February 15, 2012

Technical Director
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, Connecticut 06856-5116

Re: Proposed Accounting Standards Update, Financial Services – Investment Companies (Topic 946) (File Reference No. 2011-200)
Proposed Accounting Standards Update, Real Estate – Investment Property Entities (Topic 973) (File Reference No. 2011-210)

Dear FASB Members:

We appreciate the opportunity to comment on the Proposed Accounting Standards Updates, Financial Services – Investment Companies (Topic 946) and Real Estate – Investment Property Entities (Topic 973). Bank of America Corporation provides a diverse range of banking and non-banking financial services and products domestically and internationally. We are one of the largest banks in the U.S. in terms of total assets and have engaged in private equity activities, which encompass investing in hedge funds and similar structures with the objective of realizing investment income and/or capital appreciation.

We support the Financial Accounting Standards Board’s (the Board’s) efforts to provide guidance for assessing whether an entity is an investment company entity or investment property entity (ICE/IPE). However, we have several concerns with the guidance as proposed:

- We believe the Board should converge with International Accounting Standard 40, Investment Property, (IAS 40) and allow a fair value option for investments in real estate. We believe this approach will enable entities to more accurately depict their business model(s). If the Board chooses not to provide such an election, we believe that there should be a single set of criteria for evaluating whether an entity is an ICE/IPE. We do not believe there is a need to provide separate guidance for an ICE/IPE or to distinguish between the two as the business objective (i.e., capital appreciation) is the same.

- We believe the criteria to be overly rules based. While we agree that the primary objective of an investment entity should be investing for capital appreciation and/or investment income, we do not believe an entity should be precluded from applying fair value accounting because it does not meet all of the other proposed criteria. Specifically,

  o We do not believe the number of investments held should be a determinative factor as long as the entity’s substantive business purpose is investing for investment income and/or capital appreciation.

  o We do not agree that an investment entity should be precluded from applying fair value accounting because the pooling of funds criterion is not met. Entities often engage in private
equity investing activities through wholly owned investment company subsidiaries which are established for specific purposes (e.g., legal, regulatory or other purposes). If the core business activity of these entities is investing for investment income and/or capital appreciation, we believe fair value is the most relevant attribute and, as such, investment company accounting should be applied.

- We do not believe that the proposed criterion permitting but not requiring an entity to be a legal entity provides an appropriate basis for determining the level at which an ICE may be identified. We believe that this guidance is confusing and would not be an improvement in financial reporting.

- We believe the above mentioned criteria should be viewed as indicators to support the investment entity model similar to the approach in Statement of Position 07-1, Clarification of the Scope of the Audit and Accounting Guide, Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies (SOP 07-1).

- We do not support the proposal that an ICE or IPE should apply consolidation accounting when it holds a controlling financial interest in another ICE or IPE. The primary focus of investors in such entities is net asset value (NAV). Requiring an ICE or IPE to reflect a gross up in their financial statements for a controlled investment company’s underlying investments and obligations would have little or no influence on the investment decisions of such investors and would likely detract from the ultimate focal point of investors in these entities (NAV) as the emphasis is redirected to the financial position and operations of the investee entities rather than those of the ICE/IPE.

Our responses to certain questions presented by the Board are included in Appendix A and B.

* * *

We appreciate the opportunity to express our views in this letter. Should you have any questions, please feel free to contact Randall Shearer (980.388.8433) or me (980.387.4997).

Sincerely,

[Signature]

John M. James
Senior Vice President and
Corporate Controller

cc: Neil A. Cotty, Chief Accounting Officer
Randall J. Shearer, Accounting Policy Executive
Appendix A

The following are our responses to certain questions presented by the Board on the Proposed Accounting Standards Update for Investment Companies:

Question 1:
The proposed amendments would require an entity to meet all six of the criteria in paragraph 946-10-15-2 to qualify as an investment company. Should an entity be required to meet all six criteria, and do the criteria appropriately identify those entities that should be within the scope of Topic 946 for investment companies? If not, what changes or additional criteria would you propose and why?

We do not believe an entity should be required to meet all six criteria to be an ICE. We agree that the primary objective of an ICE should be investing for capital appreciation and/or investment income, however, we do not believe an entity should be precluded from being an ICE because it does not meet all of the other criteria. While such criteria are useful indicators to support the ICE model, a requirement to meet all such criteria may result in entities with identical business objectives accounting for investments differently and may invite the same type of structuring opportunities that the guidance is attempting to avoid.

