

February 15, 2012

VIA ELECTRONIC FILING

Leslie F. Seidman
Chairman
Attention: Technical Director
File Reference No. 2011-200; File Reference No. 2011-210
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-6116

Re: Investment Companies: Amendments to the Scope, Measurement, and Disclosure Requirements (Topic 946 – file reference 2011-200) and Real Estate Investment Property Entities (Topic 973 – file reference 2011-210)

Dear Mrs. Seidman:

The Commercial Real Estate (CRE) Finance Council appreciates this opportunity to provide comments on the Exposure Drafts, *Investment Companies: Amendments to the Scope, Measurement, and Disclosure Requirements and Investment Property Entities.* The CRE Finance Council is the collective voice of the entire \$3.5 trillion commercial real estate finance market, including portfolio, multifamily, and commercial mortgage-backed securities ("CMBS") lenders; issuers of CMBS; loan and bond investors such as insurance companies, pension funds and money managers; servicers; rating agencies; accounting firms; law firms; and other service providers.

Because our membership consists of all constituencies across the entire CRE finance market, the CRE Finance Council has been able to develop comprehensive responses to policy questions which promote increased market efficiency and investor confidence. Our members provide practical advice to policymakers at all levels on measures designed to restore liquidity and facilitate lending in the commercial mortgage market—and have been extremely influential in helping to develop programs such as the Term Asset-Backed Securities Loan Facility. CRE Finance Council members have frequently been called on to testify at Congressional hearings on the state of the CRE market, financial regulatory overhaul measures, and proposed accounting standards.

Our principal missions include setting market standards, facilitating market information, and education at all levels, particularly related to securitization, which has been a crucial and necessary tool for growth and success in commercial real estate finance. To this end, we have worked closely

with policymakers in an effort to ensure that legislative and regulatory actions do not negate or counteract economic recovery efforts in the CRE market. We will continue to work with policymakers on this effort, as well as our ongoing work with market participants and policymakers to build on the unparalleled level of disclosure and other safeguards that exist in the CMBS market, prime examples of which are our "Annex A" initial disclosure package, and our Investor Reporting PackageTM ("IRP") for ongoing disclosures.

Thus, we have a distinct perspective on the challenges facing the \$3.5 trillion market for commercial real estate finance and the need to craft policy measures that support – rather than undermine – the recovery of the commercial real estate sector and that of the nation's economy as a whole.

OVERVIEW

While the CRE Finance Council commends the Financial Accounting Standards Board's (the "FASB") efforts with the International Accounting Standards Board (the "IASB") to develop a single global, principles-based accounting standard, we do not believe that the Proposed Standards, if adopted, would work towards this goal. We are also concerned that the Proposed Standards, together with several of the FASB's proposed Accounting Standard Updates, namely Leases (Topic 840) and Consolidation (Topic 810) would, in fact, create a multitude of accounting differences among various real estate entities that are performing essentially the same activities and services depending on how they are organized for tax or other non-GAAP purposes.

CRE Finance Council recommends that FASB not create a new classification and reporting model entitled "Investment Properties Entities" for entities holding investment real estate. We believe that it would be best to continue to utilize the Investment Companies model for these entities to the extent they qualify for such treatment and that introducing new terminology and criteria complicates the accounting of real estate investment vehicles. The current terminology and definition "Investment Properties" in IAS 40 is clear and operational. If the entity that holds investment properties meets the criteria of an Investment Company then they should follow Investment Company accounting. If an entity holding investment property does not meet the criteria of an Investment Company, however, then we believe that the best practice would be to allow that entity an option (similar to IAS 40) to report their investments at either fair value or cost. We believe that these companies will elect fair value or cost treatment based on their business purpose and strategy/design and will allow them to providing pertinent fair value information to users of the financial statements. To improve comparability among constituents, any differences between the elections could be handled through additional disclosure. Further, given the FASB's recent decisions made in connection with Lease Accounting, it would seem that a separate new term of "Investment Property Entity" is not necessary. CREFC and its members are supportive of the Board's December 14th tentative decisions on lessor accounting.

CRE Finance Council has a global concern with both the Real Estate Investment Property Entities (Topic 973) and Investment Companies (Topic 946) exposure drafts. It appears that the Exposure Drafts follows a rules-based approach, which is contradictory to the principles-based approach that the Board has otherwise instituted. We feel that a principles-based approach works best for application to entities holding investment property and current investment companies in general. We believe that a rules-based approach could lead to misinterpretations and inconsistencies. Consequences we envision from this approach could lead to such misinterpretation, confusion and

requirements for financial reporting that do not meet the needs of investors, and subsequently necessitate two sets of books.

Finally, we note that small Real Estate Investment Trusts which could be subject to the investment property requirement of presenting investment property at fair value may experience financial hardship implementing systems used to develop fair value, which have little to no utility for the users of these financial reports.

I. Convergence

We encourage the Board to converge with IASB on IAS 40. While we understand the Board's position of standardization across financial reporting, IAS 40 allows management to better chose how to best represent an entity's particular business model. The Exposure Draft does not harmonize fair value accounting treatment with IAS 40, which makes fair value optional, and is not consistent with standardizing FASB and IASB. We believe that the proposed guidance will not remedy the current inconsistencies across reporting packages.

