July 17, 2026

Via electronic submission

Ms. Hillary H. Salo
Technical Director
Financial Accounting Standards Board
801 Main Avenue
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Proposed Accounting Standards Update, *Fair Value Measurement (Topic 820): Investment Companies with Equity Securities Subject to Contractual Sale Restrictions*, File Reference No. 2026-ED300

Dear Ms. Salo:

Managed Funds Association ("**MFA**")[1] appreciates the opportunity to comment on the Financial Accounting Standards Board's (the "**Board**" or "**FASB**") proposed Accounting Standards Update, *Fair Value Measurement (Topic 820): Investment Companies with Contractual Sale Restrictions* (the "**Proposed ASU**").[2] MFA supports the Board's continuing work to improve consistency and integrity in the fair value measurement framework and offers these comments in that constructive spirit.

MFA's comments are set out in detail in the attached Appendix, and our central point is one of scope. Topic 946, which defines "investment company" for FASB purposes, sweeps together two very different categories of vehicles—investment companies registered under the Investment Company Act of 1940 (the "**1940 Act**")[3] and private funds that qualify as "investment companies" under Topic 946 but are excepted from 1940 Act regulation under Section 3(c)(1) or

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1 Managed Funds Association ("**MFA**"), based in Washington, D.C., New York City, Brussels, and London, represents the global alternative asset management industry. MFA's mission is to advance the ability of alternative asset managers to raise capital, invest it, and generate returns for their beneficiaries. MFA advocates on behalf of its membership and convenes stakeholders to address global regulatory, operational, and business issues. MFA has more than 180 fund manager members, including traditional hedge funds, private credit funds, and hybrid funds, that employ a diverse set of investment strategies. Member firms help pension plans, university endowments, charitable foundations, and other institutional investors diversify their investments, manage risk, and generate attractive returns throughout the economic cycle.

2 Fin. Accounting Standards Bd., *Proposed Accounting Standards Update, Fair Value Measurement (Topic 820): Investment Companies with Equity Securities Subject to Contractual Sale Restrictions* (2026) [hereinafter Proposed ASU] (July 1, 2026), *available at* https://www.fasb.org/page/ShowPdf?path=Proposed%20ASU%20Fair%20Value%20Measurement%20(Topic%20820).pdf&title=Proposed%20Accounting%20Standards%20Update,%20Fair%20Value%20Measurement%20(Topic%20820):%20Investment%20Companies%20with.

3 1940 Act § 8 (registration of investment companies).

3(c)(7).[4] The Proposed ASU is calibrated to registered-fund fact patterns: principally, funds with daily redemption obligations holding privately issued securities of an issuer preparing a registered public offering. This scenario does not fit the private-fund model, which have a fundamentally different liquidity, disclosure, and economic architecture.

Executive Summary

- **Bifurcate the scope of the final standard.** The final standard should apply to 1940 Act registered investment companies, requiring them to consider contractual sale restrictions on valuation; private funds should be outside the mandatory scope but should be permitted, along with separate accounts and other non-investment companies, to apply the Proposed ASU on a voluntary basis. Any potential future application of the Proposed ASU standards to private funds should be considered on a separate, appropriately paced work-stream.

- **Confine the Proposed ASU "equity security" concept to Level 1 equities.** Within the registered-fund population, the rule should reach only equity securities classified as Level 1 under the ASC 820 fair value hierarchy.[5] Level 2 and Level 3 measurements already require consideration of market-participant assumptions, including relevant transferability restrictions; layering a prescriptive discount on top would be redundant to manager's existing obligations.

- **Make the rule mandatory, not optional, for all registered funds.** Within its narrowed scope, there exists a compelling argument to apply the Proposed ASU, requiring all 1940 Act funds to consider resale restrictions on equity securities when valuing those securities, to all 1940 Act registered investment companies. This includes open-end funds, closed-end funds, business development companies ("**BDCs**"), interval funds. A level playing field is essential to protect retail investors from cross-shareholder dilution across the registered-fund landscape.

- **Do not extend the Proposed ASU to other asset classes.** The rule should not extend to non-equity instruments or to Level 2 or Level 3 equity securities; regardless of the Proposed ASU, ASC 820 already requires valuation of those instruments to reflect the assumptions market participants would use, including contractual transferability restrictions.

