Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk CT 06256-5116
Attn: Technical Director – File Reference No. 1850-100

Re: FASB Exposure Draft on Leases

December 15, 2010

Dear Sir or Madam,

Hyatt Hotels Corporation, headquartered in Chicago, is a leading global hospitality company with a proud heritage of making guests feel more than welcome. Thousands of members of the Hyatt family in 45 countries strive to make a difference in the lives of the guests they encounter every day by providing authentic hospitality. The Company’s subsidiaries manage, franchise, own and develop hotels and resorts under the Hyatt®, Park Hyatt®, Andaz®, Grand Hyatt®, Hyatt Regency®, Hyatt Place® and Hyatt Summerfield Suites® brand names and have locations under development on five continents. Hyatt Vacation Ownership, Inc., a Hyatt Hotels Corporation subsidiary, develops and operates vacation ownership properties under the Hyatt Vacation Club® brand. As of September 30, 2010, the Company’s worldwide portfolio consisted of 447 properties.

We appreciate the opportunity to comment on the Leases (Topic 840) exposure draft and hope that our comments will be of assistance in further deliberation. We support the joint efforts of the FASB and IASB (“the Boards”) to develop a single accounting standard for leases and we support the goal of creating greater transparency in financial reporting and increased comparability between entities. However, we have concerns about certain aspects of the exposure draft, which include the use of significant estimates that could lead to diversity in practice, inaccurate representations of financial results, volatility, and reduced comparability among companies. We have highlighted several topics that we believe create these inconsistencies or issues and that could be clarified or revised in order for the new lease accounting guidance to be effective in addressing the intent of the exposure draft. Additionally, we have provided responses to certain of the FASB’s questions proposed to constituents in the exposure draft.

Hyatt Hotels Corporation (“HHC”) leases land, hotels, office space, equipment, and automobiles under both capital and operating leases. The exposure draft presumes that companies enter into leasing arrangements in order to finance the purchase of an asset. At Hyatt, however, our decision to enter into a hotel or land lease is often based on legal requirements in the city or country in which the property is located or based on the structure imposed on us by the owner of the hotel rather than because of a need to finance the transaction. Our most significant leases are our hotel and land leases, which make up nearly 85% of our total lease expense each year. Hotel leases are often long-term in nature (i.e. 20 to 100 years,
including renewal options) and typically include significant contingent rent components (rental payments based on a percentage of the operating profit of the hotel).

We have focused this letter on the impact that the exposure draft would have on our hotel and land leases from the lessee’s perspective.

**Topic 1: Contingent Rent**

We understand the Boards’ view that inclusion of contingent rent in the lease calculation is important to ensure that companies do not achieve off balance sheet treatment by structuring leases that are entirely contingent in nature. However, we question whether the proposed model, which includes contingent rents, would result in reliable measurements of the lease asset and liability, especially for long-term leases.

Some leases in the hospitality industry are long-term in nature (i.e. 20 years or longer) and more akin to a service agreement as the majority of the economic benefits of the operations (i.e. profits) are conveyed to the hotel owner. These types of leases include contingent rentals that are based on a percentage of operating profits, which can convey more than 80% of the profits to the hotel owner.

The hospitality industry is cyclical and is impacted by macroeconomic factors that can significantly affect demand for hospitality products and services, and therefore, it would be extremely difficult to predict contingent rentals over an extended period. Since 2000, the industry has gone through two business cycles, defined as the period starting with the first calendar year of negative revenue per available room (RevPAR) growth and ending with the last calendar year of positive RevPAR growth, from 2001 through 2007 and then from 2008 to the present. During these cycles, we experienced significant fluctuations in operating results, which drove similar fluctuations in related contingent rentals. The severity and duration of these cycles were not predicted even as we were experiencing them. Given the cyclical nature of our industry, our ability to forecast future revenues and operating profits, or accurately predict economic trends and operational results over the life of a long-term lease that spans 20 years or longer, and therefore estimate contingent rents, is extremely subjective and will not be reliable.

