distinction. We believe that investment property entities should fall under the same assessment criteria as investment companies. Please also see our comment letter on the IC proposal.

Question 5: An entity that would be an investment property entity under the proposed amendments would be required to follow the accounting requirements in the proposed amendments even if that entity also would be an investment under Topic 946. Is it appropriate for an entity that would meet the criteria to be both an investment property entity and an investment company under Topic 946 to be subject to the amendments in this proposed Update? If not, what alternative approach would you recommend if an entity would meet the criteria to be both an investment property entity and an investment company? Should the form of the entity (real estate fund versus real estate investment trust) dictate whether an entity should be an investment company or an investment property entity for accounting purposes? If yes, please describe the difference between the business activities of a real estate fund and a real estate investment trust to support your view.

We do not see the need for or benefit of carving out a specialized definition of an investment company as an investment property entity. All entities, including those that invest in real estate, should be evaluated by the criteria of an investment company and those that meet the criteria should follow the accounting under Topic 946, Financial Services – Investment Companies. The evaluation of an entity should focus on the nature of its activities and not, primarily, on the type of assets or tools used to conduct those activities. Entities investing in real estate should be evaluated under the same lens of investment company criteria, and we propose both Boards produce converged guidance based on these principles of an entity's business purpose, strategy and design.

Nature of the Business Activities

Question 6: To be an investment property entity, the proposed amendments would require substantially all of an entity's business activities to be investing in a real estate property or properties. Should an entity's business activities be limited to investing in a real estate property or properties rather than investing in real estate assets in general (such as real-estate-related debt securities and mortgage receivables) to be an investment property entity? If not, why? Is this requirement operational? Please describe any operational concerns.

We do not support a separate definition of an investment company entity for investments in real estate.

Question 7: The implementation guidance in this proposed Update specifies that when evaluating whether substantially all of the parent entity's business activities are investing in a real estate property or properties, the parent entity would not consider real estate properties held indirectly through investments in which the parent entity does not have a controlling financial interest. Should the evaluation of an entity's business activities consider properties held through noncontrolling financial interests (for example, investments in which the entity can exercise significant influence)? Why or why not?

We do not believe an evaluation of the entity should be based on a distinction of its investment assets in real estate properties. If determined to meet investment company criteria, regardless of the

type of underlying investments, the entity should follow investment-company accounting. Please also see our comment letter on the IC proposal.

Express Business Purpose

Question 8: To be an investment property entity, the proposed amendments would require that the express business purpose of an entity is to invest in a real estate property or properties for total return with an objective to realize capital appreciation, for example, through disposal of its real estate property or properties. Real estate properties held by an entity for either of the following purposes would not meet this criterion:

- a. The entity's own use in the production or supply of goods or services or for administrative purposes**
- b. Development for sale in the ordinary course of business upon completion (such as land developers and home builders).**

Should an entity whose express business purpose is to hold real estate properties for the reasons listed above be excluded from the amendments in this proposed Update? If not, why? Is the express-business-purpose criterion operational? Please describe any operational concerns.

If the Board continues to require an asset-specific approach to recognition and measurement of investment properties, we believe the two criteria listed above should be considered, but we do not agree that these should be determinative in making an investment property entity or investment company designation decision. These exclusions are representative of a rules-based approach and would have unintended consequences as described below.

For example, under Question 8.a. an entity that holds hotels theoretically holds property in order to supply goods and services (i.e., hotel rooms to paying guests). The hotel owner invests in hotels for current income and capital appreciation, and we do not believe these investments should be scoped out as property held for the entity's own use but should be accounted for as an investment property and therefore measured at fair value. In contrast, an entity could hold a plant for the production of goods to be sold to the public, and this should be accounted for as property, plant and equipment and measured at amortized cost.

The criteria in Question 8.b. as written may restrict the ability for value-added or opportunistic real estate funds to qualify their real estate assets as investment property. Value-added or opportunistic real estate funds have the business activities and purpose of such entities consistent with the definition of an IPE (or IC) and should not be excluded from fair value accounting as investment companies.

Question 9: To meet the express-business-purpose criterion, the implementation guidance in this proposed Update would require that an investment property entity have an exit strategy to dispose of its real estate property or properties to realize capital appreciation to maximize total return. An entity that invests in a real estate property or properties to collect rental income long term and does not have an exit strategy for its real estate property or properties would not be an investment property entity under the proposed amendments. Should those entities be excluded from the amendments in this proposed Update? If not, why? Is the exit strategy requirement operational? Please describe any operational concerns.

A criterion requiring an exit strategy is not necessary, because an entity's purpose and design should be most determinative in the evaluation of an investment company. An entity should be allowed to have a strategy that maximizes their total returns, whether through disposal of property or collection

of rental income until disposal becomes opportunistically best. Investment company criteria should be principally focused on the business purpose and strategy of the entity.

