December 15, 2010

Financial Accounting Standards Board
Attn: Technical Director
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Re: Invitation to comment – Exposure Draft Leases (Topic 840)

Dear Board Members,

We appreciate the opportunity to respond to the “Leases” exposure draft (ED) that was jointly issued by the International Accounting Standards Board (IASB) and the Financial Accounting Standards Board (FASB).

ING Clarion Partners was founded in 1982 and is a leading private market real estate investment manager with operations in the United States and the key emerging economies of Mexico and Brazil. ING Clarion Partners manages over $21 billion in gross AuM on behalf of institutional clients including large public and corporate pension funds, sovereign wealth funds and foundations and endowments.

In 1983 the institutional investment real estate industry adopted fair value financial accounting and reporting standards to serve the needs of the investor community. These industry standards are based on Accounting Standards Codification (“ASC”) Topic 960, Plan Accounting – Define Benefit Pension Plans (i.e. former FASB Statement of Financial Accounting Standards No. 35) and Governmental Accounting Standards Board (“GASB 25”), Statement No. 25, Financial Reporting for Defined Benefit Pension Plans and Note Disclosures for Defined Contribution Plans, which require that certain investments held by tax-exempt investors, including defined benefit pension plans and endowments be reported at fair value. For example, Topic 960 which applies to corporate plans, requires that all plan investments be reported at fair value because that reporting provides the most relevant information about the resources of a plan and its present and future ability to pay benefits when due. In addition, GASB 25 requires government-sponsored pension plans to present investments at fair value in their financial statements. Traditional historical cost basis of accounting used by other real estate companies, owners, and operators is
not appropriate for our clients as it does not provide tax-exempt investors with the financial information they require to comply with authoritative accounting standards and is not viewed as a faithful representation of their investment activity.

Additionally, institutional real estate investment funds generally have attributes similar to those of “investment companies,” as set forth in Topic 946, Financial Services – Investment Companies, (former AICPA Audit and Accounting Guide: Investment Companies). This authoritative guidance supports the use of a fair value accounting model for those real estate funds that have the attributes of an investment company. As such, we apply a fair value reporting model for investment properties under the accounting guidelines currently contained in ASC Topic 946 or ASC Topic 960 for our institutional investors.

As a result, ING Clarion believes that applying the proposed accounting rules for lessors as outlined in the exposure draft, would significantly distort financial statements rather than increase comparability and transparency for our investors. It is our view that the fair value reporting currently performed by lessors within our industry is a faithful representation of the economics of our clients’ investments and further promotes transparency requisite to executing their overall investment strategies which they rely upon to meet their own plan return requirements and obligations. Therefore we believe that lessor accounting for leases of real estate held for investment should be excluded from the scope guidance.

Moreover, ING Clarion supports the FASB’s anticipated release the “Fair Value Measurement and Disclosure” exposure draft that would require investment properties to be reported at fair value under GAAP. We believe this proposed update should be analogous to IAS 40, Investment Properties, which provides that investment properties be reported at fair value. It also provides that such investment properties be scoped out of the proposed lessor accounting model. We believe that in the interest of effective convergence of US GAAP and IFRS, providing a similar scope exception to FASB’s proposed lease accounting standard will result in consistency in global accounting and reporting standards which is also fundamental to clients who are global investors.

Although we support the boards desire to promote transparency in financial reporting, we believe that this pronouncement in general, and applying it to fair value real estate investments specifically accomplishes the opposite and introduces opaqueness into the financial reporting. Moreover, we believe that the current fair value accounting model significantly enhances transparency as it: a) provides investment results truly reflective of current market conditions, b) provides the relevant measurement of NAV which is the basis of investor share pricing and overall investment value and c) provides a more meaningful comparison of investments for those investors who hold multiple investment products. We are concerned that if the lessor accounting model is scoped in for investment properties that our clients will lose this transparency into the true performance of their investments.
We hope that the Board will consider these views in terms of the overall impact on the investors in addition to a more practical convergence process with International Financial Reporting Standards.

We would be happy to discuss our views in further detail with the board at any time.

Thank you for your time and consideration.

