February 15, 2012

Technical Director
File Reference No. 2011-210
FASB
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, Real Estate – Investment Property Entities (Topic 973)

Dear Technical Director:

On behalf of the Securities Industry and Financial Markets Association Asset Management Group (the “AMG”) Accounting Committee, we appreciate the opportunity to provide comments on the FASB’s Proposed Accounting Standards Update, Real Estate – Investment Property Entities (“Proposed Update”).

The AMG’s members represent U.S. asset management firms whose combined assets under management exceed $20 trillion. The AMG Accounting Committee includes many of the industry’s major independent asset management firms along with banks and insurance companies with significant asset management businesses. The individuals who serve on the AMG Accounting Committee are senior accounting policy professionals at their respective firms.

We recommend that the Board not adopt the investment property entity (“IPE”) model but rather, retain the model where entities that primarily hold investment property would be considered investment companies (“IC”) under the Proposed Accounting Standards Update, Financial Services – Investment Companies.

Additionally, for real estate held outside of investment companies, we encourage the Board to consider providing an option to measure real estate properties acquired for investment purposes at fair value or cost, similar to International Accounting Standard 40, Investment Property (IAS 40).

The following are our responses to certain questions raised in the Proposed Update in the event the Board decides to adopt the Proposed Update.

**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 that entity-based criteria should be considered in the decision as to whether investment properties should be measured at fair value. Rather, we believe that measuring properties at fair value is an appropriate option when they are managed, and their performance evaluated, on a fair value basis. This determination is best made by management based on individual facts and circumstances relating to their management of their real estate investment portfolio. Additionally, we note that investment properties held in an IC should be presented at fair value, consistent with the reporting needs of investors in such funds. However, we encourage the Board to consider providing an option for investment property held outside of an investment company similar to IAS 40, which provides entities an option to measure investment properties at fair value or 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.

The business strategy of the entity should dictate whether it qualifies as an IC or an IPE. To qualify as a real estate investment trust (“REIT”), an entity must distribute at least 90% of its taxable income to shareholders annually in the form of dividends. As a result, the investment objectives of REIT’s focus on returning capital to investors by generating attractive dividend yields. Consequently, they typically invest in stable, cash-flow producing investments that are accretive from a “funds from operations” perspective. Generally, REIT’s do not manage and evaluate the performance of their portfolios on a fair value basis.

This contrasts with real estate opportunity funds that do not have cash distribution requirements. Their investor base is typically comprised of investors that are allocating a portion of their private equity (i.e., IC allocations) to the real estate sector. The target investments are generally assets that have value-add characteristics and provide opportunities for substantial upside over a 3-7 year investment horizon at which point the asset will be sold and substantial appreciation will be recognized. Investment and divestiture decisions are guided by the fair value assessments of management.

Consequently, we believe that the reporting requirements of REIT’s are different than those of real estate opportunity funds. Since REIT’s focus on more traditional operating profits and earnings, we believe that the presentation of operating revenues is appropriate. On the other hand, we believe that the IC model is most appropriate for real estate opportunity funds because the property activity (rental revenues, operating expenses) is not the primary driver of decision making. Therefore, we believe that the business strategy of the entity should dictate whether the entity is an IPE or an IC.
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 non-controlling financial interests (for example, investments in which the entity can exercise significant influence)? Why or why not?

We believe the evaluation of an entity's business activities should consider properties held through non-controlling financial interests since the underlying exposure is substantially the same whether its interests are controlling or non-controlling.

In both scenarios noted in Appendix A, management would compare the fair value of controlled real estate properties to the total fair value of the real estate fund to determine whether "substantially all" of the investments qualify as investment properties. We do not believe that it was the Board's intention to re-evaluate an entity's status based on changes in the fair values of its multiple investments (that is, whether "substantially all" investments continue to qualify as investment properties). This view is based on the guidance in paragraph 973-10-15-4, which states that a "subsequent change in the purpose and design of the entity" is necessary for an entity to change its status from/to an IPE. If the Board concludes that only controlling interests should be considered, we suggest the Board add language to state that an entity is not precluded from being an IPE because valuation balances between controlling and non-controlling interests have changed over time.

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?