If the Board continues to prefer an asset-specific approach to recognition and measurement of investment properties, we believe that the requirement to have an exit strategy to dispose of investment properties is overly restrictive because you do not have to sell the property for the investors to realize the capital appreciation. In situations where the business purpose or design of the entity is to just collect rental income, for example, with an eventual sale occurring when the entity no longer wishes to continue to collect the income, the entity should have the option to either fair value or not and if the option is not available, the IPE guidance/or the IC guidance should not result a requirement for fair value accounting.

Unit Ownership and Pooling of Funds

Question 10: To be an investment property entity, the proposed amendments would require an entity to have investors that are not related to the entity's parent (if there is a parent) and those investors, in aggregate, must hold a significant ownership interest in the entity. Is this criterion appropriate? If not, why?

If the Board continues to prefer an asset-specific approach to recognition and measurement of investment properties, we do not think it is appropriate to only include entities with outside investors in the definition of an IPE or IC (please also see our comment letter on the IC proposal). This restriction would exclude certain entities whose real estate investments are funded by a parent or other related party even though the business activities and purpose of such entities are consistent with the definition of an IPE (or IC). This would potentially exclude many existing real estate reporting entities that have a single investor and under current guidance appropriately report on a fair value basis. One example is a sovereign wealth fund which would not be covered by the scope exceptions in question 11 but would have requirements to have assets carried on a fair value basis. The economics of the entity should drive the conclusion, not a bright-line requirement regarding number of investors.

Question 11: To be an investment property entity, the proposed amendments would provide an exemption from the unit-ownership and pooling-of-funds criteria for a subsidiary entity that (a) has a parent entity that is required to account for its investments at fair value with all changes in fair value recognized in net income in accordance with U.S. GAAP or (b) has a parent entity that is a not-for-profit entity under Topic 958 that measures its investments at fair value. Should this exemption be available only to a subsidiary entity with a parent entity that is (a) required to account for its investments at fair value in accordance with U.S. GAAP or (b) a not-for-profit entity under Topic 958 that measures its investments at fair value? If not, which entities should be permitted to apply the exemption and why?

If the Board continues with these criteria, the exemptions are appropriate as proposed but may need to be broadened if a business purpose and design philosophy is not adopted. That is, the specific exemptions may not cover all those that would be appropriate; rather a broadening of the criteria may better identify those entities. See answer to question 10.

Measurement

Question 12: The proposed amendments would require real estate properties other than investment properties that are held by an investment property entity to be measured in accordance with other U.S. GAAP. Should an investment property entity be required to measure those properties at fair value with all changes in fair value recognized in net income instead of applying other U.S. GAAP? Why or why not?

Given that we advocate that IPEs should be assessed under the investment company guidance, then we note that investment companies should be required to measure all assets at fair value because

they are established for the benefit of investors that evaluate performance based on changes in net asset value.

Question 13: The proposed amendments would require a right-of-use asset in which the underlying asset meets the definition of an investment property to be measured at fair value with all changes in fair value recognized in net income. Should those right-of-use assets be measured at fair value with all changes in fair value recognized in net income? If not, why and which measurement attribute would you recommend for those right-of-use assets?

Yes, if the investment company criteria are met.

Interests in Other Entities

Question 14: The proposed amendments would require an investment property entity to evaluate whether an interest in (a) another investment property entity, (b) an investment company as defined in Topic 946, or (c) an operating entity that provides services to the investment property entity should be consolidated under Topic 810. Should an investment property entity consolidate controlling financial interests in those entities? If not, why? Should an investment property entity consolidate controlling financial interests in other entities? If yes, why?

Investment company entities, including investment property entities, are created for a special and defined purpose, and the principal users of their financial statements typically evaluate the performance of the investment entity based on changes in net asset value. Consolidation of the investment entity into another entity masks that defined purpose and adds unnecessary complexity to the financial statements of the parent. In addition, consolidation of investments within the investment entity also confuses the investor and creates a need for more information and analysis in order to report the relevant financial performance of the investment entity.

Question 15: The proposed amendments would prohibit an investment property entity from applying the equity method of accounting in Topic 323 unless the investee is an operating entity that provides services to the investment property entity. Is that exception to the equity method of accounting requirements in Topic 323 appropriate for investment property entities? If not, why?

We do not believe separate IPE guidance is necessary, and only a real estate entity that meets the criteria of an investment company should report exclusively at fair value. We believe it is appropriate for an investment company, which manages its investments on a fair value basis for the benefit of its investors, to value and report all assets at fair value. We do not believe distinguishing investment company or investment property holdings from other assets is beneficial. The overriding distinctive factor in an investment company is that it does not provide products or services, but rather manages investment interests under a specific mandate and objective for all investors. Consequently, consistent with its definition and purpose, all holdings should be accounted for and reported on that basis, regardless of their nature.

Question 16: The proposed amendments would require an investment property entity to measure investments in which it does not have a controlling financial interest or cannot exercise significant influence in accordance with U.S. GAAP. For example, that would currently require held-to-maturity debt securities to be measured at amortized cost and would permit certain equity securities to be measured using the cost method, unless the fair value option in Topic 825, Financial Instruments, is elected.

Should an investment property entity be required to measure those investments at fair value with all changes in fair value recognized in net income instead of applying other U.S. GAAP? Why or why not?