Sincerely,

[Signature]

Patrick J. Tully, Jr.
Managing Director and Chief Financial Officer
ING Clarion Partners
Appendix

Question 1: Lessees

(a) Do you agree that a lessee should recognize a right-of-use asset and a liability to make lease payments? Why or why not? If not, what alternative model would you propose and why?

Response:
We disagree. We believe that there will be unintended negative and material consequences to the real estate leasing industry as a result of the proposed lessee accounting rules including: a) shorter lease terms which will result in lower real estate values, b) inconsistent financial statement presentation due to subjectivity of new lease term definition, inclusion of contingent rentals and the need to re-assess assumptions continuously. If the Boards elect to proceed with the proposed lease accounting rules, notwithstanding the concerns of its constituents, we urge the Boards to revisit their definitions of lease term and lease payment and consider limiting inputs to their determination based on contractual terms and omit proposed requirements to consider potential lease renewals and variable rent components.

(b) Do you agree that a lessee should recognize amortization of the right-of-use asset and interest on the liability to make lease payments? Why or why not? If not, what alternative model would you propose and why?

Response:
We disagree with the proposed requirements for lessees to record amortization and interest expense in place of rental expense. We believe that these accounting requirements are indicative of a finance arrangement. However, a lessee has entered into a lease to occupy real estate as an alternative to acquiring direct ownership of a property through a finance arrangement. Given the indefinite economic life associated with land, as well as the economic useful life of a brick and mortar structure which can easily exceed forty-years, we believe that the average term of 7-15 years for a commercial real estate lease is not indicative of a finance arrangement to acquire property.

We recommend consideration be given to allowing lessees to continue to report rental expense under the former SFAS 13. Right-to-use assets and liabilities to make lease payments can be amortized, or reduced equally on an effective yield method. Although the lessee would not record amortization or interest expense in the financial statements such amounts can be disclosed in the audited footnotes accompanied by the incremental borrowing rate.

Question 2: Lessors

(a) Do you agree that a lessor should apply (i) the performance obligation approach if the lessor retains exposure to significant risks or benefits associated with the underlying asset...
during or after the expected lease term and (ii) the derecognition approach otherwise? Why or why not? If not, what alternative approach would you propose and why?

Response:
We disagree that a real estate lessor should apply either approach described in parts (i) and (ii) of 2(a). As indicated above, we anticipate that the FASB will require lessors to report investment properties at fair value, and accordingly lessors of investment properties should be excluded from the proposed lease accounting rules. The fair value accounting model is indicative of true economics associated with investments in real estate and provides more valuable and useful information in comparison to a depreciated cost model, accompanied by the proposed lease accounting rules.

(b) Do you agree with the boards’ proposals for the recognition of assets, liabilities, income and expenses for the performance obligation and derecognition approaches to lessor accounting? Why or why not? If not, what alternative model would you propose and why?

Response:
See response to Question 2(a) above.

Also, we believe that these accounting requirements are indicative of a finance arrangement when in fact, a lessor has entered into a leasing arrangement with no intention of disposing of the property under a finance arrangement with a lessee, notwithstanding a purchase option term within the lease.

(c) Do you agree that there should be no separate approach for lessors with leveraged leases, as is currently provided for under US GAAP (paragraph BC15)? If not, why not? What approach should be applied to those leases and why?

Response:
We agree that there should not be a separate approach for lessors with leveraged leases, as currently provided for under US GAAP (paragraph BC15).

Question 3: Short-term leases

Do you agree that a lessee or a lessor should account for short-term leases in this way? Why or why not? If not, what alternative approach would you propose and why?

Response:
Short term leases (leases with a term or 12 months or less) are not common in the commercial real estate industry, with the exception of residential real estate rental properties. We do not agree that short-term leases should be accounted for in the proposal as the administrative burden of accounting for these leases that turnover quite frequently could be significant. Also, we believe that the proposed standard should clarify that the accounting should not change for these types of short-term leases that include language where the lessee could extend the term of the lease on a month-to-month basis after the initial term is complete.
Question 4: Definition of a lease

(a) Do you agree that a lease is defined appropriately? Why or why not? If not, what alternative definition would you propose and why?

