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2011-100  
Comment Letter No. 40  
2011-210  
MAC A0163-039 Comment Letter No. 37  
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February 15, 2012

Via email

Ms. Leslie F. Seidman  
Chairman  
Financial Accounting Standards Board  
File Reference Nos. 2011-200 and 2011-210  
401 Merritt 7  
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**Re: Invitation to Comment – Proposed Accounting Standards Updates – *Financial Services – Investment Companies (Topic 946) and Real Estate – Investment Property Entities (Topic 973)***

Wells Fargo & Company (Wells Fargo) is a diversified financial services company with over \$1.3 trillion in assets providing banking, insurance, trust and investments, mortgage banking, investment banking, retail banking, brokerage services and consumer and commercial financial services. We appreciate the opportunity to comment on the proposed Accounting Standard Updates (ASUs).

**Executive Summary**

We support the development of a consistent principle for the definition of an investment company. Investing activities of an investment company differ fundamentally from other similar investing activities of an organization as an investment company acts as a conduit to facilitate third party investment rather than as a primary investment vehicle for its parent. Accordingly, we believe the measurement of investees at fair value, including controlling financial interests in non-investment companies, represents the most faithful relationship between an investment company, its investees and its investors. To improve the proposed guidance, we offer the following suggestions:

- The framework for assessment for qualification as an investment company should provide for the use of more judgment;
- More emphasis should be placed on the express business purpose of the entity and pooling of funds criteria;
- Entities regulated under the 1940 Act<sup>1</sup> should not be automatically classified as investment companies; and
- The requirement for an investment company to disclose whether it intends to provide financial support to any of its investees should be deleted.

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<sup>1</sup> The Investment Company Act of 1940

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We encourage the FASB to defer indefinitely the issuance of the Investment Property Entities ASU. As a result of the recent tentative decisions in connection with the Leases Project<sup>2</sup> and the associated impact to companies with investment property, issuance of a separate ASU is no longer necessary. If the FASB continues development of a separate measurement principle for investment property, we recommend that the FASB permit a fair value option for investment property in order to achieve convergence with the provisions of IAS 40<sup>3</sup>.

### **Specific comments on the Investment Companies ASU**

Our comments on the proposed guidance are as follows:

- **The framework for qualification as an investment company should permit more judgment:** We believe the proposed criteria for qualification as an investment company are appropriate; however, management should be permitted to exercise more judgment in assessing the importance of the individual criteria to the purpose and design of an investment entity. A less rigid, principles-based framework would ensure that the application of the investment company accounting model is consistent with the investment strategy of the parent of the investment entity while limiting the opportunity to structure entities to achieve a specific accounting result.
- **More emphasis should be placed on the express business purpose and pooling of funds criteria:** We believe these criteria are integral to the definition of an investment company and should be given significant weight relative to the other proposed criteria when evaluating an entity as an investment company. An investment company primarily acts as a conduit to facilitate third party investment, allowing external investors to pool their funds and obtain professional investment management services, rather than primarily acting as an investment vehicle for its parent. Thus, this type of investing activity is fundamentally different than similar investing activities that occur outside of an investment company. Moreover, emphasis on these criteria represents an effective safeguard against attempts to structure investing activities to avoid consolidation.
- **Entities regulated under the 1940 Act should not be automatically classified as investment companies:** The definition of an investment company should not be linked to regulatory requirements. If this individual attribute is solely determinative, it may result in the treatment of investment entities as investment companies when they do not adequately satisfy other more fundamental criteria. While we acknowledge that most 1940 Act companies would likely be deemed to be investment companies under the proposed criteria, it is possible that an entity without a commitment to investors or potential investors to engage in certain investing activities or pooling of funds could register under the 1940 Act, resulting in inconsistent accounting treatment from other entities not registered under the 1940 Act with exactly the same structure. Should an entity registered under the 1940 Act that had no

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<sup>2</sup> Joint project of the FASB and the IASB to develop a common leasing standard

<sup>3</sup> International Accounting Standard 40 on Investment Property

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pooling of funds subsequently decide to solicit external investors, the proposed guidance requires that the entity be reassessed whether it is an investment company, ensuring consistent accounting treatment. Explicitly linking the definition of an investment company to regulatory requirements is not consistent with a principles based standard and a framework which ensures that the population of entities that should qualify as investment companies are consistently identified.

- The proposed disclosure of “intended” financial support should be removed: The proposed disclosures include a requirement for an investment company to disclose whether it has provided or intends to provide financial support to any of its investees. ASU 450, *Contingencies*, and ASU 460, *Guarantees*, already require the accrual of probable support obligations and disclosure of those that are reasonably possible, making the proposed disclosure requirement unnecessary. We believe that the term “intends” is unclear and implies a disclosure threshold that is lower than “reasonably possible”. Accurately identifying and explaining “intentions” is challenging and including such subjective information in the financial statements will result in inconsistent financial reporting.