We do not believe separate IPE guidance is necessary but feel only a real estate entity that meets the criteria of an investment company should report exclusively at fair value, because they are a reporting entity established for the benefit of investors that evaluate performance based on changes in net asset value.

Financial Liabilities

Question 17: The proposed amendments would require an investment property entity to measure its financial liabilities (such as its own debt) in accordance with other U.S. GAAP, which currently requires amortized cost measurement unless the fair value option in Topic 825 is elected. Should an investment property entity be required to measure its financial liabilities at fair value with all changes in fair value (including changes in an entity's own credit) recognized in net income instead of applying other U.S. GAAP? Why or why not?

We do not believe separate IPE guidance is necessary and feel an investment company should be evaluated using criteria which are principle based with a focus on the business purpose and strategy of the entity. We support current U.S. GAAP for financial liabilities of investment companies which requires amortized cost measurement unless the fair value option in Topic 825 is elected. We do not support anything requiring maintenance of two sets of books. Many private equity funds and levered real estate funds measure their liabilities at fair value and should be allowed to continue that measurement because that results in the most meaningful net asset value for investors, versus any specific requirement.

Rental Revenue Recognition

Question 18: The proposed amendments would require an investment property entity to recognize rental income on investment properties subject to a lease when lease payments are received or as the lease payments become receivable in accordance with the contractual terms of the related lease rather than on a straight-line or other basis. Is that basis of recognizing rental revenue appropriate for investment properties measured at fair value? If not, why?

Yes. Fair values of real estate properties are commonly based on discounted cash flow models and the timing of cash should not be altered by non-cash-basis accounting conventions such as deferred rent revenue or depreciation.

Practical Expedient for Measurement of an Interest in an Investment Property Entity

Question 19: The proposed amendments would permit, as a practical expedient, an entity to estimate the fair value of its investment in an investment property entity using the net asset value per share (or its equivalent) of the investment if the entity would transact at the net asset value per share. Are there investments that currently qualify for the practical expedient that would no longer qualify for the practical expedient because of the proposed amendments? If so, please identify those types of investments.

We are unaware of investments that currently qualify, but which in the future would not qualify, for use of the net asset value per share as a practical expedient for fair value. Requiring investment-company accounting for real estate investment funds would bring into conformity the decreasing number of real estate funds that do not already report at fair value and therefore have their net asset values based on underlying fair values. Real estate investment funds that manage their property for capital appreciation or income should be within the scope of the proposed investment company ASU.

Disclosure

Question 20: Are the proposed disclosures appropriate for an investment property entity? If not, which disclosures do you disagree with? Should any additional disclosures be required? If so, why?

We believe that the proposed disclosures are appropriate except for the requirement to disclose:

- Restrictions on the ability to increase rent, collect rent or collect proceeds on sale.
- Any contractual obligations related to an investment property.

These disclosures are unnecessary because such restrictions would factor into the reported fair value and would be voluminous, low value information. For example, commercial properties are subject to many lease contracts that fix rents and hence limit rent increases.

Effective Date and Transition

Question 21: Should an entity recognize the effect of adopting the requirements in this proposed Update as an adjustment to the beginning balance of retained earnings in the period of adoption? If not, what transition requirements would you recommend and why?

We agree with a cumulative effect at adoption recognized at the beginning of the period of adoption.

Question 22: How much time would be necessary to implement the proposed amendments?

The proposed amendments must be considered in conjunction with the proposed investment company guidance, proposed updates to current consolidation guidance, and proposed updates to lease accounting. If the guidance is adopted as proposed we believe that significant effort will need to be applied in order to reassess and document conclusions under the proposed new standards, requiring the input and collaboration of many parties company-wide. Should consolidation conclusions change as a result of the updated guidance, processes for gathering information and performing consolidations and de-consolidations will need to be adjusted. Consequently, we believe a minimum of 18-24 months should be allowed for implementation. In addition, with a view to convergence with the IASB's proposed changes, we believe the effective date should be coordinated with the IASB.

Question 23: The proposed amendments would prohibit early adoption. Should early adoption be permitted? If yes, why?

No. We do not believe early adoption would be beneficial to shareholders, due to the lack of comparability among reporting entities it would create. The effective dates of the investment company, consolidation, and lease guidance should be aligned due to the interrelationship of the three.

Nonpublic Entities

Question 24: The proposed amendments would apply to both public and nonpublic entities. Should the proposed amendments apply to nonpublic entities (such as private companies and not-for-profit organizations)? If not, how should the proposed requirements differ for nonpublic entities and why?

Consistent with our previous responses, we do not see the benefit of carving out a specialized definition of an investment company as an investment property entity. If the Board continues to desire an asset-specific approach, we recommend that non-public entities that meet the definition of an IPE be included within the final standard but be given an option to apply either fair value or cost accounting to investment property entities. In many cases, the strategy of a non-public IPE is unique in that its goal is

to drive earnings growth for its parent and the additional volatility inherent in fair value measurement does not provide meaningful information to the private investors.