We believe that many companies, regardless of their industry, will have a difficult time estimating contingent rentals to be earned under a contract when such rents are based on future operating results, especially under long-term arrangements, due to the amount of subjectivity inherent in forecasting the future events upon which contingent rent is based. As such, we have significant concerns about the accuracy and reliability of the right-of-use asset and lease liability that will be recorded by a lessee. For example, it is unlikely that anyone could have predicted the recent economic downturn, the pace at which it impacted every aspect of the economy, and the amount of time it would take for the economy to recover. During this economic downturn, if companies had been required to estimate future revenues, sales or operating profits for the purpose of their lease calculations, the estimates would have been inaccurate and subsequently adjusted in future periods. We believe such adjustments lead to increased skepticism by investors and decreased confidence by the financial statement users.

In the basis for conclusion, the Boards’ state that they believe companies negotiate leases with contingent rental terms with some level of understanding as to the likely amount of payments to be made under the terms of the lease (paragraph BC126 of the exposure draft). While it is true that companies typically forecast sales and profits during the lease negotiation process, the range of estimates used to determine whether a company should enter into a specific deal are significantly different than the specific and accurate estimates needed for the purpose of financial reporting.
Rather than estimating all future contingent rent payments, we believe that a more accurate right-of-use asset calculation would include minimum rental payments per the contract and only the contingent rents that can be measured reliably at the inception of the lease, which would generally be the most current period. The period over which a company could reliably estimate contingent rentals may, however, vary by industry or by lease. Including only contingent rentals that can be reliably measured is more consistent with International Accounting Standards ("IAS") 36, Impairment of Assets, which states, "Detailed, explicit and reliable financial budgets / forecasts of future cash flows for periods longer than five years are generally not available" (paragraph 35). We believe that this concept should be incorporated into the final lease standard in order to reduce the subjectivity in the calculation of the right-of-use asset and the lease liability and to better align the principles of the lease standard with existing guidance as well as to align the accounting for contingent rentals by lessees with the accounting by lessors.

We propose that the final standard require an entity to increase contingent rentals which can be reliably measured by changes in the consumer price index ("CPI"), or a similar index, as a means to estimate future growth. If a company has reasons to believe that CPI is not the appropriate growth rate to use in the calculation, the company should be required to disclose the rate used and the basis for using a rate other than CPI. Under this approach, contingent rents would be estimated for each year of the lease and discounted along with the minimum rental payments, as opposed to being calculated under a probability-weighted approach. See Exhibit A for an example of this calculation.

Our proposed approach would more closely align the calculation of the lease obligation with the existing guidance in Accounting Standards Codification ("ASC") 450, Contingencies, and IAS 37, Provisions, Contingent Liabilities and Contingent Assets, which both require that a liability be recorded only when the amount can be "reliably" (IAS) or "reasonably" (ASC) estimated.

Clarifying the calculation of the right-of-use asset to include only those contingent rentals based on output (i.e. sales or operating profits) that can be reliably measured would also align the method of calculating the lease liability by the lessee with the method used by the lessor to calculate the asset related to the right to receive payments. In the lessor’s calculation of the lease asset, the lessor includes only those contingent rentals that it can reliably measure (paragraph 35a), which is consistent with the guidance included in the Revenue Recognition Exposure Draft. We believe that the measurement criteria should be consistent for both lessors and lessees.

If contingent rentals that cannot be reliably measured are excluded from the asset / liability calculation, we propose that the Boards enhance the footnote disclosure requirements in order to provide additional information about the contingent rental payments due in future years to ensure that investors receive accurate information about an entity’s commitments. We suggest that such disclosures include: (1) qualitative information about contingent rental payments, the basis for calculation, etc. and (2) historical contingent rent payments.

We believe that only including contingent rentals that can be reliably estimated will result in a more accurate calculation of the right-of-use asset and therefore, more reliable financial statements. Additionally, the requirement to base future contingent rents on CPI will result in greater comparability among companies and reduced diversity in practice.