Response:
Yes. A lease is a contract in which the right to use a specified asset or assets is conveyed for a period of time in exchange for consideration. Leases for real property transfer the right to use a specific portion of the real property from the landlord to the tenant in exchange for rent.

(b) Do you agree with the criteria in paragraphs B9 and B10 for distinguishing a lease from a contract that represents a purchase or sale? Why or why not? If not, what alternative criteria would you propose and why?

Response:
No. We do not agree with the criteria in paragraph B-9 or B-10 for distinguishing a lease from a contract that represents a purchase or sale as it relates to real estate.

Under the “derecognition” approach, a lessor who does not maintain significant exposure to risks and rewards associated with the leased asset is required to derecognize a portion of the asset. Such a presentation in a lessor’s financial statements would indicate a partial sale or the transfer of a portion of the property’s value to the lessee. This presentation would present a view far different than the economic and legal substance of the transaction. Regardless of the terms of a lease, it is unlikely that an owner/lessor of real estate would transfer their legal responsibility for a property without legally transferring title, in whole or in part, to a third-party. From this perspective, we disagree that the derecognition approach is appropriate for real estate leases where a bona fide sale has not occurred and propose that the derecognition approach include a scope exception for real estate lessors. In our opinion, the sale or derecognition of real estate should continue to be accounted for under existing guidance in Topic 360-20, Real Estate Sales, section 40-5 and related literature which require the following:

a. A sale is consummated
b. The buyer's initial and continuing investments are adequate to demonstrate a commitment to pay for the property
c. The seller's receivable is not subject to future subordination
d. The seller has transferred to the buyer the usual risks and rewards of ownership in a transaction that is in substance a sale and does not have a substantial continuing involvement with the property

(c) Do you think that the guidance in paragraphs B1–B4 for distinguishing leases from service contracts is sufficient? Why or why not? If not, what additional guidance do you think is necessary and why?
Response:
Yes. We think that the guidance in paragraphs B1–B4 for distinguishing leases from service contracts is sufficient.

Question 5: Scope exclusions

Do you agree with the proposed scope of the proposed guidance? Why or why not? If not, what alternative scope would you propose and why?

Response:
No. We believe the Board should to exclude lessor accounting for leases of real estate held for investment from FASB’s proposed lease accounting rule, similar to the scope exception provide for investment properties reported at fair value under IAS 40.

The reasons for our position are stated below:

- A convergence of GAAP with International Financial Reporting Standards ("IFRS"), specifically IAS 40, Investment Properties, results in a consistent and informative basis of accounting for investment properties globally;

- A fair value accounting model improves transparency to financial statements by providing investment performance results indicative of current market conditions and made readily accessible to investors or other users of financial statements;

- The reporting of real estate investments at fair value will result in a more transparent measurement of a company’s net asset value ("NAV");

- Investors with holdings in multiple asset classes can easily compare the performance results between real estate investments and other investments in financial assets, the latter of which are typically reported at fair value;

- Under a fair value accounting model a property’s operating results are reported to reflect gross contractual rental income and managed expenses directly correlated to the property’s day to day operations, performance metrics that are crucial to experienced real estate investors.

- Additionally, see our comments on the matter in our letter preceding this Appendix.

Question 6: Contracts that contain services components and lease components.

Do you agree with either approach to accounting for leases that contain service and lease components? Why or why not? If no, how would you account for contracts that contain both service and lease components and why?

Response:
The proposed lease guidance would require that lease payments be allocated between the lease component and any service component when the other services are distinct. If the
believe that the service component should be treated as distinct and accounted for separately. Under that premise the principles in the joint FASB/IASB project on revenue recognition should apply. Since service contracts associated with real estate operations is subject to constant change, we believe that consideration of them would subject the recognition of the right to use asset and liability to constant change. Constantly evaluating or predicting what that change would be would just add more volatility to the probability analysis used to calculate the right to use asset/liability.

Since lessees would recognize leases on a gross basis as assets for the right to use leased assets and liabilities for the required lease payments, we recommend that the Boards provide additional guidance on distinguishing lease components from components which should not be treated as part of the lease. Although the presentation is net on the balance sheet, the “distinctive service” aspect also impacts the calculation of the lessors. We believe that a triple net lease whereby the tenant pays certain expenses of the property directly and a lease whereby a landlord is reimbursed for those expenses (i.e. common area maintenance, insurance, and property taxes) should be treated the same. That is, any reimbursements to the landlord of such expenses should be recognized as incurred and not considered part of rental revenues for calculation of the lease asset or liability.

