

July 2, 2009

Technical Director
Financial Accounting Standards Board
401 Merritt 7, PO Box 5116
Norwalk, CT 06856-5116

By e-mail: director@fasb.org

**Re: Comments on Proposed FASB Staff Position No. FAS 157-g
Estimating the Fair Value of Investments in Investment Companies That Have
Calculated Net Asset Value per Share in Accordance with the AICPA Audit and
Accounting Guide, *Investment Companies*
(File Reference: Proposed FSP FAS 157-g)**

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. The NYSSCPA thanks the FASB for the opportunity to comment.

The NYSSCPA's Financial Accounting Standards Committee deliberated the proposed staff position and drafted the attached comments. If you would like additional discussion with us, please contact Mark Mycio, Chair of the Financial Accounting Standards Committee, at (212) 372-1421, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David J. Moynihan
President

Attachment

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

COMMENTS ON PROPOSED FASB STAFF POSITION No. FAS 157-g

**ESTIMATING THE FAIR VALUE OF INVESTMENTS IN
INVESTMENT COMPANIES THAT HAVE CALCULATED NET ASSET
VALUE PER SHARE IN ACCORDANCE WITH THE AICPA AUDIT AND
ACCOUNTING GUIDE, *INVESTMENT COMPANIES***

(File Reference: Proposed FSP FAS 157-g)

July 2, 2009

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Comments on Proposed FASB Staff Position No. FAS 157-g

Estimating the Fair Value of Investments in Investment Companies That Have Calculated Net Asset Value per Share in Accordance with the AICPA Audit and Accounting Guide, *Investment Companies*

We have reviewed the Proposed FASB Staff Position FAS 157-g Estimating the Fair Value of Investments in Investment Companies That Have Calculated Net Asset Value per Share in Accordance with the AICPA Audit and Accounting Guide, *Investment Companies* and have the following responses to the questions asked. Each question is reprinted below in italics, followed by our response.

Question 1

Do you believe there are other investments that should be within the scope of this proposed FSP? If so, what principle should be used to determine which investments are within the scope of the proposed FSP?

Response

Except for the following, we do not believe that there are other investments that should be included within the scope of this proposed FSP.

It is not uncommon for closely held affiliated entities to pool their funds in other related entities formed to function in a manner similar to an investment company. Such entities typically do not solicit external investments and, therefore, may not meet the strict definition of an *investment company*. We believe that consideration should be given to including these types of entities within the scope of this proposed FSP. We believe that this is appropriate because, other than the fact that they do not actively raise money from the public (i.e. from beyond the related entities that have pooled their funds), net asset value is typically calculated using the methodology prescribed by the Audit and Accounting Guide *Investment Companies* (the "Guide").

Additionally, paragraph 4 of the FSP indicates that real estate funds are included within its scope. However, there has historically been ambiguity regarding whether real estate investment companies are included within the scope of the Guide. The AICPA's dormant Statement of Position 07-1, "Clarification of the Scope of the Audit and Accounting Guide Investment Companies and Accounting by Parent Companies and Equity Method Investors for Investments in Investment Companies," was, in part, designed to clarify this issue. We note that there is a current EITF agenda item, Issue No. 09-D, "Application of the AICPA Audit and Accounting Guide, Investment Companies, by Real Estate Investment Companies," that represents a renewed attempt to clarify this issue. In light of the current status of standard-setting in this regard, if it is the intent of the Board that these entities are to be included within the scope of this FSP, we believe that this issue should be dealt with more substantively than merely a passing mention in the FSP.

Question 1 (continued)

Do you agree that the Board should not permit the application of the proposed FSP to investments in entities that have readily determinable fair values as defined in paragraph 3 of Statement 115?

Response

We agree that investments in equity securities that have readily determinable fair values and all investments in debt securities that meet the requirements of SFAS 115 should continue to be accounted for and/or valued in accordance with the requirements of SFAS 115, using the SFAS 157 framework.

Question 1 (continued)

Are there other investments that the Board should exclude from the scope of this proposed FSP?

Response

The investments in locked-up private equity funds (as defined in paragraph 7.79-d of the Guide) should not, as an automatic default, be eligible to apply the *Practical Expedient* as proposed in the FSP without consideration of the application of further adjustment to its Net Asset Value (“NAV”). This is because private equity funds are not designed to transact with any regular degree of frequency at NAV but rather, on an event-driven basis (i.e., capital calls and distributions connected with investment opportunities and realizations). While we do not question whether portfolios of such entities are determined in accordance with generally accepted accounting principles when computed in accordance with the Guide, we believe that the nature and structure of the entity holding these portfolios fundamentally changes the character of the investment in the investor’s hands such that the value at the underlying portfolio level is not directly transitive to the investor level. We believe that NAV has a place as an input into such valuations, but may not be determinative in and of itself without, at least, considering the propriety of adjustment to NAV and whether such adjustment should be an increase or a decrease.