Pooling of funds
We believe fair value is the most relevant measurement attribute for an entity or structure whose core business purpose is investing for investment income and/or capital appreciation. Therefore, we do not believe a wholly owned ICE should be precluded from applying fair value accounting and encourage the Board to adopt a principles based approach which would include the pooling of funds concept as an indicator rather than a requirement when performing the ICE analysis.

Entities often engage in private equity investing activities through wholly owned investment company subsidiaries which are established for specific purposes. For example, wholly owned limited liability companies may be set up to limit the legal liability to a sole owner. Under the proposed amendments, such entities would be precluded from applying investment company accounting due to their failure to meet the pooling of funds requirement even though their core business activity is investing for investment income and/or capital appreciation. We believe that fair value is the appropriate basis for these entities and, as such, investment company accounting should be applied.

There is generally no strategic rationale for a wholly owned ICE to hold investments other than for capital appreciation. Investment entities can hold interests in numerous industries and sectors (e.g., manufacturing, energy, etc.) Requiring such entities to apply consolidation or equity method accounting for their underlying investments, would result in financial statements that are distorting to the entities shareholders. As discussed in our response to Questions 12-14 below, investors in such entities are interested in NAV. If the objective of the proposed amendments is to provide financial information that is transparent to and meets the needs of such investors, then fair value accounting best achieves this objective.

Multiple investments
We note that in order to meet the proposed definition of an ICE an entity must hold multiple investments at the same time. This requirement is inconsistent with the IPE criteria whereby an entity is permitted to hold either a single real estate property or multiple properties. Although the FASB believes holding
multiple investments is an important characteristic of an ICE as this is a means of providing diversification and maximizing returns (paragraph BC 19), we do not believe holding a single investment contradicts the overall stated business objective and recommend that the Board amend this requirement to be consistent with the IPE criteria. We further note that the proposed ICE guidance provides an exception for investments held via a master feeder structure. As illustrated in Example 4 of the proposed ICE amendments, if the purpose of a master feeder fund is to hold investments for capital appreciation or investment income and if the feeder funds are formed in conjunction with the master fund for a similar business objective, then the feeder funds are permitted to apply investment company accounting even though they hold a single investment in the master fund. We believe the Board should expand this concept to all structures in which the primary objective is investing for capital appreciation and/or investment income.

Non legal entity investment portfolios
We do not believe that the proposed criterion permitting but not requiring an entity to be a legal entity provides an appropriate basis for determining the level at which an ICE may be identified. We believe that this guidance is confusing and would not be an improvement in financial reporting.

We believe that an investment company is typically a legal entity. As defined in the glossary, a legal entity includes “any legal structure used to conduct activities or to hold assets. Some examples of such structures are corporations, partnerships, limited liability companies, grantor trusts, and other trusts.” We believe that this definition is sufficiently broad to encompass any separate structure that is established to hold investments in line the with the proposed stated business objective. We acknowledge, however, that certain assets, such as separate accounts of life insurance companies, may not be held in distinct legal entities.

**Question 5:**
An entity may be an investment company when it performs activities that support its investing activities. As a result, a real estate fund or real estate investment trust (that is not an investment property entity) could be an investment company if the entity (directly or indirectly through an agent) manages only its own properties. However, the entity would be precluded from being an investment company if the other activities were considered more than supporting the entity’s investment activities (for example, construction). Is this requirement operational, and could it be consistently applied?

We agree that the primary objective of an ICE should be investing for capital appreciation and/or investment income. If an entity conducts significant activities that fall outside of this stated objective, we do not believe investment company accounting should be applied.

**Question 7:**
To be an investment company, 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?

**Question 9:**
Certain entities may meet all of the other criteria to be an investment company but have only a single investor (for example, a pension plan). The amendments in FASB’s proposed Update on investment property entities provides that if the parent of an entity is required to measure its investments at fair
Appendix A

value under U.S. GAAP or the parent entity is a not-for-profit entity under Topic 958 that measures its investments at fair value, the entity would not need to meet the unit-ownership and pooling-of-funds criteria to be an investment property entity. Considering the Board’s concerns identified in paragraph BC24, should the criteria in this proposed Update be amended to address situations in which the entity has a single investor?

