February 15, 2012

Technical Director
File Reference No. 2011-200
Financial Accounting Standards Board
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Proposed Accounting Standards Updates: "Financial Services - Investment Companies (Topic 946): Amendments to the Scope, Measurement, and Disclosure Requirements"

Dear Technical Director:

American Capital, Ltd. ("American Capital") (Nasdaq: ACAS) welcomes the opportunity to comment on the proposed Accounting Standards Update ("ASU") to amend Topic 946, Financial Services—Investment Companies. American Capital is a publicly traded private equity firm and global asset manager structured as a non-diversified closed end investment company that has elected to be regulated as a business development company ("BDC") under the Investment Company Act of 1940, as amended (the "Investment Company Act"). American Capital invests in senior debt, mezzanine debt and equity in the buyouts of private companies sponsored by American Capital, the buyouts of private companies sponsored by other private equity firms and provides capital directly to early stage and mature private and small public companies. American Capital also has investments in structured finance investments including commercial mortgage backed securities and collateralized loan obligations. In addition, American Capital has a wholly-owned portfolio company that manages alternative asset funds such as private equity funds, publicly-traded mortgage real estate investment trusts and structured finance vehicles. American Capital and its affiliates currently have approximately $68 billion in assets under management including entities that may be impacted by the proposed ASU.

American Capital supports the Financial Accounting Standards Board's (the "Board") goal of improving and converging financial reporting by setting forth consistent criteria for determining whether an entity is an investment company. However, we believe certain aspects of the Board's proposed ASU require further clarification and consideration. The following are American Capital's comments to certain of the Board's specific questions to respondents on the proposed ASU.

**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?

American Capital agrees that an entity should meet all six criteria to qualify as an investment company but believes further clarification is needed on the requirement in the pooling-of-funds criterion that an entity must have other investors that are not related parties of the entity’s parent (if there is a parent). For example, an entity with a single unrelated investor other than its parent that holds a significant ownership interest in the entity would not meet the criterion whereas an entity with two or more unrelated investors other than its parent would meet the criterion.

**Question 2:** The definition of an investment company in the proposed amendments includes entities that are regulated under the SEC’s Investment Company Act of 1940. Are you aware of any entities that are investment companies under U.S. regulatory requirements that would not meet all of the proposed criteria in paragraph 946-10-15-2? If so, please identify those types of entities and which of the criteria they would not meet.

American Capital is supportive of the application of the guidance in the proposed Update to all entities regulated under the Investment Company Act. Without this provision, certain entities regulated under the Investment Company Act may not meet the revised definition of investment company under the proposed amendments. This could lead to entities requiring to present its financial statements under two measurement bases because it is considered an investment company for regulatory purposes but not for U.S. GAAP purposes.

In addition to entities that are regulated under the Investment Company Act, the Board should also consider the effect the proposed amendments would have on Small Business Investment Companies (“SBIC”) regulated under the Small Business Investment Company Act of 1958.

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

American Capital is supportive of the proposed requirement for an entity to reassess whether it is an investment company if there is a change in the purpose and design of the entity. Current accounting literature provides little guidance on requiring an entity to reassess whether it continues to meet the criteria of an investment company or how an entity should account for a change in its purpose and design.

The proposed amendments provide a clear threshold for reassessing whether an entity is an investment company and provide clear and appropriate guidance for how to account for a change in its purpose and design. American Capital believes that the proposed guidance will result in a more consistent application of accounting standards.

**Question 8:** The proposed unit-ownership criterion would require an entity to have ownership interests in the form of equity or partnership interests to be an investment company. The entity would consider only those interests in determining whether it meets the proposed pooling-of-funds criterion. Therefore, a securitization vehicle, such as a collateralized debt obligation, may not qualify as an investment company under the proposed amendments because it may not meet the unit-ownership or the pooling-of-funds criterion. The entity would not consider interests
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held by its debt holders when evaluating these criteria to be an investment company. For entities that do not have substantive equity interests (for example, those considered variable interest entities under Subtopic 810-10), should the unit-ownership and pooling-of-funds criteria to be an investment company consider interests held by debt holders? Please explain.

American Capital is supportive of the proposed requirement to require an entity to have unit ownership interest in the form of equity or partnership interests in order to meet the criteria to be an investment company.

American Capital does not believe the exclusion of securitization vehicles from the proposed unit ownership criterion for determining if an entity meets the definition of investment company would change the overall conclusion as to whether a securitization vehicle is an investment company. American Capital does not believe that a securitization vehicle would meet the fair value management criterion, which requires that all of the entity’s investments be managed and its performance evaluated on a fair value basis and the entity’s activities must demonstrate that fair value is the primary measurement attribute used to make a decision about the financial performance of those assets. In general, a securitization vehicle holds a pool of specific debt investment assets, generally to maturity, with principal and interest on the debt investments being paid to the various tranches of debt holders based on defined terms. Therefore, American Capital does not believe a securitization vehicle would meet the fair value management criterion of an investment company. Accordingly, American Capital does not believe the proposed unit ownership criterion would prevent a securitization vehicle from otherwise meeting the definition of an investment company.