**Topic 2: Renewal Options**

Under the proposed guidance, companies would be required to estimate the longest possible lease term that is "more likely than not to occur." We disagree with this concept, unless the exercise of the option is probable. At the inception of the lease, we do not believe that a liability, as defined in the Boards’
Conceptual Framework project, exists nor do we believe that it is possible, in many cases, to reliably estimate the likelihood of extending a long-term lease at the inception of the lease. We do, however, believe that in a short-term lease, a contingent liability may exist and should be recorded if it meets the “probable” and “reasonably estimable” criteria of ASC 450, Contingencies. We believe that it is important to distinguish between short-term and long-term leases because a company’s ability to accurately predict the likelihood of extending a long-term lease is extremely limited and requiring companies to do so would increase the subjectivity of the right-of-use asset and lease liability reflected in the financial statements.

Under the Boards’ Conceptual Framework project related to “Elements and Recognition” a liability is defined as “a present economic obligation for which the entity is an obligor.” Further, the Conceptual Framework states that, “present means that on the date of the financial statements both the economic obligation exists and the entity is the obligor.” Following the definition of a liability outlined in the Conceptual Framework project, a liability for lease payments to be made during a renewal term does not exist at the inception of the lease. Therefore, the lessee should not be required to include a renewal option in the calculation of the lease term unless the lessee believes it is probable that it will exercise the renewal option and the impact of exercising the renewal option can be reliably measured. For example, when Hyatt enters into a 25-year property lease, at the inception of the lease it is difficult to predict whether we will exercise the renewal options for the subsequent 10 to 25 years because our decision to renew a lease is based on a variety of factors that are unknown at the inception of a lease. These factors include, but are not limited to, the performance of the hotel over the initial term, the attractiveness of the location and the city in which the hotel is located, which may change over time, the quality of the asset at the time of renewal, and the competitive environment at that time.

Our proposed approach prevents companies from structuring leases as one-year leases with unlimited renewal options, but it also reduces the subjectivity of the right-of-use asset and lease liability recorded in the financial statements by limiting the period of time over which the company needs to predict its operations to a shorter time frame that is more reliably measured. We believe that this approach would result in more accurate estimates of the lease terms at inception because companies have more visibility into the likelihood of exercising renewal options in the near term.

**Topic 3: Re-assessment of Estimates**

In accordance with paragraph 17 of the exposure draft, a lessee is required to “…reassess the carrying amount of the liability to make lease payments arising from each lease if facts or circumstances indicate that there would be a significant change in the liability since the previous reporting period” [emphasis added]. We believe that the subjectivity of this requirement could result in varying interpretations as to the frequency of reassessment, and thereby create diversity and inconsistency in practice among companies. For example, some companies may consider it appropriate to reassess their estimates only if certain entity-specific indicators occur, while other lessees may reassess on a continuous basis. We therefore request that the Boards’ clarify their intentions with respect to subsequent measurements and provide guidance as to what is meant by “significant change in the liability,” and whether the establishment of entity-specific “triggering events” would be appropriate to determine when reassessment must occur. In clarifying the proposed guidance with respect to re-assessment of estimates, we encourage the Boards to consider the following:

- Re-forecasting expected lease terms or estimated contingent rent payments will be extremely burdensome, especially for entities with a significant number of leases.

- Due to the subjectivity of the estimates used in the calculation of the right of use asset and lease liability at inception, there will likely be significant adjustments that may result in significant volatility within the income statement.
• The proposed guidance is unclear as to when "...facts and circumstances indicate that there would be a significant change in the liability..." which would be clarified if the final standard included qualitative trigger events that companies should consider in determining when it is necessary to re-assess the value of the right-of-use asset and the lease liability.

We recommend that the final standard require companies to adjust their lease expense for the current year on a regular (i.e. quarterly or annually) basis to reflect actual results, as actual contingent rent payments vary from estimated payments, and only re-assess the right-of-use asset and lease liability when specific trigger events occur.