- **Disclosure.** An additional justification for excluding private funds from the Proposed ASU is that they do not make position-by-position disclosures to investors. MFA takes no position on the form or content of the proposed disclosure for registered funds.

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4 1940 Act §§ 3(c)(1), 3(c)(7); *see also* FASB ASC 946-10-15-4 to -9 (Topic 946 investment-company assessment applies without regard to 1940 Act status).

5 FASB, Fair Value Measurement (Topic 820) (May 1, 2015) (defining Level 1 inputs as "quoted prices (unadjusted) in active markets for identical assets or liabilities that the reporting entity can access at the measurement date" and codifying the current Level 1/2/3 hierarchy), *available at* https://viewpoint.pwc.com/dt/us/en/fasb_financial_accou/asus_fulltext/2015/asu_201507fair_value/asu_201507fair_value_US/asu_201507fair_value_US.html#pwc-topic.dita_1933012804220171.

- **Transition and effective date.** If private funds are excluded, no transition or effective-date guidance is needed for them. For registered funds, MFA takes no position on the substantive transition or effective date but recommends that whatever the Board adopts (i) afford registered investment companies maximum flexibility regarding when and how to implement a valuation adjustment for equity securities subject to contractual resale restrictions and (ii) be designed to mitigate the ability of opportunistic mutual-fund shareholders to game redemptions around the effective date to the detriment of remaining shareholders.

* * * * *

MFA appreciates the Board's consideration of these comments and would welcome the opportunity to discuss them further. Please contact Jeff Himstreet (jhimstreet@mfaalts.org) or the undersigned (jhan@mfaalts.org) with any questions.

Respectfully submitted,

/s/ Jennifer W. Han

Jennifer W. Han

Executive Vice President
Chief Legal Officer & Head of Global Regulatory Affairs
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Appendix Proposed ASU

Responses to Questions for Respondents

Question 1

Do you agree that the amendments in this proposed Update should apply to investment companies as defined under Topic 946? Please explain why or why not.

MFA Response.

The amendments should apply on a mandatory basis only to a subset of entities within the scope of Topic 946.[6] Topic 946's breadth sweeps together two categories of vehicles with materially different legal frameworks, liquidity terms, and investor expectations, and the Proposed ASU does not account for that divergence. The compressed comment period, which we understand is driven by current dynamics in the initial public offering ("**IPO**") market for contractually-restricted equity securities held by registered investment companies, does not afford commenters or FASB sufficient opportunity to consider thoroughly the Proposed ASU's impact on private funds.

MFA recommends that the Board bifurcate the mandatory scope of the final standard between (i) investment companies registered under the 1940 Act, which would be obligated to consider the effect of contractual sale restrictions, and (ii) private funds. Private funds are pooled vehicles that qualify as "investment companies" under Topic 946 but are excepted from investment company regulation, typically under Section 3(c)(1) or 3(c)(7) of the 1940 Act.[7] The Proposed ASU, as drafted, should apply to registered 1940 Act funds; further study is warranted before considering extending the Proposed ASU to the latter.

MFA recommends that private funds be permitted, on a voluntary basis, to apply any valuation discount envisioned in the Proposed ASU. Application of the Proposed ASU to private funds should not be mandatory. We also recommend that investment managers be permitted, again on a voluntary basis, to apply Proposed ASU to accounts other than investment company accounts, such as separately managed accounts. Large asset management firms that provide investment management services to an array of public and private funds, and other accounts such as separately managed accounts, often apply valuation for a given equity security across the firm.

6 *See* Fin. Accounting Standards Bd., Accounting Standards Update No. 2013-08, Financial Services—Investment Companies (Topic 946): Amendments to the Scope, Measurement, and Disclosure Requirements (June 2013) (amending the assessment of investment-company status under Topic 946 and retaining specialized accounting guidance for investment companies), *available at* https://www.fasb.org/page/ShowPdf?path=ASU%202013-08.pdf&title=UPDATE%20NO.%202013-08%E2%80%94FINANCIAL%20SERVICES%E2%80%94INVESTMENT%20COMPANIES%20(TOPIC%20946):%20AMENDMENTS%20TO%20THE%20SCOPE,%20MEA.

