

February 10, 2012

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116


By e-mail: director@fasb.org

**Re: Proposed Accounting Standards Update –
Real Estate—Investment Property Entities (Topic 973)
(File Reference No. 2011-210)**

The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 28,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above captioned Exposure Draft.

The NYSSCPA's Financial Accounting Standards Committee and Real Estate Committee deliberated the Exposure Draft and prepared the attached comments. If you would like additional discussion with us, please contact J. Roger Donohue, Chair of the Financial Accounting Standards Committee at (516) 887-7573 or Ernest J. Markezin, NYSSCPA staff at (212) 719-8303.

Sincerely,


NYSSCPA
Richard E. Piluso
President

Attachment

**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**PROPOSED ACCOUNTING STANDARDS UPDATE –
REAL ESTATE—INVESTMENT PROPERTY ENTITIES (TOPIC 973)**

(FILE REFERENCE NO. 2011-210)

February 10, 2012

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Comments on

Proposed Accounting Standards Update – Real Estate—Investment Property Entities (Topic 973) (File Reference No. 2011-210)

We have reviewed the Financial Accounting Standards Board (FASB) proposed Accounting Standards Update, *Real Estate—Investment Property Entities (Topic 973)*, and we appreciate the opportunity to provide our responses to the questions for respondents.

Responses to Specific Questions

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.

Response:

We do not believe that entity based criteria should be factored in to the decision as to whether investment properties should be measured at fair value. We agree with the proposed Accounting Standards Update (ASU) that only entities that meet the criteria of Real Estate Investment Property Entities be required to measure their investments at fair value. The rationale is that these are investment companies in the real estate industry, and have to follow similar investment company criteria as indicated in this proposed ASU.

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.

Response:

We agree that an investment property entity should use fair value without an option. Allowing an option defeats the purpose of the proposed ASU to provide consistency. Owning real estate the objective of which is to gain income from the operations of the property and not from returns on the investment, which could include appreciation on an anticipated sale, is not an investment in the context of this proposed ASU.

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?

Response:

We believe the criteria set forth in the proposed ASU as to the distinction between operating the property for income from its operations from those of having an investment in the property whereby the rental income is considered return on investment until property is to be sold requiring an exit strategy, is clear without change.

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?

Response:

Yes, reassessment simply makes sense. You have to reflect the change of the entity from what it was to what it is.

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.

Response:

We agree with the concept that all entities should follow the same criteria. If an entity meets the requirements of a real estate investment company entity, it follows the requirements of the proposed ASU (973). If it does not meet the criteria of this proposed ASU, we determine if it meets the criteria for an investment company (946), or if not an investment company, other appropriate generally accepted accounting principles. In this way, everyone is following the same rules, and consistency is achieved.

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.

Response:

We agree with the Board that investments in securities and other similar types of investments should apply other applicable U.S. GAAP, including guidance related to investment companies in Topic 946 if the entity meets the criteria to be an investment company. We also agree that the criteria to be an investment property focus on whether substantially all of the business activities are investing in real estate property or properties.

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?

Response:

We do agree with the requirement that a controlling financial interest is needed to determine the parent company's business activities. We also believe that where an entity does not meet the criteria to be an Investment Property entity it will then qualify as an Investment Company that will have similar reporting requirements. We believe the two separate classifications are not necessary.

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.

Response:

Yes, we agree they should be excluded because the activity does not meet the criteria to be an investment property entity, *i.e.* hold property for the entity's own use is not an investment, and building to sell is not investing, as that term is defined in the Update.

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.

Response:

Intent is the key. If the entity intends to buy and sell the property, it is an investment activity as opposed to if it intends to operate it for rental income. The exit strategy can be somewhat far reaching, but has to be realistic.

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?

Response:

Yes, this criteria is consistent with investment company criteria to have investors, unrelated to the parent, who are investing to obtain income from the investment activity, dividends, *etc.* and/or sale of the property.

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?

Response:

We agree with this exemption because the accounting being followed by the subsidiary and not-for-profit entities are using fair value. 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.

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?

Response:

No, the nature of the transaction should govern the accounting, and, in this case, other U.S. GAAP principles are applicable.

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?

Response:

Yes, this seems necessary to retain consistency in accounting measurement. It follows the principle that if the entity is an investment property, the requirements of this Update are applicable.

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?

Response:

Yes, this follows the Update's requirement that if the requirements of this Update are applicable, the entity would follow the requirements of the Update, if not, Topic 810 Consolidation would be applicable.

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?

Response:

Yes, because the equity method would not be applicable if entity measured at fair value and increases and decreases are reflected in income. The equity method is applicable for accounting for the interest in operations of the entity. If it were to be measured at fair value, the entity would be recording appreciation twice: once from operations and once from fair value measurement.

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?

Response:

Yes, this is appropriate to follow the provisions of the Update, which requires a controlling financial interest. If not, the entity is not following the criteria of the Update, and the focus of the Update is to provide consistency under the given circumstances.

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?

Response:

No, measurement of the liability should follow U.S. GAAP as indicated above. Following this is consistent with the scope of the requirements for an investment property entity which focuses on the investment.

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?

Response:

Following receipt of the rentals rather than straight lining is more appropriate for investment income. Straight lining is for operational real estate entities whereby the properties are leased to obtain rentals.

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.

Response:

We are not aware of any exceptions. 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.

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?

Response:

The disclosures seem appropriate.

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?

Response:

We would prefer adoption in the following year.

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

Response:

We are a professional organization with many members servicing different types and sizes of entities. Accordingly, we do not have a basis to respond to this question. Nevertheless, the FASB should take all appropriate measures to ascertain the process burden.

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

Response:

We are not aware of any reason why early adoption would have a negative effect on reporting the transition of this transaction.

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?

Response:

We believe the requirements should also apply to both public and nonpublic entities. This enhances consistency whereby the same transactions are accounted in the same way by all of the entities.