#### **Specific comments on the Investment Property Entities ASU**

Our comments on the proposed guidance are as follows:

- A separate measurement principle for investment property is no longer necessary: The proposal will create a new accounting designation and measurement principle which we believe would not be used by a significant number of companies. In recent deliberations related to the Leases Project, the FASB tentatively decided that a lease of investment property would not be within the scope of the proposed receivable and residual approach for lessors. The Investment Property Entities ASU was issued primarily as an alternative to the complexities of the receivable and residual approach for lessors of real estate. As the Board’s tentative decisions greatly simplify the accounting for lessors of real estate, it would seem that the issuance of the Investment Property Entities ASU is no longer necessary.
- The FASB should permit an entity to elect fair value accounting for all its investment properties: IAS 40 provides an entity with an option to measure all of its investment properties at fair value. We believe that permitting the fair value option for investment properties permits an entity to choose whether the proposed lessor accounting model or fair value is a better reflection of its business model. Any concerns regarding comparability among market participants can be addressed through disclosure. Permitting such an option would achieve greater comparability in global accounting standards.
- The scope of the proposal should be clarified to avoid unintended consequences related to normal lending and leasing activities of financial institutions: We note the definition of investment property and the example in paragraphs 973-10-55-33 and 34 of the proposed guidance, but do not believe this definition and the related illustration adequately addresses certain activities of financial institutions, such as when:

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- A lender exercises the right to foreclose on real estate collateral supporting loans. A lender may hold the real estate collateral with similar assets in a separate legal entity or a larger corporate entity. If these assets are in a separate entity, the lender may be required to apply the guidance in the proposed ASU, but if the assets are in a larger corporate entity with other assets/business activities, the lender would not be required to apply the proposed ASU.
- A lender holds an interest in or consolidates an entity that owns a single syndicated commercial real estate loan or multiple loans. Generally, these entities are established to facilitate the administrative and legal process for managing and resolving a loan, which may include a restructuring of the loan, settlement with the borrower/guarantors, sale to a third party, or foreclosure and sale of the real estate.
- A lender purchases nonperforming loans supported by real estate. The options for resolution may include modification of the loan, settlement with the borrower, sale to a third party, or foreclosure and sale of the real estate.

In particular, we are concerned that the proposed guidance which requires re-assessment of an entity if the purpose or design changes subsequent to formation of the entity may not be flexible enough to allow the activities noted above. For example, at formation, an entity engaging in the above activities may not be considered an investment property entity, but might subsequently meet the definition upon re-assessment. The purpose or design of the entity has not changed, but potential activities of the entity may include situations where loan resolutions result in the foreclosure and ownership of real estate assets by the entity. We do not believe that lenders should be required to change the measurement for the real estate assets to fair value, subjected to increases as well as decreases in value. The current measurement for foreclosed real estate to be sold by lenders is based on the lower of cost or fair value model, which we believe is a better measurement given the ultimate expected disposition of the asset.

- The creation of a separate framework for Investment Property Entities is not necessary: We believe that the interaction between the separate, but similar proposed framework for Investment Companies may be confusing to preparers and users of financial statements. If the FASB continues to pursue this project, we recommend that the scope of the Investment Companies ASU should be expanded to include investment property entities.

### **Conclusion**

Regarding the Investment Companies ASU, we support the development of a consistent principle for the definition of an investment company. To improve the proposed guidance, we encourage the FASB to permit more judgment in the assessment framework, not automatically classify entities regulated under the 1940 Act as investment companies, and eliminate the disclosure of intended financial support.

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Regarding the Investment Property Entities ASU, we encourage the FASB to defer indefinitely the issuance of the Investment Property Entities ASU. If the FASB continues development of a separate measurement principle for investment property, we recommend that the FASB permit a fair value option for investment property in order to achieve convergence with the provisions of IAS 40.

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We appreciate the opportunity to comment on the issues contained in the FASB's proposed ASUs. If you have any questions, please contact me at (415) 222-3119.

Sincerely,

/s/ Richard D. Levy

Richard D. Levy  
Executive Vice President & Controller

cc: Hans Hoogervorst – International Accounting Standards Board  
Kathy Murphy – Office of the Comptroller of the Currency  
Stephen Merriett – Federal Reserve Board  
Robert Storch – Federal Deposit Insurance Corporation  
Donna Fisher – American Bankers Association  
David Wagner – The Clearing House