7 *See supra* note 4.

The Proposed ASU is driven by registered-fund fact patterns. We recognize that the compressed comment period reflects, in significant part, requests from 1940 Act registered funds concerning anticipated large-scale IPOs where the fund holds privately placed securities of the issuer that remain subject to contractual resale restrictions at the time the offering prices.[8] Those are discrete registered-fund fact patterns tied to daily net asset value ("**NAV**") striking, the operation of the forward-pricing rule,[9] and the daily redemption rights of 1940 Act fund shareholders. Private funds are not the constituency driving this rulemaking, and the motivating fact patterns are not representative of how investors acquire interests in or exit private funds that may hold contractually restricted positions.

Private funds do not face the redemption dynamics that give the Proposed ASU its urgency. A registered open-end fund is statutorily required to satisfy redemptions at the NAV next computed after receipt of the request, and any mispricing of a restricted position translates directly into daily cross-shareholder dilution. Private funds are structurally different: they do not offer daily redemption and instead control by contract and offering design the frequency, notice periods, gates, lock-ups, side pockets, and suspension rights governing investor liquidity.[10] Sophisticated investors and private funds negotiate those terms in advance, and each private fund's valuation policies are reasonably designed to satisfy applicable fiduciary obligations, accounting standards, and applicable legal requirements. The market-participant assumptions relevant to a private fund's fair value determinations are, accordingly, dissimilar to the shareholder motivations driving the Proposed ASU.[11]

The comment window for the Proposed ASU is far too short to assess fully the collateral consequences for mandating the Proposed ASU for private funds. A mandatory resale-restriction discount is not a self-contained accounting change. In the private fund context, mandatory share price discounts flow through the economics of the entire fund structure. Private fund NAV can drive management fees, incentive allocations, performance fees, waterfall distributions, general partner ("**GP**") carried interest, high-water marks, hurdles, claw backs, and even impact tax

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8 *See* Proposed ASU, *supra* note 2, at Background Information and Basis for Conclusions ¶¶ BC1–BC10 (describing stakeholder concerns that current guidance may not reflect how market participants would value equity securities subject to contractual sale restrictions, particularly for investment companies).

9 1940 Act Rule 22c-1(a) (requiring sales, redemptions, and repurchases of redeemable securities at a price based on current NAV next computed after receipt of the relevant order); *see also* 1940 Act § 22(e).

10 *See* 1940 Act §§ 3(c)(1), 3(c)(7), *supra* note 4; *see generally* FASB ASC 946-20 (Dec. 4, 2014) (recognizing diverse liquidity and redemption terms across investment-company structures), *available at* https://storage.fasb.org/Proposed%20ASU%20Financial%20Services%CE%93%C3%87%C3%B6Investment%20Companies%20%28Topic%20946%29%20Disclosures%20about%20Investments.pdf.

11 FASB ASC 820-10-35-2 (defining fair value as the price to sell an asset in an orderly transaction between market participants at the measurement date) *available at* https://viewpoint.pwc.com/dt/us/en/fasb/GAAP/Codification/Codification/Codification/Broad_Transactions/Fair_Value_Measurement/Overall/820-10-35.html (log-in required); *see also* Proposed ASU, *supra* note 2, ¶¶ BC11–BC19 (market-participant framework).

calculations.[12] Imposing an additional accounting-layer discount would ripple through each of those contractually defined arrangements, potentially with unintended results under partnership agreements and side letters negotiated years earlier. Implementation would also require substantial operational and technological build-out: new data elements tracking restriction type, duration, and lapse events; reconciliation across administrators, prime brokers, and auditors; and new controls, valuation-committee procedures, and governance infrastructure to determine when, in what amount, and on what documented basis a discount is applied. The current comment timeline is insufficient to provide an opportunity for private funds to scope the necessary work and time needed to mandate compliance with the Proposed ASU.

Recommendation. MFA recommends that the Board (i) proceed on the current timeline with a final standard directed solely to registered investment companies subject to the 1940 Act and subject to daily or quarterly redemption at NAV; (ii) decline consideration of mandatory application to private funds unless and until the Board and commenters can more fully study the collateral consequences of a resale-restriction discount in that context; and (iii) in the interim, treat any consideration of contractual resale restrictions by private funds or separately managed accounts as optional and principles-based, without a prescribed discount methodology or disclosure format above what is already required under applicable legal and fiduciary principles.