**Topic 4: Income Statement Recognition**

The exposure draft requires that the right-of-use asset is amortized over the expected term of the lease on a straight-line basis, while the lease liability is amortized using the effective interest method, which results in a higher total expense in the early years of a lease and a lower expense in later years. We appreciate that this expense pattern is similar to the expenses that would be recorded if an entity purchased an asset with a loan from a third party, however, we do not believe that the proposed expense pattern properly reflects the economics of our significant lease arrangements. HHC primarily enters into hotel leases in order to operate a new Hyatt-branded hotel in a selected location for the benefit of the owner of the property. As with all new operations, results are generally lower in early years and improve with time as the operations become more established in the market, generally resulting in increasing operating results during stable economic times. In these arrangements, the property owner derives the benefits of a substantial portion of the operating results via contingent rental payments, which are based on the profitability of the hotel, and therefore, the economics of the arrangement indicate that leasing expenses should increase over time as the hotel becomes more profitable. The accounting results under the proposed lease model, however, would produce operating results that contradict the current deal economics.

Additionally, there will be situations, especially in the early years of a lease, in which the cash payments are not sufficient to cover the interest portion of the obligation, which would result in the increase of the lease liability, which we believe was not the intent of the proposed lease model. See exhibit A for an example of the mismatch between hotel performance and lease expense under the new lease model, as well as an example of increasing lease obligations that may result in certain situations.

In our opinion, we believe that it is more appropriate to amortize the asset and record interest expense from the liability on a constant effective yield or straight line basis, which would result in a consistent expense being recorded each period. As discussed in Topic 3 of this letter, we also believe that the expense should be adjusted regularly (i.e. quarterly or annually) to reflect actual payments made under contingent rental arrangements. As a result, the total expense reflected each year would be the straight-line amortization of both the asset and the liability, revised by any adjustments due to actual contingent rent payments during the period. We believe that this approach better matches the income statement results with the economics of the arrangement.

If our proposed approach of straight lining both the asset amortization and interest expense is not acceptable to the Boards, we encourage the Boards to consider an expense recognition model that would more accurately match the lease expense to the underlying economics of the arrangement. In determining the appropriate model, we encourage the Boards to consider the following factors:

• The exposure draft proposes that a leased asset should be treated the same as an owned asset. However, a lessee does not receive all the benefits of ownership, such as the right to sell the asset or the ability to continue to utilize an asset beyond its initial economic life. As such, a
right-to-use asset is more akin to an intangible asset since the lessee is paying for the "right" to use the asset for a limited purpose as opposed to being able to fully control the asset via total ownership.

- The proposed standard assumes that a lessee is entering into a lease in order to finance the acquisition of the asset and therefore, the exposure draft proposes that the lease liability should be reduced using the effective interest method, which would be used if the lessee borrowed the money for the purchase of the asset. This assumption does not take into account the various types of loans a lessee could have secured (i.e. zero interest, balloon payment loan, etc.) or the fact that the lessee may have been able to purchase the asset for cash but chose to enter into a lease for business reasons. Therefore, the proposed standard creates an expense pattern that may not reflect the economics of the arrangement.

Although we have cited examples specific to the hospitality industry, we believe that the mismatch of expense and the economics of the arrangement is a pervasive issue that impacts several industries. With inflation, expenses generally increase over time, which is not properly reflected in the proposed expense recognition model.

**Topic 5: Service Agreement vs. Lease**

The exposure draft includes guidance for distinguishing leases from service contracts that is consistent with existing guidance. We believe that the current guidance is perceived to be sufficient because under the existing accounting model the treatment of service agreements is similar in nature to the treatment of operating leases. We do not, however, believe that the guidance in the exposure draft will be sufficient under the proposed leasing standard as there is now a significant accounting implication for contracts that are designated as leases. Service contracts will receive additional scrutiny and interpretive guidance is needed to support companies in analyzing contracts.

In the exposure draft, a service contract contains a lease if (a) the fulfillment of the contract depends on providing a specified asset and (b) the contract conveys the right to control the use of a specified asset for an agreed upon period of time. We believe that criterion (b) is extremely subjective and request the Boards provide additional guidance as to the concept of "control" within a contract.