**Question 7: Purchase Options**

*Do you agree that a lessee or a lessor should account for purchase options only when they are exercised? Why or why not? If not, how do you think that a lessee or a lessor should account for purchase options and why?*

**Response:**

Yes, given the uncertainty of a lessee exercising a purchase option.

**Question 8: Lease term**

*Do you agree that a lessee or a lessor should determine the lease term as the longest possible term that is more likely than not to occur taking into account the effect of any options to extend or terminate the lease?*

**Response:**

No.

We believe that the fact remains that real estate lease renewal options are typically unilateral in nature and that the lessee can choose not to renew a lease despite economic motivations to the contrary. Additionally, economic and strategic management circumstances are constantly changing and the ongoing re-assessment of these assumptions would produce additional volatility in the financial statements. Given the long-term nature of real estate leases, determining renewal probabilities is highly subjective and results in probabilities that are highly uncertain due to the large number of uncontrollable and unforeseeable factors that come into play. We believe that this
volatility would ultimately produce financial statements that are more confusing to the end users as comparable period analysis would hold little relevance.

Also, we believe that the high degree of subjectivity in calculating renewal probabilities opens the door to manipulation. These subjective estimates will most likely lead to lessors and lessees drawing different conclusions and thus different values for the same lease.

If not, how do you propose that a lessee or a lessor should determine the lease term and why?

Response:
We believe that lease renewal options do not meet the definition of an asset or a liability until such options are exercised and become contractually enforceable. Accordingly, we request that the Boards reconsider the definition of “lease term” and that the definition is solely determined based on the contractually enforceable term of the executed lease which excludes unexercised options to extend or terminate the lease. We take this position because only the contractually enforceable term of the executed lease gives rise to an asset and a liability for the lessee and lessor. We believe that this definition of lease term accomplishes the Boards’ transparency objectives relative to the term of the lease that can be reasonably predicted. This definition of lease term accomplishes the comparability objectives of the Boards providing:

- Comparability between lessee and lessor because the definition of “lease term” is based solely on non-subjective criteria relative to both parties of the lease (contractually enforceable term of the executed lease)

- Comparability between lease transactions without introducing the high degree of subjectivity required to estimate renewal probabilities relating to unexercised lease renewal options and without introducing the volatility created by updates to renewal probability estimates.

We believe that this proposed definition of “lease term” will result in unexercised lease renewal options being treated more consistently with similar types of unexercised options that do not utilize the “more likely than not to occur” recognition criterion under US GAAP.

Question 9: Lease payments

Do you agree that contingent rentals and expected payments under term option penalties and residual value guarantees that are specified in the lease should be included in the measurement of assets and liabilities arising from a lease using an expected outcome technique?

Response:
Contingent rentals, expected payments under term option penalties, and residual value guarantees should be included in the measurement of assets and liabilities using the
expected outcome technique described in 14 (a)-(c) if such inclusion is limited to the contractually enforceable term of the executed lease (for reasons stated in the answer to Question 8) and only for such lease payments that can be reliably measured.

**Why or why not?**

**Response:**

Relative to the contractually enforceable term of the executed lease, the liability to pay contingent rentals and the right to receive contingent rental payments exist at the date of inception of the lease. It is only the amount to be paid that is uncertain, thus the expected outcome technique should be used to reliably measure these assets and liabilities. As stated in our answer to Question 8, we believe that lease renewal options do not meet the definition of an asset or a liability until such options are exercised and become contractually enforceable, thus contingent rentals relating to unexercised lease renewal options should be excluded.

**If not, how do you propose that a lessee or a lessor should account for contingent rentals and expected payments under term option penalties and residual value guarantees and why?**

**Response:**

N/A

**Do you agree that lessors should only include contingent rentals and expected payments under term option penalties and residual value guarantees in the measurement of the right to receive lease payments if they can be reliably measured?**

**Response:**

Yes.

