December 15, 2010

Submitted via email to: director@fasb.org

Attn: Technical Director - File Reference Number 1850-100

Dear FASB and IASB Board Members:

eBay Inc. ("eBay" or "we") appreciates the opportunity to comment on the Exposure Draft entitled "Leases (Topic 840)" (the "ED"), jointly developed by the Financial Accounting Standards Board and the International Accounting Standards Board (the "Boards"). eBay is a global organization that encompasses multiple industries across the technology sector. We therefore appreciate the complexities of applying numerous accounting concepts to leasing arrangements, and support the decision to develop a more unified, principles based approach to replace the existing requirements.

We seldom act as a lessor for third parties and therefore have restricted our comments to lessee accounting matters. We respectfully emphasize that although we are generally supportive of the lessee principles outlined in the proposed guidance, there are several areas in which the Boards should consider revising the proposed guidance. These are summarized as follows:

- While we appreciate the simplicity of the proposed guidance, we do not believe that the proposed ED as currently drafted can serve as a full amendment of the current leasing guidance in Topic 840. Certain key definitions are not clear and may inadvertently scope in service transactions that were never intended to be a lease transaction. In addition, the ED does not include guidance for a number of transactions and issues that are regularly encountered by lessees, such as (i) accounting for lease incentives and (ii) the timing of recognition of lease assets and liabilities for build-to-suit leases and tenant improvements and construction. Additional guidance will help promote consistency in the recognition of leases across issuers.

- We believe the current lease term definition in Topic 840 should be retained, meaning that the lease term would be calculated as the non-cancellable contractual lease term and renewal options determined to be reasonably assured of being exercised. This approach offers the most relevant and reliable financial information, provides a faithful representation of leasing transactions and is operationally practical for preparers.

- In our view, the proposed presentation of the sublease asset and liabilities for intermediate lessors does not faithfully represent in many instances the business economics for subleasing arrangements. We believe that one of the primary reasons for many issuers entering into a sublease, including us, is to partially recover the cost of an existing head lease liability due to changes in business needs, rather than a desire to be in the leasing business. As an alternative, we propose that the head lease assets and liabilities be reduced by the assets and liabilities related to portions sub-leased to the sub-lessee. Such reductions could also be disclosed in the financial statement footnotes if deemed material.

- We recommend that the Boards address the financial presentation, disclosure requirements and transitions methodologies for all major projects together and provide sufficient transition periods to allow entities to efficiently and effectively plan the implementation of the significant changes brought about by the projects.
We have provided our detailed comments to certain of the Boards' questions regarding the above matters in the appendix to this letter. We would be happy to speak with you to elaborate on or clarify any of our views expressed in this comment letter. Please do not hesitate to contact us at (408) 376-6636 (or pdepaul@eBay.com) or Glen Ceremony, Corporate Controller, at (408) 376-5263 (or gceremony@eBay.com).

Very truly yours,

Phillip P. DePaul
Vice President, Chief Accounting Officer
eBay Inc.
Appendix

Responses to selected questions in the exposure draft

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?
(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?

We agree that recording a right-of-use asset and liability arising from leases provides useful information to financial statement users. We also agree that a lessee should amortize the right-of-use asset and interest on the lease liability consistent with the accounting for purchases of property and equipment under financing arrangements.

However, as discussed in the responses below, we are concerned with the practicality of applying the proposed guidance to compute such assets and liabilities and the lack of guidance in some areas to properly replace the current lease accounting guidance.

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?
(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?
(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?

We agree with the criteria in paragraphs B9 and B10 for distinguishing a lease from a contract that represents a purchase or sale. However, we do not believe that paragraphs B1-B4 appropriately define leases, and in particular do not believe that the ED provides sufficient guidance for determining whether a specified asset is provided or determining the conditions that would cause a service arrangement to contain an embedded lease. Although the guidance in B1-B4 appears to be a carry-forward of the current guidance in EITF 01-8: Determining Whether an Arrangement Contains a Lease, we (and likely many other issuers) have never had to perform a detailed assessment of our leases under this guidance, as the financial impact was materially similar if the lease was an operating lease or a service contract. Given the major implications for applying lease accounting to a service contract, more clarifications are needed to fully understand the concepts in paragraphs B1-B4.