Paragraph B4 of the exposure draft defines control of the asset as any of the following:

1. Ability to manage the asset in a manner determined by the entity (lessee) while controlling more than an insignificant amount of the output or other utility of the asset; OR
2. The ability or right to control physical access to the underlying asset while obtaining or controlling more than an insignificant amount of the output of the asset; OR
3. Obtaining all but an insignificant amount of the output during the term of the agreement at a price that is neither contractually fixed nor based on the market.

We believe that this definition hinges on the concept of the lessee controlling the output, which is a concept that is difficult to apply consistently across entities, especially within the hospitality industry where "output" is not as readily defined as it may be in some other industries. We believe that the concept of controlling "more than an insignificant amount of the output or other utility of the asset" is subjective and we request the Boards to provide additional guidance around this concept in order to aid companies in applying the new guidance to their contracts. For example, if Hyatt controls and operates an asset for the benefit of Hyatt whereby we retain a significant amount of the operating results, we believe this arrangement is indicative of a lease. However, if we operate a hotel for the benefit of the owner, we believe that the arrangement is more indicative of a service agreement (i.e. a management agreement), especially when the payment to the owner is equal to 80% or 90% of the operating profits of the hotel.
We have illustrated this fact pattern in Exhibit A, which depicts a situation in which Hyatt pays the owner 90% of the operating profits of the hotel. Although, Hyatt operates the asset, we do not believe that this arrangement is a lease because the economic benefits of operating the hotel flow primarily to the hotel owner, as illustrated in the “Allocation of Hotel Profits” section of Exhibit A.

Given that operating leases will be recorded on the balance sheet under the new guidance, the assessment of a contract is more important than it has been in the past and therefore, we believe that additional guidance and examples are necessary in order to ensure that the guidance is appropriately and consistently applied. We suggest that the final standard focus on whether the agreement provides that the future economic benefits of the asset will flow to the lessee and define the level at which such economic benefits would be deemed to be “more than an insignificant amount of the output.” It would be beneficial if the final standard included a more detailed description of the factors that indicate whether an entity controls “more than an insignificant amount of the output.” This would assist companies in appropriately identifying contracts that should be accounted for as leases.

As outlined above, we believe the current guidance is too vague to be effectively implemented, and if the final standard does not provide more clarity with respect to control and the concept of controlling “more than an insignificant amount of the output,” we believe there will be significant diversity in practice in applying this aspect of the standard.

**Topic 6: Transition**

In an effort to ease the burden of transitioning to the proposed guidance, the Boards’ have proposed a simplified retrospective adoption of the new standard. We, however, recommend that the Boards’ also allow companies to elect full retrospective application of the final standard. A full retrospective adoption would result in increased comparability between periods and would allow for leases at the beginning and end of their lives with higher and lower income statement impacts, respectively, to offset each other thereby presenting a more balanced view.

For an individual lease, the proposed model results in a higher expense in the first year of the lease, but as the number of leases increases, the lease expense even out as some leases are in the early stages of the lease term and others are in later stages, resulting in a somewhat consistent expense, year-over-year. If the accounting for all leases is changed from the old model to the new model at a specific point in time, as suggested by the simplified retrospective model, the first income statement period will reflect the highest possible expense for each lease, which will significantly distort the income statement. The full retrospective model, however, would capture leases in all stages of the lease term, resulting in a more appropriate income statement impact that is comparable year-over-year.

**Topic 7: Incremental Borrowing Rate**

In accordance with the proposed standard, a lessee would recognize a lease liability and a right to use asset that are calculated as the present value of all future lease payments, discounted using the lessee’s incremental borrowing rate. The exposure draft defines the lessee’s incremental borrowing rate as “the rate of interest that, at the date of inception of the lease, the lessee would have to pay to borrow over a similar term and with a similar security, the funds necessary to purchase a similar underlying asset.” We have interpreted this to mean that Hyatt would use our corporate incremental borrowing rate in the calculation of our right-of-use assets and lease liabilities. However, paragraph B13 states that the incremental borrowing rate should reflect the “nature of the transaction and the specific terms of the lease, such as lease payments, lease term, expected contingent rentals, expected payments under term option
penalties and residual value guarantees, the expected value of the underlying asset at the end of the lease term and security attached to the underlying asset during and at the end of the lease term."