**Why or why not?**

**Response:**

To do otherwise is to undermine the objective of providing reliable financial statements.

**Question 10: Reassessment:**

Do you agree that lessees and lessors should re-measure assets and liabilities arising under a lease when changes in facts or circumstances indicate that there is a significant change in the liability to make lease payments or in the right to receive lease payments arising from changes in the lease term or contingent payments (including expected payments under term option penalties and residual value guarantees) since the previous period? Why or why not? If not, what other basis would you propose for reassessment and why?

**Response:**

As indicated in our response to Questions 8 & 9, we believe the lease term should be based on the contractually enforceable term of the executed lease, and generally, contingent rentals should be excluded with the exception of those contractually enforceable under the lease term. Any reassessment should be limited to those assumptions. Without consideration to this point, reassessment as proposed would add
undue volatility to the financial statements without any benefit, as the judgments and assumptions primarily being reassessed would otherwise be highly subjective in nature.

**Question 11: Sale and leaseback:**

*Do you agree with the criteria for classification as a sale and leaseback transaction? Why or why not? If not, what alternative criteria would you propose and why?*

**Response:**

No, we believe that the paragraphs 66-67, B9-10, B31 and BC160-167 list different requirements for a sale than the former SFAS 66 and SFAS 98, specifically in their definition of "continuing involvement". The new requirements would allow transactions that previously were not considered sales to be recorded as a sale. The paragraph B31 a) limits the purchase option requirement only if that option price is not fair value. At the beginning of the lease term, fair value cannot be determined at the end of the lease if the option price is a stated amount? This uncertainty could cause variance in the application of the standard and produce inconsistent results from similar transactions within the real estate industry.

We propose altering the paragraph B31a) to include a definition of "continuing involvement" which would not limit purchase options, which may or may not be at fair value, since that determination cannot be made at the beginning of the lease for stated amount options.

**Question 12: Presentation, Statement of financial position:**

(a) *Do you agree that a lessee should present liabilities to make lease payments separately from other financial liabilities and should present right-of-use assets as if they were tangible assets within property, plant and equipment, or investment property as appropriate, but separately from assets that the lessee does not lease (paragraphs 25 and BC143–BC145)? Why or why not? If not, do you think that a lessee should disclose this information in the notes instead? What alternative presentation do you propose and why?*

**Response:**

Notwithstanding the concerns previously outlined in our comments, we agree with this concept from a lessee perspective which seems in line with the business aspects of the arrangement and achieving transparency.

(b) *Do you agree that a lessor applying the performance obligation approach should present underlying assets, rights to receive lease payments and lease liabilities gross in the statement of financial position, totaling to a net lease asset or lease liability (paragraphs 42, BC148 and BC149)? Why or why not? If not, do you think that a lessor should disclose this information in the notes instead? What alternative presentation do you propose and why?*

**Response:**

As noted previously, we believe splitting the recognition and measurement of the fair value of an investment property into a financial asset and a non-financial asset is not aligned with the fundamentals of an investment property. We do not feel such information
would be useful to investors in real estate funds since all such assets would have the business objective of being leased and investors are more concerned with overall performance returns and the capital appreciation or depreciation of such assets.

(c) Do you agree that a lessor applying the derecognition approach should present rights to receive lease payments separately from other financial assets and should present residual assets separately within property, plant and equipment (paragraphs 60, BC154 and BC155)? Why or why not? Do you think that a lessor should disclose this information in the notes instead? What alternative presentation do you propose and why?

Response:
We do not believe this approach is appropriate for real estate transactions and also believe there should only be one model from a lessor perspective.

(d) Do you agree that lessors should distinguish assets and liabilities that arise under a sublease in the statement of financial position (paragraphs 43, 60, BC150 and BC156)? Why or why not? If not, do you think that an intermediate lessor should disclose this information in the notes instead?

Response:
We do not feel this information would be useful in a fair value reporting environment and would be included within the underlying valuation of the real estate asset.

Question 13: Presentation, Income statement
Do you think that lessees and lessor should present lease income and lease expense separately from other income and expenses in the income statement? Why or Why not?