Specifically, section (b) of paragraph B2 states that an asset in a service contract is implicitly specified “if a lessor can substitute another asset for the underlying asset but rarely does so in practice”. The requirement in (b) may inadvertently scope in service contracts where assets used in these contracts could be substituted, but are rarely substituted, for various reasons other than feasibility or impracticality, such as convenience, common practice or a lack of interest to change an insignificant part of the service. In our opinion, the only condition that should be retained to conclude an asset in a service contract is implicitly ‘specified’ should be the concept of “infeasibility or impracticality of substitution” as stated in section (a) of paragraph B2.
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?

We do not agree that the lease term be 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. We believe the current lease term definition in Topic 840 should be retained, meaning that the lease term should be calculated as the non-cancellable contractual lease term and should only include renewal options determined to be reasonably assured of being exercised; this approach offers the most relevant and reliable financial information while still meeting the Boards’ objective of recording assets and liabilities related to all leases. Moreover, this approach is operationally practical for preparers.

From a lessee perspective, the amounts payable beyond a term reasonably assured of occurring does not appear to meet the definition of a liability under the conceptual framework because at the inception of the lease, the lessee is only obligated to make any lease payments for terms reasonably assured of occurring. We believe that inclusion of renewal estimates in the lease assets and liabilities at only a “more likely than not” standard may not be viewed as reliable information by financial statement users and would not add to the usefulness of the financial statements.

In addition, the requirement to estimate the probability of occurrence for each possible lease term in order to determine the lease term as stated in paragraph 13 and B16-B20 appears to be overly burdensome without increasing the reliability of our financial reporting. Accordingly, we recommend that the lease term should be limited to a term reasonably assured of occurring.

Lastly, given the proposed changes to the lease term determination, we are uncertain if the accounting for other matters that are dependent on the lease term should be updated to reflect the longer lease term. For example at present, Topic 840 requires that leasehold improvements be amortized at the lesser of the useful life of the asset or the lease term. If the lease term is ultimately modified as proposed, we suggest that the Boards provide more guidance on whether the amortization period for leasehold improvements should also be modified, and if so, how the modification should be accounted for and presented at transition.

Question 12: Statement of financial position

(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?

Although we agree with the Boards’ view that a sublease transaction is separate from the head lease transaction, we do not agree that an intermediate lessor should be required in some instances to present assets and liabilities arising from a sublease separately from the head lease assets and liabilities. In our view, the proposed presentation does not faithfully represent in many instances the business economics for subleasing arrangements. We believe that one of the primary reasons for many issuers entering into a sublease, including us, is to partially recover the cost of
an existing head lease liability due to changes in business needs rather than a desire to be in the leasing business. As an alternative, we propose that the head lease assets and liabilities be reduced by the assets and liabilities related to portions sub-leased to the sub-lessee. Accordingly, lease assets and liabilities and the related amortization and interest expense would properly be adjusted for the existence of the sublease contract. Such sublease contracts could also be disclosed in the financial statement footnotes if deemed material.

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?

We believe that a prudent and thoughtful implementation takes time and proper planning. Regardless of which approach is followed for transition, entities should have sufficient time to appropriately plan and assess the impact of the new guidance on their accounting policies, internal processes, reporting and technology infrastructure, and organizational and communication strategy. We agree with the Boards’ approach to collectively assess the effective dates and transition methodologies for the major convergence projects; therefore we refrain from providing our comments on this question in this letter. Please refer to our comment letter on the Boards’ Discussion Paper entitled “Effective Dates and Transition Methods”.

Question 18: Do you have any other comments on the proposals?

While we appreciate the simplicity of the proposed guidance, we do not believe that the proposed ED as written can serve as a full amendment of the current leasing guidance set out in Topic 840. As noted above, certain key definitions are unclear and the guidance does not address certain types of transactions and issues that are regularly encountered by lessees. Additional guidance within the ED or amendment of other lease-related guidance will help promote consistency in the recognition of leases.

Examples where additional guidance is needed include the following:

- The definition of a ‘lease payment’ does not address how payments from the lessor, such as monetary and non-monetary lease incentives, should be accounted for (Topic 840-20-25).
- Additional application guidance is needed for preparers to assess the timing for recognition of lease assets and liabilities for build-to-suit leases (Topic 840-20-25).
- Asset retirement obligations (ASC 410), acquired lease contracts in a business combination (Topic 840-10-25) and lease contract costs associated with exit or disposal activities (ASC 420) should also be addressed in the guidance.