This definition implies that the incremental discount rate would be adjusted depending on the location of the lease (i.e. the rate used to lease a hotel in Germany would be different than the rate used to lease a hotel in the United States). Given that Hyatt would use corporate debt under terms available to Hyatt based on its corporate credit ratings, we believe that the final standard should require companies to calculate the incremental borrowing rate without regard to the asset or the entity entering into the lease. We believe that adjusting the corporate incremental borrowing rate for the above mentioned factors is an impractical approach, especially for companies with large leasing portfolios in several jurisdictions.

**Summary**

We understand the Boards’ basis for the proposed standard, but we believe that many of the provisions, such as estimating contingent rentals, predicting the lease term, etc., can only be effectively applied to short-term leases. Furthermore, we believe that the standard, as written, will result in unreliable asset and liability balances, significant income statement volatility, and diversity in practice among companies with long-term leases that include contingent rent due to the amount of judgment required in measuring the asset and liability. We believe that the concerns outlined above are pervasive in nature and impact companies across a variety of industries (hospitality, retail, restaurants, commercial real estate, etc.) and we encourage the Boards to amend the proposed standard to address these concerns related to long-term leasing arrangements.

Sincerely,

Rania Saleh
Senior Vice President & Corporate Controller
Hyatt Hotels Corporation
EXHIBIT A:

**Assumptions:** In preparing this lease model, we assumed the following:

- **Lease Term:** 25 years with a 25-year extension option
- **Contingent Rent:** 90% of operating profits
- **Base Rent:** 200 in the first 5 years, no minimum rent in years 6 - 25

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**New Model**

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**Allocation of Hotel Operating Profits**

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Questions for Respondents

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?

While we agree with the Boards’ proposal to recognize a right-of-use asset and lease liability in the financial statements of the lessee, we have significant concerns about the proposed accounting model, as it is currently written. As discussed in Topic 5, we do not believe that the definition of a lease provided in the exposure draft is sufficient enough to allow companies to appropriately identify lease agreements and appropriately separate leases from service contracts (i.e., management agreements). As a result, we believe that service agreements could fall within the scope of the new standard, which we believe is not only inappropriate but also appears to be an unintended consequence of the current proposal.

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?

No, we do not agree with the boards’ approach to amortizing the right-of-use asset and interest on the lease liability because we believe that the result of the proposed guidance is an expense recognition that is inconsistent with the economics of the arrangement. Furthermore, the expense recognition pattern simulates the expenses incurred if the lessor were to purchase the asset with 3rd party debt, but a lessee often does not receive the benefits of ownership and therefore, should not be required to amortize the asset and liability in the same manner as an owned asset. See our discussion above in Topic 4 for additional information.

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 de-recognition approach otherwise? Why or why not? If not, what alternative approach would you propose and why?

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

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 BC 15)? If not, why not? What approach should be applied to those leases and why?

No comment as our response is focused on Leesee accounting.

Question 3: Short-term Leases

This exposure draft proposes that a lessee or a lessor may apply the following simplified requirements to short-term leases, defined in Appendix A as leases for which the maximum possible lease term, including options to renew or extend is 12 months or less:

a) At the date of inception of a lease, a lessee that has a short-term lease may elect on a lease-by-lease basis to measure, both at initial measurement and subsequently, (i) the liability to make lease payments at the undiscounted amount of the lease payments and (ii) the right-of-use asset at the undiscounted amount of lease payments plus initial direct costs. Such lessees would recognize lease payments in the income statement over the lease term (paragraph 64).

b) At the date of inception of a lease, a lessor that has a short-term lease may elect on a lease-by-lease basis not to recognize assets and liabilities arising from a short-term lease in the statement of financial position, nor derecognize any portion of the underlying asset. Such lessors would continue to recognize the underlying asset in accordance with other Topics and would recognize lease payments in the income statement over the lease term (paragraph 65).

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?
Yes, we agree that short-term leases should be eligible for simplified accounting treatment, and agree that either method (a) or (b) described above would be appropriate.

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?