Question 2

Do you agree that an investment company should consider a contractual restriction prohibiting the sale of an equity security when measuring the fair value of that equity security? Should this guidance be optional? Please explain why or why not.

MFA Response.

The answer turns on the type of investment company involved and the ASC 820 fair value classification of the security. Consistent with Question 1, the amendments should apply to 1940 Act registered investment companies and, within that population, reach only equity securities classified as Level 1 under the ASC 820 fair value hierarchy.[13] Valuation methodologies for Level 2 and Level 3 securities should already require consideration of contractual and other transferability restrictions.

For registered funds, the guidance should be mandatory that registered funds should consider contractual sale restrictions on an equity security when measuring fair value. Registered investment companies operate under a

12 *See* Investment Advisers Act of 1940 ("**Advisers Act**") § 205, Advisers Act Rule 205-3 (permitting performance-based compensation to qualified clients and recognizing NAV-based fee arrangements); *see also* FASB ASC 946-20-05 (NAV as the basis for investor-level allocations and manager compensation in investment companies).

13 FASB ASC 820-10-55-37 to -51 (visited July 15, 2026) (illustrative Level 1, Level 2, and Level 3 classifications) *available at* https://viewpoint.pwc.com/dt/us/en/fasb/GAAP/Codification/Codification/Codification/Broad_Transactions/Fair_Value_Measurement/Overall/820-10-55.html; *see also* Proposed ASU, *supra* note 2.

prescriptive statutory framework with guardrails designed to protect retail investors. Open-end funds must redeem at the NAV next computed after receipt of the request; closed-end funds, BDCs, interval funds, and tender offer funds each operate under distinct 1940 Act pricing, repurchase, and periodic-tender frameworks that depend on a fairly stated NAV.[14] A mispriced restricted position produces cross-shareholder dilution or unwarranted value transfer between transacting and remaining investors. This dilution risk is common to the retail-facing NAV-driven vehicles the 1940 Act regulates.

An optional regime for registered investment companies, where fund companies are not obligated to consider equity security contractual resale restrictions, would create new concerns apart from the potential liquidity challenges the Board is trying to address. If two registered funds had identical holdings, hypothetically, and one was required to consider contractual sale restrictions and the other was not, then competing funds holding economically identical positions are more likely to report different NAVs. The difference in NAV would result solely from one applying the discount and the other electing not to consider the effect of the resale restriction. Retail investors in one would pay less for the fund that applied the discount, and redeeming shareholders the fund that applied the discount would receive less proceeds than a redeeming shareholder in the other fund. The goals of a uniform application are furthered by a more level playing field among registered funds.[15] MFA therefore recommends that the Proposed ASU mandate consideration of the effects of any equity security resale restriction on valuation for all 1940 Act registered investment companies, without an accounting-policy election, subject only to the ASC 820 hierarchy limitation described below.

Any requirement that registered funds consider applying a valuation discount for equity securities with resale restrictions should be confined to Level 1 equity securities. The Proposed ASU speaks broadly of "equity securities" without regard to the ASC 820 hierarchy. That framing is overinclusive. A Level 1 measurement is, by definition, an unadjusted quoted price in an active market for an identical asset, and it is at Level 1 that a contractual restriction is most likely to cause the quoted price to overstate what a market participant would pay. Level 2 relies on observable inputs other than Level 1 prices, including inputs that may be adjusted for restrictions and holding-period considerations, and Level 3 relies on unobservable inputs applied through a model already expected to reflect restriction, liquidity, and marketability factors.[16] Fund managers valuing Level 2 and Level 3 equity securities are already required under ASC 820 and prevailing industry practice to reflect contractual and non-contractual transferability

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14 Investment Company Act of 1940 § 2(a)(48) (defining "business development company"); *id.* §§ 55–65 (BDC regulatory framework); 1940 Act Rule 23c-3 (permitting closed-end funds to make periodic repurchase offers at NAV; the interval-fund framework).

15 Private funds typically do not disclose position-by-position holdings, and as such mandatory application of the Proposed ASU is less critical for a private fund.