As noted in our response to Question 1, private equity investments are often held through wholly owned investment company subsidiaries which are set up for specific purposes, such as to comply with legal, regulatory or other requirements. There is generally no strategic rationale for a wholly owned ICE to hold investments other than for capital appreciation. We do not believe such entities should be precluded from applying investment company accounting when the core business purpose of such entities and the overall structure is investing for investment income and/or capital appreciation. We understand the Board’s concern that without such a requirement an ICE could be inserted into a larger corporate structure to derive a particular accounting outcome. However, as long as the objective of the entity(s) is consistent with the express business purpose, we believe fair value to be the most relevant measurement attribute. We encourage the Board to revise this requirement to allow for consideration of the purpose and design of the overall structure, similar to that permitted for master feeder funds. If the primary purpose is consistent with the premise of realizing capital appreciation and/or investment income, then control by a single investor should not change the measurement basis (i.e., fair value).

Question 12:
The proposed amendments would retain the requirement that an investment company should not consolidate or apply the equity method for an interest in an operating company unless the operating entity provides services to the investment company. However, the proposed amendments would require an investment company to consolidate controlling financial interests in another investment company in a fund-of-funds structure. An investment company would not consolidate controlling financial interests in a master-feeder structure. Do you agree with this proposed requirement for fund-of-funds structures? If not, what method of accounting should be applied and why? Should a feeder fund also consolidate a controlling financial interest in a master fund? Please explain.

Question 13:
The proposed amendments would require an investment company to consolidate a controlling financial interest in an investment property entity. Should an investment company be subject to the consolidation requirements for controlling financial interests in an investment property entity? If not, what method of accounting should be applied and why?

Question 14:
The proposed amendments would prohibit an investment company from applying the equity method of accounting in Topic 323 to interests in other investment companies and investment property entities. Rather, such interests would be measured at fair value. Do you agree with this proposal? If not, why?

We do not support the proposal that an ICE should apply consolidation accounting when it holds a controlling financial interest in another ICE or IPE. The primary focus of investors in such entities is NAV as opposed to transparency into a subsidiary’s underlying investments and obligations. Generally, the investee’s underlying investments are recorded at fair value. In addition, many private equity investments are non-recourse in nature, therefore, the parent company would not be obligated to pay back the underlying debt of its investees. Requiring an ICE to gross up its financial statements for
controlling financial interests would, therefore, provide little additional information regarding the parent company’s economic exposure and ultimately have little or no influence on the investment decisions of such investors. Further, requiring such additional details in the parent company’s financial statements would likely create confusion and detract from the ultimate focal point of the investors in these entities (NAV). We believe that allowing a parent company ICE to retain investment company accounting in consolidation is consistent with the current approach in that if specialized industry accounting principles are appropriate at the subsidiary level those principles should be retained in consolidation and recommend the Board revise the proposed amendments.

We agree that an ICE should apply fair value accounting when it has significant influence over another ICE or IPE rather than the equity method of accounting because we believe that fair value is the most relevant measurement basis for these investments.

**Question 15:**

*An investment company with a controlling financial interest in a less-than-wholly-owned investment company subsidiary or an investment property entity subsidiary would exclude in its financial highlights amounts attributable to the noncontrolling interest. Do you agree that the amounts attributable to the noncontrolling interest should be excluded from the calculation of the financial highlights? If not, why?*

We do not support the proposed presentation requirements related to noncontrolling financial interests in an ICE’s financial statements. As stated in our response to Questions 12-14, we believe this information is of limited to no usefulness to investors whose primary concern is NAV.

**Question 18:**

*The proposed amendments would retain the current requirement in U.S. GAAP that a noninvestment company parent should retain the specialized accounting of an investment company subsidiary in consolidation. Do you agree that this requirement should be retained? If not, why?*

We agree with the current U.S. GAAP requirement that a non-ICE parent should retain the specialized accounting of an investment company subsidiary as we believe fair value is the most relevant measurement attribute for an entity or structure whose core business purpose is investing for investment income and/or capital appreciation.
Appendix B

The following are our responses to certain questions presented by the Board on the Proposed Accounting Standards Update for Investment Property Entities:

**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.

We believe the FASB should converge with IAS 40 and allow a fair value option for investments in real estate. We believe this approach will enable entities to more accurately depict their business model(s). Requiring an entity to meet specified criteria as a prerequisite to measuring its investment properties at fair value will likely result in increased discrepancies in accounting among such entities that are performing identical activities and services depending on how they are organized (i.e., legal, regulatory or other purposes). Consistent with current requirement in IAS 40, we further believe that fair value disclosure should be provided if management elects to carry investment properties at cost.