Response:
In general we do not believe that the lessees and lessor should present lease income and lease expense separately from other income and expenses in the income statement because a separate line for the amortization of the right-of-use asset and interest expense or income would not provide additional information to the reader of the income statement since the income or expense related to the leases would not be part of the main business purpose of the entity. However, we believe that for the lessor entities by which the lease income is the main business purpose, that separating the lease income and expense from other income and expense would provide additional information to the reader of the income statement.

If not, do you think that a lessee should disclose that information in the notes instead? Why or Why not?

Response:
For the entities that do not separate lease income and lease expense from other income and expense in the income statement, we do think that the lessees and lessor should disclose that information in the notes. By providing the information in the notes the
readers who would find use for that information would be able to obtain the data from the notes if they are material to the total other income and expense amount.

**Question 14: Presentation, Statement of cash flows**

*Do you think that cash flows arising from leases should be presented in the statement of cash flows separately from other cash flows (paragraphs 27, 45, 63, BC147, BC153 and BC159)? Why or why not? If not, do you think that a lessee or a lessor should disclose this information in the notes instead? Why or why not?*

**Paragraphs 27 and BC 147 (Lessee)**

**Response:**

No. We do not believe that the cash flows from leasing activities should be classified as financing activities. The lease cost should be included in the operating section as we believe that this is an operating cost rather than a financing cost.

**Paragraphs 45 and BC 153 (Lessor – Performance Obligation Approach)**

**Response:**

Yes. We agree that the lessor should classify cash receipts from lease payments as operating activities in the statement of cash flows.

**Paragraphs 63 and BC 159 (Lessor – Derecognition Approach)**

**Response:**

Yes. We agree that the lessor should classify cash receipts from lease payments as operating activities in the statement of cash flows.

**Questions 15: Disclosure:**

*Do you agree that lessees and lessors should disclose quantitative and qualitative information that:
(a) identifies and explains the amounts recognized in the financial statements arising from leases; and
(b) describes how leases may affect the amount, timing and uncertainty of the entity’s future cash flows? (paragraphs 70–86 and BC168–BC183)? Why or why not? If not, how would you amend the objectives and why?*

**Response:**

We disagree with the proposed disclosures and believe the current disclosures required by GAAP are sufficient for real estate lessors. The proposed disclosures would be very burdensome for our industry without adding any significant value for users of our financial statements. A single fund could hold thousands of real estate leases that would be subject to the proposed requirements.
Questions 16: Transition:
(a) This exposure draft proposes that lessees and lessors should recognize and measure all outstanding leases as of the date of initial application using a simplified retrospective approach (paragraphs 88–96 and BC186–BC199). Are these proposals appropriate? Why or why not? If not, what transitional requirements do you propose and why?

Response:
As indicated previously, we believe investment properties should be scoped out of the proposed accounting, however we agree with the simplified retrospective approach.
(b) Do you think full retrospective application of lease accounting requirements should be permitted? Why or why not?
(c)
Response:
No, it is too burdensome as a single fund can hold thousands of leases and it does not add useful information to the user of a real estate lessor’s financial statements.
(d) Are there any additional transitional issues the boards need to consider? If yes, which ones and why?

Response:
No

Questions 17: Benefits and costs:
Do you agree with the boards’ assessment that the benefits of the proposals would outweigh the costs? Why or why not?
Response:
No. Under the right-to-use model lessees and lessors will incur extraneous costs to acquire, implement and maintain software that would be able to accommodate the new accounting and reporting requirements under the proposed update. Additional staffing will be necessary for the on-going assessment and control over leasing activity to ensure compliance with the proposed update and appropriateness of adjusting entries. Retrospective accounting requirements for in-place leases will intensify these costs and resource issues beyond reasonable means. An institutional real estate Fund could own many properties with thousands of leases that must be reviewed periodically to assess renewal options and variable rent components. These issues combined with our view that the resulting proposed accounting is not appropriate for our investors, leads us to our conclusion related to this question.

Question 18: Other comments:
Do you have any other comments on the proposals?
Response:
Our additional comments have been outlined in the body of the letter preceding this Appendix.
Questions 19: Non-public entities:

Should any of the proposed guidance be different for non-public entities (private companies and not-for-profit organizations)? If so, which requirement(s) and why?

Response:
   No.