16 FASB ASC 820-10-35-47 to -54, *supra* note 13 (Level 2 and Level 3 inputs, including adjustments for restrictions on the sale or use of an asset and other factors market participants would consider); FASB ASC 820-10-35-9 (market participant assumptions).

restrictions. Layering a prescriptive contractual-restriction adjustment on top would risk double-counting the restriction.

Private funds again should remain outside the mandatory scope but permitted to voluntarily apply sale-restriction discounts on equity securities if the manager deems it appropriate. The same is true for separately managed accounts holding equity securities subject to resale restrictions. For the reasons developed in Question 1, private funds do not offer statutory daily redemption, do not accept retail investors on the terms 1940 Act funds do, and control the timing and terms of liquidity by contract. The retail-investor and dilution rationales that support a mandatory rule for registered funds do not carry over to private funds. If the Board later chooses to address private funds, any guidance should be optional, principles-based, and developed on a separate work-stream with ample time and opportunity for input from private funds and consideration by the FASB.

Recommendation. The Board should (i) apply the amendments on a mandatory basis to all 1940 Act registered investment companies, including open-end funds, closed-end funds, BDCs, interval funds, and tender offer funds; (ii) limit the reference to "equity securities" to Level 1 securities under ASC 820; and (iii) exclude private funds from the mandatory scope but permit application of the amendments on a voluntary basis to private funds and separate accounts.

Question 3

Are there other types of assets subject to contractual sale restrictions that should be considered either in this project or in a separate project? In your experience, to what extent are contractual sale restrictions on these other types of assets pervasive and considered by market participants? Please explain your reasoning.

MFA Response.

No. Consistent with Questions 1 and 2, the Board should confine the Proposed ASU to contractual sale restrictions on Level 1 equity securities held by 1940 Act registered investment companies. The exposure draft should not extend to (i) Level 2 or Level 3 equity securities, (ii) non-equity instruments at any hierarchy level, or (iii) securities held by private funds.

Level 2 and Level 3 equity securities already require a bottom-up valuation analysis that under current guidance to consider resale restrictions. ASC 820 requires the fair value of a Level 2 or Level 3 asset to reflect the assumptions market participants would use in pricing it, including restrictions on sale or use. Level 2 valuations rely on observable inputs adjusted for restrictions and holding-period considerations; Level 3 valuations rely on unobservable inputs applied through a model already expected to reflect restriction, liquidity, and marketability factors. Prevailing industry practice, reflected in the AICPA's Valuation Guide, is the same: transferability restrictions are a standard input to Level 2 and Level 3 measurements of portfolio-company equity investments. Extending the Proposed ASU to those measurements risks over-emphasizing the restriction in the valuation process.

Non-equity instruments do not present the fact pattern driving the Proposed ASU. The stakeholder concerns motivating the exposure draft arise from a narrow fact pattern: a registered fund holds a greatly appreciated equity position in an issuer preparing a registered public offering, and the fund is contractually locked up or otherwise restricted from selling the equity position.

- *Level 1 non-equity instruments do not raise the same concern.* The Level 1 universe outside equities is small and largely limited to instruments such as certain highly liquid government securities and exchange-traded funds -- not typically subject to the contractual sale restrictions the Proposed ASU targets.
- *Level 2 and Level 3 instruments already incorporate the effect of restrictions on valuation.* Syndicated bank loans, private credit, structured products, and partnership interests trade in markets where consent rights, assignment limitations, and transfer restrictions are pervasive and priced into the input set. Syndicated bank loans, for example, trade in over-the-counter secondary markets in which assignment mechanics under the loan documentation are a standard input. Layering a prescriptive adjustment on top again risks double-counting the effect of the restriction on valuation.

A separate project expanding the scope of the Proposed ASU beyond equity securities would create additional issues rather than solve any existing concern. A separate project directed at mandatory application of the Proposed ASU requirements to non-equity instruments or at Level 2 or Level 3 equity securities would either (i) codify inputs already required by ASC 820, adding compliance cost without improving fair value, or (ii) impose a prescriptive discount methodology on markets whose restrictions are heterogeneous, bilaterally negotiated, and already reflected in observed transaction prices.

