November 11, 2010

Technical Director
File Reference No. 1850-100
FASB
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Dear Board Members and Staff:

We appreciate your invitation to comment on the Proposed Accounting Standards Update related to leases. We acknowledge the tremendous amount of time and effort that went into developing this exposure draft and appreciate the FASB’s diligence in this matter.

By way of background, Express is a specialty retailer operating approximately 580 stores in high-traffic shopping malls, lifestyle centers and street locations across the United States. All of our stores are subject to operating leases, typically with terms of 10 years, including options to renew for additional multi-year periods thereafter. Some of our leases have early cancellation clauses, which permit the lease to be terminated by us or the landlord if certain sales levels are not met in specific periods or if the center does not meet specified occupancy standards. A number of our store leases provide for rental payments based on a percentage of net sales or additional rental payments if sales at the respective stores exceed specified levels, as well as the payment of common area maintenance charges, real property insurance and real estate taxes. Given these facts, this standard will clearly have a major impact on us and the majority, if not all, other specialty retailers. Our primary concerns with the exposure draft are presented below, within the context of the questions posed by the FASB.

Volatility to earnings (Questions 8 and 9)
We believe that the new standard has the potential to introduce significant volatility to earnings as a result of the lease term, contingent rental payments and the reassessment provisions of the exposure draft. The level of judgment and estimation involved in each of these is enormous and unprecedented. Reliably estimating sales for a particular store is a challenge from quarter-to-quarter, and this standard would require us to estimate sales potentially 10 years into the future. If your review sales results of any specialty retailer you will note that there is significant volatility in comp store sales quarter to
quarter as well as year to year. These numbers are the aggregate result of all stores within a company. Individual store sales results will fluctuate more. In addition, we would also be required to estimate how long we plan to stay in each store at the signing of each lease. This is dependent upon a number of factors, some of which are not within our control, such as, mall occupancy, upkeep of the mall, development of the surrounding areas and the economic condition of the surrounding areas. As noted above, many of our leases have cancellation clauses, as well as renewal options. These clauses are put into leases because we simply do not know what the future will hold for a particular store. Requiring us to make estimates on contingent rentals and expected lease term up front, and potentially reassess each lease on a quarterly basis, will certainly increase volatility in earnings. Feedback we've received from investors, in our industry, on this proposed standard has been negative in nature primarily due to the significant volatility in earnings it is likely to cause. We would propose keeping the existing guidance with regards to contingent rentals, (i.e., recognizing contingent rentals when the contingency occurs) and retaining the current definition of a lease term. We believe that these would reduce the volatility in earnings and present investors with a more consistent approach to lease accounting and a better understanding of the underlying health of the business.

Administrative burden (Question 10)
As was noted above, we have approximately 580 leased stores currently open, and over the next five years, expect to average 30 store openings per year across the US and Canada. The sheer number of leases that need to be evaluated against the provisions of this exposure draft will put a significant strain on our current resources and potentially require the hiring of additional resources from outside the company. In addition, the requirement to reassess leases at each reporting period will put undue pressure on us and other retailers, especially in light of the tight deadlines under which public companies are required to report quarterly results. This has the potential to open companies up to more risk and lead to more errors in the presentation of leases within the financial statements given the number of judgmental assessments we are required to make each quarter. We believe that maintaining the current definition of a lease term and recognition of contingent rental upon the contingency occurring will alleviate some of the administrative burden and, thus, increase the quality of financial reporting for public companies.

Impact on covenants (Question 17)
The exposure draft will have a significant impact on covenants included within certain debt agreements. Components of covenant calculations expected to be impacted would include, but are not limited to, EBITDA and leverage ratios. These items are key components in a considerable number of debt covenants. By significantly altering the amounts included in the covenant calculations, there is the potential that a number of debt agreements will need to be renegotiated and/or amended, which could lead to additional costs for debtors and a potential windfall for lenders even though the underlying fundamentals surrounding the original debt agreements have not changed. We do not believe that this is appropriate. We believe that banks were, or should have been, aware of the rent obligations of their borrowers given the current disclosures in both the footnotes to the financial statements and the contractual obligations table for public
has not been fully considered in the cost-benefit analysis and would urge the board to reconsider, with what could be, significant amendment fees in mind.

Misrepresentation of cash flows (Question 14)
Leasing is critical in the operation of our business and as such we would argue that the cash payments for leases should be an operating activity and not a financing activity, particularly in the retail industry. As defined in the FASB Codification 230-10-20 “Operating activities generally involve producing and delivering goods and providing services.” The rental expense that we incur is fundamental in our business and we consider it a cost of delivering our goods to the customer. As such, we believe for retail companies, the classification of rental payments as a financing activity is not accurate in the context of our business, and will be confusing to the end user in evaluating our cash flows. We therefore recommend rental payments be classified as operating cash flows in situations where leasing is an integral part of delivering a company’s product to the ultimate customer.

In closing, we appreciate the Board’s time and consideration of our comment letter. We believe there are enough legitimate concerns about this proposal to warrant the reconsideration of the entire exposure draft. In this process we would urge the board and the staff to pay special consideration to retail companies given the reliance on leasing in our business model and the significant complexities this new standard would create both for the reporting companies and investors that are trying to make sense of the changes in reported earnings.

On a separate note, we would also like the board to consider the volume and complexity of the new standards being issued. In the past year there have been an unprecedented number of new standards and interpretations from the FASB. The pace of new standards and interpretations is placing stress and strain on companies as we attempt to present accurate and complete results, and we believe is creating an unnecessary risk of misstatement and compliance in said financial statements. In these difficult times, we encourage the board to slow their current pace of standard setting, allowing companies to focus on business growth and on presenting the most complete and accurate picture of their financial situation, without the undue burden that new standards necessarily create. We thank you for your consideration in these areas and once again appreciate the ability to voice our concerns.

Best regards,

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Express