**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 company 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.

As stated in our response to Question 2, we believe the FASB should converge with IAS 40 and allow a fair value option for investments in real estate as we believe this approach will enable entities to most accurately depict their business model(s) and eliminate inconsistencies in accounting.

If the Board chooses not to provide such an election and pursue an investment entity model, then we encourage the Board to consider one uniform standard for evaluating whether an entity is an ICE or IPE as we do not believe it is necessary to make a distinction between the type of investment assets held. We note that most of the proposed criteria for evaluating whether an entity is an ICE or IPE are identical with the exception of the proposed IPE guidance permitting an entity to hold a single investment. As discussed in our response to Question 1 above related to the proposed ICE amendments, we do not believe that holding a single investment is inconsistent with the overall business purpose of the entity and have asked the Board to reconsider this requirement.

We propose the following modifications to paragraph 946-10-15-2:
a. “Nature of the investment activities. The investment company’s entity’s only substantive activities are investing in multiple investments for returns from capital appreciation and/or investment income (such as dividends or interest) or both.

aa. Express business purpose. The express business purpose of the investment company entity is investing to provide returns from capital appreciation and/or investment income (such as dividends or interest) or both.”

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?

As stated in our response to Question 2, we believe fair value accounting should be optional as opposed to required for investments in real estate assets. However, if the Board continues to pursue the proposed IPE model, we believe noncontrolling financial interests should be considered in evaluating whether an entity’s business activities meet the express business purpose requirement. Entities may hold investments indirectly for specific reasons (e.g., regulatory or other reasons). If the core business activities of an entity or structure is in line with the stated objective in the proposed amendments, we do not believe an entity should be precluded from applying fair value accounting as an IPE. Since an IPE investee entity would generally measure substantially all of its underlying investments at fair value, an investor who applies the equity method of accounting for its noncontrolling interest would essentially record the same accounting effect as if the entity had met the IPE criteria. Therefore, we do not believe the level of ownership warrants a different method of accounting.

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.

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.

If the Board chooses to pursue the proposed IPE model, then we agree that entities who engage in real estate holdings for purposes other than to maximize total return (e.g., use in the sale or production of own goods and services or construction and development) should be excluded from the scope of the proposed guidance.

We believe that an exit strategy should be an indicator in evaluating whether an entity is an IPE as opposed to a requirement. Given the nature of investments in real estate, an exit strategy is one of several ways to achieve capital appreciation. Returns may also be earned by repositioning properties, changing their use, or entering into new arrangements (e.g., leases). Therefore, we do not believe that an entity should be precluded from applying fair value accounting as an IPE solely because it lacks a defined exit strategy.

**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?

**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?

As noted in our response to Question 7 above related to the proposed ICE amendments, we believe fair value is the most relevant measurement attribute for an entity or structure whose core business purpose is investing for total return (capital appreciation). If the Board pursues the proposed IPE model, then we do not believe that a wholly owned IPE should be precluded from applying fair value accounting. Similar to our recommendation for the proposed ICE amendments, we encourage the Board to include the pooling of funds concept as an indicator rather than a requirement when performing the IPE analysis.
Appendix B

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?

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?

If the Board continues to pursue the proposed IPE model, then similar to our responses to Questions 12 and 13 above related to the proposed ICE amendments, we do not believe that an IPE should apply consolidation accounting when it holds a controlling financial interest in another IPE or ICE. As stated above, the primary focus of investors in such entities is NAV as opposed to transparency into the subsidiary's underlying investment holdings and obligations. Generally, the investee's underlying investments are recorded on a fair value basis. Requiring an IPE to gross up its financial statements for controlling financial interests in underlying investees would provide minimal incremental value to investors in such entities. We, therefore, recommend the Board revise the proposed amendments to permit a parent IPE to apply fair value accounting to its investment in a wholly owned IPE or ICE.

We agree that an IPE should apply fair value accounting when it has significant influence over another IPE or ICE rather than the equity method of accounting as we believe fair value to be the most relevant measurement basis for these investments.

If the Board chooses to maintain the proposed IPE model, we recommend allowing a non-IPE parent to retain the specialized accounting of an IPE or ICE subsidiary consistent with the current U.S. GAAP requirement for investment companies. As discussed in our response to Question 18 related to the proposed ICE amendments, we believe there is nominal benefit in requiring a parent entity to apply consolidation accounting when the nature and activities of the overall structure is consistent with the proposed business objective. We, therefore, ask the Board to permit both a non-IPE and IPE parent to retain fair value accounting in consolidation.