Private funds should remain outside the scope for mandatory. For the reasons developed in Question 1, private funds do not present the retail-investor and daily-NAV concerns that justify prescriptive intervention.

Recommendation. The Board should (i) limit this project to Level 1 equity securities held by 1940 Act registered investment companies; (ii) decline to open a separate project addressing Level 2 or Level 3 equity securities, non-equity instruments, or securities held by private funds; and (iii) preserve the existing principles-based framework of ASC 820 for all asset classes outside the narrow IPO-driven/registered investment company fact pattern that motivates the Proposed ASU.

Question 4(a)

The proposed amendments would require that an investment company disclose the amount of the discount attributable to contractual sale restrictions on equity securities. Investors: Would the proposed disclosure provide investors with decision-useful information and help investors understand the effects of a contractual restriction on the sale of an equity security held by an investment company? If the amount of the discount disclosed was

attributable to all contractual sale restrictions on equity securities in the aggregate, would that provide for decision-useful information? Please explain why or why not.

MFA Response.

MFA takes no position on whether, or in what form, the proposed disclosure would be decision-useful to investors in registered investment companies. That is a question for the retail-facing 1940 Act complex, its boards and valuation designees, and its investors.

MFA's purpose in responding to Question 4(a) is to further explain why the proposed disclosure cannot be reconciled with the operating model of private funds, and to reemphasize our recommendation that private funds be excluded from mandatory application of the Proposed ASU.

Private funds typically do not disclose portfolio positions to investors on a position-by-position basis. Registered investment companies are subject to a public, statutory disclosure regime that includes periodic, public, position-level holdings reports.[17] Private funds are not: they are excepted from registration under Section 3(c)(1) or 3(c)(7) of the 1940 Act and operate under a different disclosure architecture: their advisers are subject to the antifraud, custody, and books-and-records requirements of the Investment Advisers Act of 1940 ("**Advisers Act**")[18] and report portfolio-level information confidentially to the SEC on Form PF.[19] Private funds do not provide public position-by-position holdings reports that Form N-CSR require of registered funds (or Form 10-Q for BDCs).[20] Investor-facing communications in the private-fund model are typically aggregated, exposure-based, and delivered under negotiated reporting regimes tailored to sophisticated, accredited investors and qualified purchasers.

The mandatory disclosure contemplated in the Proposed ASU appears position-linked. A disclosure quantifying the discount "attributable to contractual sale restrictions on equity securities" appears tied to specific positions: it is meaningful only if a reader can associate the disclosed discount with the security to which the restriction attaches. Even in aggregate, the disclosure would frequently be reverse-engineerable to individual holdings. This is particularly true where a fund holds a concentrated pre-IPO position, a private investment in public equity ("**PIPE"**), or a strategic block

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17 SEC, Form N-PORT (monthly portfolio-investments reporting by registered management investment companies, with information reported for the third month of each fiscal quarter made public); 1940 Act § 30.

18 Advisers Act § 206 (antifraud); Advisers Act Rule 206(4)-2 (custody rule); Advisers Act Rule 204-2 (books and records).

19 SEC, Form PF, https://www.ecfr.gov/current/title-17/chapter-II/part-279/section-279.9 (visited June 13, 2026); *see also* Advisers Act Rule 204(b)-1 (Form PF confidential reporting by SEC-registered private-fund advisers; Form PF filings are confidential and not publicly disclosed).

20 *See* Form N-CSR (certified shareholder reports of registered management investment companies, including the fund's complete schedule of investments); Form N-PORT (monthly portfolio-holdings reporting by registered management investment companies, with the third-month report in each fiscal quarter made public); Investment Company Act of 1940 § 30 (periodic and other reports of registered investment companies); *see also* Form 10-Q (quarterly reports of business development companies and other Exchange Act reporting companies); Securities Exchange Act of 1934 § 13(a) (periodic reporting obligations applicable to BDCs by operation of Investment Company Act § 64).

subject to a publicly disclosed lock-up. That is at odds with the private-fund disclosure model, in which position-level information is confidential, commercially sensitive, and generally not disclosed to investors (much less the public).

The Proposed ASU's disclosure requirements are designed for a vehicle that reports its portfolio to the public, and it does not fit a vehicle that does not. That mismatch is another independent reason (alongside the redemption, retail-investor, and market-participant-assumption points in Questions 1 and 2) why the Proposed ASU should not apply to private funds on a mandatory basis.