It is common for vehicles such as private equity real estate funds to be established with only one substantive investor or one group of related investors. In these vehicles, the investors are individuals (senior management, employees and former employees, family members and family trusts) whose investment exposure is not a risk or benefit to the parent entity (if there is a parent). The benefit and risk of loss resides exclusively with these individuals, and they invest at their own discretion using their funds (i.e., not deferred compensation) in real estate funds that are managed by their employers. In these situations, the employer has no economic exposure to these real estate investments and vice versa. Treating the employer, employee and family members as a single investor for purposes of evaluating the pooling-of-funds criterion is inconsistent with the principal/agent analysis in the FASB's Proposed Accounting Standards Update, Consolidation: Principal versus Agent Analysis. Therefore, we suggest that the Board change the criterion to refer to "affiliates" such that only those related party interests that result in additional economic exposure to the primary holder would be considered. Otherwise, we suggest this criterion be changed to a factor that shall be considered to determine if the entity is an IPE, or allow for an employee exclusion.

Finally, we acknowledge that in the Basis of Conclusions ("BC"), the Board expressed concern that entities could be established for the express purpose of achieving a desired accounting outcome. Paragraph BC26 states:
"The Board concluded that the entity must have one or more 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 to be an investment property entity. The Board was concerned that without such a requirement, an investment property entity could be inserted into a larger corporate structure to achieve a particular accounting outcome while the parent could own almost all of that investment property entity with a nominal amount held by an unrelated investor. Investors that are related to the parent would be treated, along with the parent, as a single investor for the purposes of evaluating compliance with the pooling-of-funds criterion.”

We believe that by modifying the criterion from related parties to affiliates, the Board’s concern would be addressed without unintentionally excluding entities from IC classification where the parent neither owns nor has any economic exposure. Alternatively, the Board could allow for an overall employee exclusion assuming it does not involve unvested deferred compensation.

We believe that the criteria as currently proposed is not appropriate unless modified as discussed above.

**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?

We believe that an exemption from the unit-ownership and pooling-of-funds criteria should be made available to certain subsidiary entities where the parent otherwise accounts for substantially all of its assets on a fair value basis. These include entities that (a) have 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 US GAAP or (b) have a parent entity that is a not-for-profit entity under Topic 958 that measures its investments at fair value. However, the exemption should not be limited to those entities but rather should more broadly include all entities for which substantially all of their assets are recorded on a fair value basis.

**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 believe that the requirements for reporting and measurement of debt for IPEs should be identical to those for ICs. Consistent with current IC accounting guidance, we agree that IPEs should not be required to measure their financial liabilities at fair value.
**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?

We agree that an investment property entity should 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.

**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 agree that investment property entities should be permitted to use net asset value per share (or its equivalent) of the investment as a practical expedient to estimate fair value. We are not aware of any investments that would no longer qualify for the practical expedient other than those entities we discussed in our response to Questions 10 and 11.

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

Paragraph 973-360-50-1 requires disclosure of a) amounts recognized in net income for direct operating expenses separately for properties that generated rental revenue and those properties that did not generate rental revenue during the period, b) restrictions on the ability to increase rent, collect rental revenue, or collect proceeds on the sale of an investment property, and c) any contractual obligations related to an investment property.

We suggest the disclosures indicated in items b) and c) be either revised or removed. The proposed disclosures are not required under current US GAAP, are not industry practice and will not be cost beneficial to implement.

The proposed disclosure in paragraph 973-360-40-1 b., states “any restrictions on the ability to increase rent, collect rental revenue, or collect proceeds on the sale of an investment property” differs somewhat from its companion disclosure in IAS 40 (paragraph 75 g.), which states “the existence and amounts of restrictions on the realisability of investment property or the remittance of income and proceeds of disposal.” Indeed, restrictions on the ability to collect proceeds on the sale of a property is a critical disclosure, but the other restrictions are ubiquitous within the industry. These restrictions include rent steps, CPI increase caps, rent controls in multi-family environments, collection problems, etc. We suggest conforming the disclosure to the IAS 40 requirement, which more clearly indicates that the disclosure is related to restrictions around the realization of proceeds on sale.
The proposed disclosure per paragraph 973-360-40-1c., “any contractual obligations related to an investment property” also differs somewhat from the companion disclosure in IAS 40 (paragraph 75 h.), which states “contractual obligations to purchase, construct or develop investment property or for repairs, maintenance and enhancements”. Again, the Proposed Update only serves to broaden an already all-encompassing requirement. For an actively managed asset such as real estate, and the volume of contracts and agreements, this requirement presents an operational burden to the preparer of the financial statements. We believe the cost of implementation would outweigh any benefit of providing this information to investors.