We believe that, more interpretive guidance is necessary to allow users to consistently determine whether agreements that are not leases in the legal form meet the criteria for lease accounting. The proposed guidance excludes from the scope of a lease an intangible asset. We believe that there are leases for the use of "air-rights" which are deemed to be intangibles and therefore would be excluded from this guidance. Leases of air-rights are where a building or sign other such property is place on top of an existing structure (e.g. the air on top of a rail station is used to construct a sign or a building). However, we don't understand how such leases of air-rights are materially different from a lease of land which would qualify as a lease under this guidance.

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

Yes, we agree that a contract represents a sale, if at the end of the contract, one entity transfers control of the asset to the other entity. However, we believe that the concept of "transfer of control" in the final lease standard should align with the concept of "transfer of control" within the Revenue Recognition exposure draft (paragraphs 25 – 31).

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?

No, we do not believe that the guidance in B1 – B4 is sufficient to allow companies to consistently distinguish a lease from other types of agreements. As noted in our answer to question 4a and discussed in Topic 5 of our letter, we believe that additional guidance is necessary to assist companies in properly distinguishing leases from service contracts.

Question 5: Scope Exclusions
This exposure draft proposes that a lessee or a lessor should apply the proposed guidance to all leases, including leases of right-of-use assets in a sublease, except leases of intangible assets, leases of biological assets, and leases to explore for or use minerals, oil, natural gas and similar non-regenerative resources (paragraphs 5 and BC33 – BC46).

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?

Yes, we believe that the proposed scope exceptions are appropriate. However, we also believe that the board should consider a materiality exception for leases that are longer than 12 months in duration but are immaterial both individually and in the aggregate to the overall financial statements. Alternatively, these immaterial leases could follow the treatment outlined for short-term leases.

Question 6: Contracts that Contain Service Components and Lease Components
This exposure draft proposes that lessees and lessors should apply the guidance in proposed Accounting Standards Update, Revenue Recognition (Topic 605): Revenue from Contracts with Customers, to a distinct service component of a contract that contains service components and lease components (paragraph 5, B5 – B8 and BC47 – BC54). If the service component in a contract that contains service components and lease components is not distinct:

a) The FASB proposes the lessee and lessor should apply the lease accounting requirements to the combined contract.

b) The IASB proposes that:
   a. A lessee should apply the lease accounting requirements to the combined contract.
   b. A lessor that applies the performance obligation approach should apply the lease accounting requirements to the combined contract.
c. A lessor that applies the de-recognition approach should account for the lease component in accordance with the lease requirements, and the service component in accordance with the guidance in the exposure draft on revenue from contracts with customers.

Do you agree with either approach to accounting for leases that contain service and lease components? Why or why not? If not, how would you account for contracts that contain both service and lease components and why?

Yes, we agree with the proposed approach for accounting for contracts that contain service components.

**Question 7: Purchase Options**

This exposure draft proposes that a lease contract should be considered terminated when an option to purchase the underlying asset is exercised. Thus, a contract would be accounted for as a purchase (by the lessee) and a sale (by the lessor) when the purchase option is exercised (paragraphs 8, BC63, and BC64).

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?

Yes, we agree that lessees and lessors should account for purchase options only when they are exercised.

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

No, we do not agree that the lease term used in the calculation of the right-of-use asset and the lease liability should include estimated renewal terms, unless the exercise of the renewal option is “probable” or the lease is short-term in nature (i.e. 5 years or less). See Topic 2 in our comment letter for additional discussions with respect to this topic.

**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? Why or why not? 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?

No, we do not agree with the boards’ proposal to include contingent rentals and expected payments under term option penalties or residual value guarantees in the calculation of the right-of-use asset and the lease liability. As discussed in Topic 1 above, a company’s ability to estimate contingent rentals, especially in long-term lease arrangements, is only as reliable as the long-term assumptions used and therefore, the right-of-use asset and lease obligation will be exposed to changes in those assumptions. Including contingent rentals in the calculation of the lease asset and liability will result in assets and liabilities that are based on subjective information that is unlikely to be accurate, which increases volatility in the financial statements as initial estimates are later traced-up. We suggest that the calculation of the right-of-use asset and the lease obligation include minimum rental payments and contingent rent, only to the extent that they can be reliably measured. All other contingent rental payments should be estimated using a fixed growth rate, such as CPI.