Recommendation. MFA recommends that the Board (i) exclude private funds from mandatory application of the Proposed ASU, including any proposed disclosure requirement, and (ii) if it later considers applying the Proposed ASU on a mandatory basis to private funds, the Board should do so through a separate workstream. This separate workstream should begin not from the registered-fund model but from the private-fund disclosure regime that has developed to meet the needs of sophisticated, often institutional private fund investors. As to registered investment companies, MFA takes no position on the form or content of the proposed disclosure.

Question 4(b)

Preparers: What costs would be incurred to disclose the amount of the discount attributable to contractual sale restrictions on equity securities?

MFA Response.

Consistent with our response to Question 4(a), MFA takes no position on the preparer costs that would be incurred by registered investment companies.

As to private funds, MFA reiterates that they should be excluded from the final standard for the reasons developed in Questions 1, 2, and 4(a). If private funds were nonetheless required at some point in the future to comply, the preparer costs would be substantial and disproportionate to any decision-useful information the disclosure would produce. Identifying, quantifying, documenting, and continuously monitoring the specific portion of a valuation adjustment attributable to a contractual restriction would require new methodologies, controls, and documentation; retention of third-party valuation specialists; revisions to valuation policies and system modifications; and expanded audit and review procedures. These costs and burdens would all be layered on top of a valuation process that already involves the collective judgment of valuation professionals, pricing and valuation committees, and external service providers. The point, however, is not to catalogue those costs but to highlight that a disclosure designed for a public, position-level reporting regime regulated under the 1940 Act should not be imposed on a private fund vehicle that operates under a different regulatory regime.

MFA Recommendation. Private funds should be excluded from the final standard, in which case no preparer-cost analysis is relevant.

Question 5

Do you agree with the transition guidance in this proposed Update? Please explain why or why not. Should an investment company instead be permitted to apply the proposed amendments only to equity securities with contractual sale restrictions that are executed or modified on or after the date of adoption, rather than to all equity securities with contractual sale restrictions in effect at the date of adoption? If so, please describe the nature of the transactions or circumstances that would necessitate that transition alternative and how frequently those circumstances arise in practice.

MFA Response.

Private funds. For the reasons developed in Questions 1, 2, and 4(a), the Proposed ASU should not apply to private funds. If the Board accepts that recommendation, no transition question arises for private funds. MFA takes no position on the transition mechanics that would otherwise apply to investment companies registered under the 1940 Act.

Registered investment companies. MFA takes no position on transition issues of the Proposed ASU as applied to 1940 Act registered investment companies, including open-end funds, closed-end funds, BDCs, interval funds, and tender offer funds. Whether the Board adopts a retrospective, prospective, or hybrid transition is a matter for the registered-fund industry and the Board's engagement with it. Two structural transition principles warrant emphasis:

- *Maximum flexibility for registered funds in implementing the Level 1 discount.* The Board should afford registered investment companies the greatest possible flexibility in determining when and how to reflect a valuation adjustment for Level 1 equity securities subject to contractual resale restrictions. That flexibility should include the ability to elect (i) prospective application to positions acquired or to contractual sale restrictions executed or modified on or after the effective date, (ii) retrospective application to all Level 1 equity securities subject to contractual sale restrictions held as of the effective date, or (iii) a hybrid approach that reflects a fund's existing valuation policies, pricing-committee procedures, and portfolio composition.

  Registered funds hold restricted equity positions acquired under widely varying facts and circumstances: pre-IPO investments, PIPE transactions, seed positions, secondary purchases, and negotiated blocks. Their existing fair-valuation frameworks under 1940 Act Rule 2a-5 are already calibrated to those differences. A one-size-fits-all transition mechanic risks disrupting valuation policies and internal controls that boards and valuation designees have carefully developed, without a corresponding benefit to investors. To preserve comparability and transparency notwithstanding that flexibility, MFA recommends that registered funds be required to disclose valuation discount policies in their financial statements or a companion regulatory filing. Investors, fund boards, and market participants can then evaluate a fund's transition approach against its peers without the Board having to impose a single, uniform mechanic that fits some funds better than others.