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

We believe the Proposed Update should be effective at the beginning of the first calendar year at least one year after the standard has been issued. Implementation of the Proposed Update would place a substantial burden on real estate funds that have not previously reported property level operating data. Implementation would often require entities to obtain data from third parties that they previously did not have access to or receive, and this data would need to be reviewed and audited for reliability. Furthermore, the process for compiling the financial statements would need to be re-engineered, often requiring systems implementation projects. Nevertheless, we also believe that institutions that are able to implement the Proposed Update should be permitted to do so as soon as possible.

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

As noted in question 22, we support an option for early adoption for those entities that wish to do so. To the extent management of an entity that currently does not report on a fair value basis would like to adopt the new standard, we believe that the inclusion of this additional information should not be precluded.

**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?**

We believe the Proposed Update should apply to both public and non-public entities. We do not believe there are significant differences in the types of entities, the nature of business activities or business purposes that would require exceptions for non-public entities. Further, we note that long-standing practice has been to account for these entities as investment companies and we believe that reporting consistent with specialized accounting is what is most meaningful and transparent to investors whether or not those investors hold investments in public or private entities.
The AMG Accounting Committee would be pleased to discuss our response with the FASB staff. If you have any questions, please contact me at (617) 664-8213.

Sincerely,

Sean P. Newth
Chairman
SIFMA Asset Management Group Accounting Committee

cc: Michael Stewart, Director of Implementation Activities, International Accounting Standards Board
cc: Timothy W. Cameron, Esq., Managing Director, SIFMA Asset Management Group
cc: Mary Kay Scucci, PhD., CPA Managing Director, U.S. Business Policy and Practices
cc: SIFMA Asset Management Group Accounting Committee
We recommend additional examples be included in the Proposal to clarify how a more complicated structure with multiple investments might be analyzed.

**Scenario 1**

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<th>Real Estate Fund</th>
<th>3rd Party Investors</th>
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<tbody>
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<td>$100</td>
<td>51%</td>
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<tr>
<td>100%</td>
<td></td>
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<tr>
<td>FV = $9 (2)</td>
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**Analysis**

1. The real estate partnership is excluded from the investment property entity analysis because it is not held directly or indirectly through a controlling financial interest.
2. As a result, the fair value of the multiple real estate properties held directly by the real estate fund ($9) is evaluated against the total fair value of the investments in the real estate fund ($100) and determined not to be substantive. Therefore, the fund does not qualify as an investment property entity.

**Scenario 2**

<table>
<thead>
<tr>
<th>Real Estate Fund</th>
<th>3rd Party Investors</th>
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</thead>
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<tr>
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<td></td>
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<tr>
<td>FV = $91 (4)</td>
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</table>

**Analysis**

3. The real estate partnership is excluded from the investment property entity analysis because it is not held directly or indirectly through a controlling financial interest.
4. As a result, the fair value of the multiple real estate properties held directly by the real estate fund ($91) is evaluated against the total fair value of the investments in the real estate fund ($100) and determined to be substantive. Therefore, the fund does qualify as an investment property entity.

Paragraph 973-10-55-4 does not allow an entity to consider investments in real estate properties held in non-controlling financial interests when evaluating whether an entity qualifies as an investment property entity.

- We believe that the basis for excluding non-controlling financial interests from the investment property analysis is that non-controlling interests are more akin to financial instruments, which are more indicative of assets held by an investment company rather than an investment property entity. We ask that the Exposure Draft clarify our understanding.

- In both scenarios, management would compare the fair value of controlled real estate properties to the total fair value of the real estate fund to determine whether "substantially all" of the investments qualify as investment properties. This approach could result in entities flipping in/out of investment property guidance. We do not believe the Board intended that changes in fair value would result in a change in the purpose and design of the entity, requiring a reassessment of IPE status. We request that the Board clarify that this is not the intent of the proposed guidance.