Using similar logic, we do not support including expected payments under term option penalties, as these cannot be reasonably estimated at the inception of the lease, especially for a long-term lease.

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? Why or why not?

Yes, we agree that lessors should only include contingent rentals that can be reliably measured in their calculation of the lease receivable. However, this approach differs from the proposed accounting for lessees, and we do not agree that the lease asset / liability would be calculated differently by the lessee and lessor. In general, we believe that the financial statements are only beneficial to users if they contain “reliable” information and therefore, we would support a proposal that required lessors and lessors to include only those contingent rental
payments that can be reliably measured, as opposed to including all estimated contingent rentals. We do, however, believe it is important that the model for calculating lease assets and liabilities be consistent for both lessors and lessees.

**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 reporting period? Why or why not? What other basis would you propose for reassessment and why?

Yes, we agree that the assumptions used in calculating the right-of-use asset and lease liability should be re-assessed when facts or circumstances indicate that there may be a significant change in the balance. However, as highlighted in Topic 3 of our comment letter, we believe that the re-assessment guidance needs to be clarified to better explain what is meant by “significant change in the liability” in order to ensure consistent application of the guidance across companies.

**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?

No comment.

**Question 12: 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, 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?

Yes, we agree with separate disclosure of these line items, to the extent they are material.

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?

We believe that net presentation is appropriate with additional disclosure for material items in the Notes to the financial statements as net presentation best depicts the entity’s use and expected return on the asset.

c) Do you agree that a lessor applying the de-recognition 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 BC 155)? 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?

Yes, we believe these items should be separated.

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?

We believe sublease accounting should be net against the accounting treatment for the underlying lease.

**Question 13: Income Statement**
Do you think that lessees and lessors should present lease income and lease expense separately from other income and expense in the income statement (paragraphs 26, 44, 61, 62, BC146, BC151, BC152, BC157 and BC158)? Why or why not? If not, do you think that a lessee should disclose that information in the notes instead? Why or why not?

Yes, we believe that the income statement impact of applying this model should be separated from other items on the income statement. This will assist in analyzing the impact that the model has in the early years of a lease.

**Question 14: 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?

Yes, we believe that cash flows arising from leases should be presented separately within the statement of cash flows if they meet appropriate materiality thresholds.

**Question 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

Yes, we believe that the aforementioned quantitative and qualitative information should be disclosed to the extent it is not already provided on the face of the balance sheet.

b) Describes how leases may affect the amount, timing and uncertainty of the entity’s future cash flows?

Yes, this information should be disclosed as long as reasonable materiality and judgment is applied.

(Paragraphs 70 - 86 and BC168 - BC183)? Why or why not? If not, how would you amend the objectives and why?

**Question 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?

b) Do you think full retrospective application of lease accounting requirements should be permitted? Why or why not?

c) Are there any additional transitional issues the boards need to consider? If yes, which ones and why?

No, we do not agree with the boards’ proposal that only a simplified retrospective approach should be used when implementing the new lease guidance. Rather, we believe that the final standard should allow constituents to elect a full retrospective application of the new guidance. We also believe that deferred rent and the reversal of this historical account against the right of use asset should be further analyzed and perhaps an illustrative example provided. Refer to the discussion above in Topic 7.

**Question 17: Benefits and Costs**

Paragraphs BC200 – BC205 set out the boards’ assessment of the costs and benefits of the proposed requirements. Do you agree with the boards’ assessment that the benefits of the proposals would outweigh the costs? Why or why not?

No, we do not believe that the benefits of the proposed standard, as written, exceed the estimated costs. While we understand the objective of the proposed standard, the current exposure draft is overly complex and may decrease comparability due to the level of judgment necessary in forecasting contingent rentals and the lease term.

**Question 18: Other Comments**

Do you have any other comments on the proposals?
We have no further comments.

**Question 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?

*Not applicable.*