- *Mitigation of redemption-based gaming and dilution.* Any change to the fair value of restricted equity positions held by a daily-redeemable open-end fund necessarily affects the NAV at which redemptions are struck. Shareholders with information about the timing, direction, or magnitude of a transition-driven NAV adjustment could redeem in advance of, or delay redemptions until after, the adjustment—capturing value at the expense of non-redeeming shareholders. The SEC has identified this dilution risk as a concern animating 1940 Act Rule 22c-1's forward-pricing regime,[21] the swing-pricing framework under Rule 22c-1(a)(3),[22] and the fair-valuation obligations codified in Rule 2a-5.[23]

  MFA recommends that, in giving registered funds the flexibility described above, the Board pair that flexibility with reasonable anti-gaming safeguards to protect non-redeeming shareholders. The Board for example could require advance shareholder disclosure of the fund's chosen transition method and effective date, aligning implementation with a fiscal-period reporting boundary, coordinating transition disclosure with the fund's existing NAV-communication practices, and permitting registered funds to reflect the transition adjustment consistent with existing fair-valuation, forward-pricing, and swing-pricing controls.

Recommendation. The Board should (i) exclude private funds from the final standard, in which case no transition guidance is needed for them; (ii) afford registered investment companies maximum flexibility in determining when and how to implement the Level 1 discount, whether prospectively to new positions, retrospectively to positions held on the effective date, or on a hybrid basis; (iii) require registered funds to disclose whether, when, and how they are applying the discount so that investors and the market can evaluate each fund's approach; and (iv) design the transition to minimize the ability of opportunistic shareholders to game redemptions around the effective date.

Question 6

How much time would be needed to implement the proposed amendments? Should the effective date for entities other than public business entities differ from the effective date for public business entities? If so, how

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21 1940 Act Rule 22c-1, *supra* note 6; *see* SEC, *Pricing of Redeemable Securities for Distribution, Redemption and Repurchase*, Inv. Co. Act Rel. No. 5519 (Oct. 16, 1968) (identifying dilution of non-redeeming shareholders as the concern underlying forward pricing), *available at* https://www.sec.gov/files/rules/final/1968/34-8429.pdf.

22 1940 Act Rule 22c-1(a)(3) (permitting open-end funds to use swing pricing to pass transaction costs to transacting shareholders and mitigate dilution); *see also* SEC, *Investment Company Swing Pricing*, 81 Fed. Reg. 82084 (Nov. 18, 2016), (identifying shareholder dilution as the concern addressed by swing pricing), *available at* https://www.govinfo.gov/content/pkg/FR-2016-11-18/pdf/2016-25347.pdf.

23 1940 Act Rule 2a-5; SEC, *Good Faith Determinations of Fair Value*, 86 Fed. Reg. 748 (Jan. 6, 2021), *available at* https://www.govinfo.gov/content/pkg/FR-2021-01-06/pdf/2020-26971.pdf.

much additional time would you recommend for entities other than public business entities? Please explain your reasoning.

MFA Response.

Registered investment companies. MFA takes no position on the effective date or implementation period appropriate for 1940 Act-registered investment companies.

Private funds. MFA reiterates the recommendation developed in Questions 1, 2, 4(a), and 5: the Proposed ASU should not be mandated for private funds. Because private funds should be outside the scope of the final standard, no effective date or implementation period is needed for them.

If the Board nonetheless considers extending the standard to private funds in a future work-stream, it should do so on an optional, principles-based basis and provide a materially longer implementation period than would apply to registered funds. Private funds negotiate contractual valuation, redemption, and reporting terms with sophisticated investors at inception; conforming those arrangements to a new mandatory measurement regime would require partnership-agreement and side-letter review, coordination with administrators and auditors, and build-out of new valuation-committee and documentation infrastructure that cannot be compressed into a registered-fund-style timeline.

Question 7

Do you agree with the early adoption guidance in this proposed Update? Please explain why or why not.

MFA Response.

Consistent with Questions 5 and 6, MFA takes no position on early adoption for registered investment companies, subject to the caveat in Question 5 that any early-adoption window should apply uniformly across the registered-fund complex to preserve NAV comparability. For private funds, if the Board accepts our recommendation that they be excluded from the final standard, no early-adoption question arises.