Question 2

Are there circumstances in which an investment might initially have a readily determinable fair value and in a subsequent period not have a readily determinable fair value (and thus arguably become eligible for the practical expedient)? If so, please describe those circumstances. In those circumstances, should the investment be eligible for the practical expedient even though the investor may not be able to transact with the investee (fund) at net asset value per share?

Response

We believe that a 1940 Act company that becomes delisted might initially have a readily determinable fair value and in a subsequent period not have a readily determinable fair value. We believe that such investments should be eligible for the *Practical Expedient*.

There are many other investments that could initially have a readily determinable fair value and in a subsequent period not have a readily determinable fair value, however, guidance on determining fair value of such investments has already been prescribed by the FASB (e.g., FSP FAS 157-3, “Determining the Fair Value of a Financial Asset When the Market for That Asset Is Not Active” and FSP FAS 157-4, “Determining Fair Value When the Volume and Level of Activity for the Asset or Liability Have Significantly Decreased and Identifying Transactions That Are Not Orderly”).

Question 3

Do you believe the Board should pursue one of the alternative approaches instead of the approach taken in this proposed FSP? If so, why?

Response

Consistent with our response to Question 1, except for locked-up private equity companies using as an automatic default the application of the *Practical Expedient*, we are generally in favor of the first alternative approach indicated in paragraph 3 of the FSP whereby the condition to use the *Practical Expedient* would be that the primary means to enter and exit the investment are transactions (e.g., redemptions or distributions) between investor and investee (i.e., the fund) at NAV. We prefer this alternative because we believe that it would limit the use of the *Practical Expedient* appropriately to investments for which little or no other means of acquiring or selling and investment exists.

Question 4

Do you agree with the Board’s decision to permit rather than require the application of this proposed FSP? Are there any other unintended consequences of requiring the application of this proposed FSP to investments within its scope?

Response

We agree with the decision to permit, rather than require, the application of this proposed FSP because requiring application could force organizations to follow the *Practical Expedient* when fair value might be better determined by the investor through the use of modeling and/or through the application of discounts due to the existence of, for example, onerous gates or lockup restrictions imposed by fund managers. We acknowledge, however, that the process of developing an estimate of fair value for investments with such restrictions other than at NAV could be difficult or impossible due to the lack of transparency on the part of the investor into the observable/unobservable inputs necessary to develop a fair value model computation.

We suggest that the Board provide further clarification of the use of the phrase “is not determinative of fair value” in paragraphs 15 and 31c of the FSP since we found the meaning of this phrase to be unclear.

Question 5

Are the disclosure requirements of this proposed FSP operational?

Response

In general, we believe that the disclosure requirements of this proposed FSP are operational. However, the Board may want to provide examples of the application of acceptable “major category” aggregations that are indicated in paragraph 16 of the FSP.

Question 5 (continued)

Should the Board require all of the disclosure by major category (or should it permit some of them on a more aggregated basis)?

Response

The Board should consider expansion of the guidance regarding degree of aggregation of liquidity risk, redemption restrictions, and expected timing of the payment of unfunded commitments.

Question 5 (continued)

If the final FSP is effective upon issuance (for example, assume issuance is July 31, 2009), can the disclosures be provided for prior periods for which financial statements have not been issued?

Response

We do not believe that the FSP should be effective upon issuance as it requires many new disclosures for which the information may not be immediately available to organizations. Accordingly, we believe that the Board should consider a required implementation date for interim and/or annual reporting periods ending on or after September 15, 2009 with early implementation allowed.

Notwithstanding the foregoing, we generally believe that, depending upon the degree of aggregated disclosure required by a final FSP, most organizations should be able to provide the disclosures for prior periods for which financial statements have not yet been issued. However, we believe that organizations that cannot provide the disclosures required by this FSP in the period that it is first adopted should be allowed to make general disclosures regarding the risks attendant to these investments as deemed practicable. In such cases, appropriate disclosure of what disclosures were not practicable to make should be required to be disclosed in the organization’s financial statements.

Question 5 (continued)

Are there other disclosures that the Board should consider requiring?

Response

The disclosures in the proposed FSP appear appropriate. However, the Board should consider including sample disclosures within the implementation guidance section of the final FSP, as well as expanding the disclosure requirements of paragraph 16 of the FSP. Specifically, paragraph 16c should be expanded to include the timing and amount of expected unfunded commitments in the near term and beyond (i.e., payable within the next year, two to five years, and beyond five years). Further, the disclosures in paragraph 16b and 16e of the FSP should be expanded to provide an estimate of the amount of

investments that can be liquidated within the next year, whether such investments are subject to the unilateral imposition by the fund manager of gates, lockups, or side pockets, and whether such circumstances are currently in place or not. Lastly, we believe that the Board should modify the disclosure requirements of paragraph 16a to require disclosure of the meaning of the *Practical Expedient* and why it has been used to estimate fair value as opposed to any other fair value measurement.