CREFC members believe IAS 40's optionality provides a better treatment for entities holding investment real estate. We recognize that FASB does not like inconsistency, but given the rules-based definition in this exposure draft, parties can chose to not qualify if they wish by intentionally not meeting one or more of the criteria. We would encourage that GAAP follow IAS 40, and allow an option for investment property to be accounted for either under amortized cost or fair market value.

We note that the IASB has converged with US GAAP by agreeing to establish specialized accounting for investment companies. We applaud their effort. Accordingly, we are surprised that FASB would propose creating a new specialized entity for real estate thereby creating a new instance of divergence from IFRS.

II. Tentative Lease Accounting Decisions Make IPE Model Unnecessary.

While we agree that lease accounting guidance might make sense for assets of shorter lives and minimal residual value, in our opinion, it would not in the case of commercial real estate. If carried at cost, lease accounting presents significant issues for commercial real estate. We agree with the recent tentative decisions made by the Board on December 14th regarding lease accounting as it relates to lessors of real estate assets. We believe that FASB's overarching concepts can be accomplished in a more simplistic manner without the need for a new separate piece of guidance or new definition of an "investment property entity." FASB may wish to provide that if cost-basis is used, rental income would be straight-lined and if fair-value basis is utilized, lease rentals should be recorded as earned.

III. Why we disagree with FASB that their approach will create more consistency.

As previously stated, we do not support the use of a rules-based approach which provides for six criteria to define an investment company and five additional criteria to define an investment property entity. For example, we believe that investment property entities are not just those that have an exit strategy. Equity REITS, which are investment property entities as defined today, would be unable to qualify due to an inability to establish an exit strategy since they are prohibited from doing so under existing tax rules. The CRE Finance Council

does not understand the Board's intent on the need for an express exit strategy, especially when the proposed guidance notes that disposals only during liquidation or to satisfy investor redemptions do not qualify as exit strategies. If a fund is a close-ended fund which has a fixed life, the exit strategies may well exist. However, a typical open-ended real estate fund may not have a date-certain for winding down and therefore would not have a specific exit strategy. Such funds invest with the expectation to have both operating earnings as well as the capital appreciation. Capital appreciation would be realized through execution of new leases regardless of whether there are actual sales of assets. Investors moving in and out of the fund are buying or selling shares at the fund's current value and expect to receive returns based on both operating income and capital appreciation. If a fund would not qualify as an investment property entity because of the lack of an exit strategy for its assets, the fund would likely have the obligation to keep two sets of books as the investors expect the financials they receive to be on a fair value basis, thus creating an unnecessary cost and additional reporting obligation for the fund.

In another example of the rules-based approach perhaps having unintended consequences, we disagree that single property entities should be excluded from Investment Company treatment. Assuming the IPE proposal is not adopted, we are concerned that under the rules-based criteria in the Investment Company guidance, there are very large real estate assets such as Rockefeller Center that would be more than large enough to place into an entity to have multiple parties invest in without needing or wanting to have other properties included in the fund. The investors in these funds would expect financials to be carried at fair value regardless of meeting the criteria defined in the Investment Company proposed guidance.

Some funds (which may or may not meet the defined benefit plan definition in the guidance) need to have their assets fair-valued. We are also concerned about what might be needed to support that single investors in funds set up with the intent to have multiple investors (but don't initially) are being marketed in times that the markets are not moving. Additionally, CRE Finance Council has concerns that the scope exceptions as defined in the guidance do not cover some single investor entities such as sovereign wealth funds which require their assets be carried at fair value.

Our group is also concerned about hotels being scoped out as service entities. Investors in real estate purchase hotels for operating income as well as the capital appreciation just as they do retail, industrial, multifamily, and office properties – scoping them out of fair value accounting does not make sense to the investors in these funds. We are also concerned that scoping out real estate properties held for the development or sale in the ordinary course of business might eliminate value added or opportunistic real estate funds from qualifying under the guidance. Investors in these funds will expect fair value accounting as well.

We further request clarification on the accounting for investments of non-controlling interests. These investments have previously been accounted for under the equity method,

using a fair value accounting in the underlying investments as investors desire all assets within an Investment Company fund be recorded at fair value.

IV. Small Real Estate Investment Trusts, could face difficulty with fair value accounting.

Small Equity REITs generally do not carry properties on a fair value basis, but do provide financial data to investors that would allow them to establish fair value of the underlying collateral so that the investors can use their own due diligence when evaluating the REIT's asset pool. Due to the dynamic nature of real estate assets, investors do not rely on a REIT's asset valuations and need the underlying data which is provided to them to formulate their own calculations on a more frequent basis.

Administratively, small REITs may have financial difficulty implementing systems to develop fair value. These barriers represent significant cost impacts either to purchase systems to produce internal valuations and/or to purchase external valuations. Further, since audit costs of market values are more costly than historical cost audits, these requirements could result in unnecessary increased audit fees to review the valuations.

SUMMARY

It is opinion of the membership of CREFC that there is no need for a new Investment Property Entity definition. We also believe that for investment properties, rents should be recognized as accrued versus using the new lease accounting. We support convergence and IAS 40 existing guidance with the exception of retaining specialized accounting for investments carried under the equity method.

Respectfully submitted,

Stephen M. Renna Chief Executive Officer

CRE Finance Council