**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 provide that if the parent of an entity is required to measure its investments at fair 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?

American Capital is supportive of the statement in section 946-10-55-15 of the proposed Update that “provided that the entity meets all of the other criteria for an investment company, having a single investor that is itself an investment company would not preclude the entity from meeting the definition of an investment company.” However, American Capital does not believe that an entity with a single investor parent should be required to be formed in conjunction with its parent in order for the entity to meet the definition of an investment company as one could infer in section 946-10-55-15. American Capital believes the Board should clarify that an entity does not need to be formed in conjunction with its parent in order to satisfy the pooling-of-funds criteria by having a single investor that is itself an investment company.

For example, if an investment company acquired all of the outstanding equity interests in another investment company, the acquired investment company would not have been formed in conjunction with its parent and therefore under the proposed amendments, may no longer qualify as an investment company. This would have a significant undesired consequence on the
accounting by both the investment company parent which would be precluded from consolidating its interest in the acquired entity if it is not an investment company and by the acquired entity which may no longer qualify to follow the specialized industry guidance in Topic 946 in its stand alone financial statements. American Capital believes that the accounting conclusion as to whether the acquired investment company is still an investment company should be no different because it was acquired rather than formed in conjunction with its parent investment company.

In addition, American Capital does not believe that the proposed guidance in section 946-10-55-15 should be limited to a single investor that is itself an investment company but rather should be expanded to include an investor that is itself an investment company which holds a controlling financial interest in an entity. For example, if an entity that otherwise meets the definition of an investment company has two investors consisting of an investment company with a controlling financial interest in the entity and an unrelated party with an insignificant interest, the entity should still meet the pooling-of-funds criteria to be an investment company.

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.

American Capital does not believe the proposed requirement to consolidate a controlling financial interest in another investment company should be limited to an investment company in a fund-of-funds structure. American Capital also notes that it is not aware of the definition of the term “fund-of-funds” in U.S. GAAP literature so there may be some uncertainty as to what entities the term is intended to include. Limiting the requirement to consolidate controlling financial interests in another investment company only in a fund-of-funds structure could lead to unintended consequences. For example, assume a private equity fund’s investment portfolio consists of both multiple direct equity investments in operating companies as well as one controlling financial interest in another private equity fund. Assuming the parent private equity fund does not meet the definition of a “fund-of-fund”, it may be precluded from consolidating the controlling financial interest in the other private equity fund. American Capital does not believe that is the expected result the Board is looking to achieve.

American Capital also believes the proposed amendments to require an investment company to consolidate controlling financial interests in another investment company may conflict with current guidance in Article 6 of Regulation S-X and the interpretations of that rule by the staff.

1 Under the proposed Update, an investment company would be permitted to consolidate only controlling interests in another investment company.

2 Pursuant to Rule 6-03(c)(1) of Regulation S-X, “statements of the registrant may be consolidated only with the statements of subsidiaries which are investment companies.”
of the Securities and Exchange Commission ("SEC") that would preclude consolidation of a non-registered investment company. The staff of the SEC has acknowledged that a project to amend Regulation S-X to address the inconsistencies between U.S. GAAP and Regulation S-X has been put on hold. American Capital encourages the Board to coordinate with the staff of the SEC so that the effective date of any proposed amendments to Topic 946 coincides with any amendments to Regulation S-X to eliminate the inconsistencies in accounting guidance.

**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?

American Capital is supportive of the proposed amendment that 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. The underlying nature of an entity that meets the definition of an investment company in the proposed amendments does not change because of the ownership interest of its investors; the proposed pooling-of-interest criterion should mitigate potential abuse by a noninvestment company parent investing for strategic operating purposes and structuring opportunities.

If this current requirement were not retained, it could lead to unintended consequences. For example, assume a fund manager that is not an investment company manages a private equity fund in return for both a fixed annual fee and a performance-based fee of 20 percent of the fund’s profits. The fund manager also holds a 25 percent equity investment in the fund with the remaining 75 percent of the equity investment held by multiple third party investors. Also, assume the private equity fund is variable interest entity and the fund manager is the primary beneficiary and therefore would consolidate the private equity fund. The private equity fund would meet the criteria of an investment company under the proposed amendment. However, if the current requirement that a noninvestment company parent retain the specialized accounting of an investment company in consolidation is not retained in the proposed amendment, the fund manager would have to consolidate the underlying controlled equity investments of the private equity fund instead of recording them as investments at fair value. The result would lead to financial statements of the fund manager that would not be useful to an investor.

We appreciate the opportunity to share our comments with the Board. Please do not hesitate to contact us if you have any questions.

Sincerely,

Richard Konzmann
Senior Vice President, Accounting and Reporting

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3 The staff of the SEC indicated at the March 6, 2007 AICPA Investment Companies Expert Panel Meeting that they "interpret S-X 6-03(c)(1) generally to prohibit the consolidation by a registered investment company of any entities other than registered investment companies." This position of the staff has also been reinforced through comment letters to registrants. However, the staff has also stated at the 2010/2011 AICPA Investment Companies Industry Developments Audit Risk Alert that it "has not objected to consolidation of noninvestment company subsidiaries in certain cases."