



September 11, 2013

Mr. Russell Golden, Chairman
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Delivered by email to: director@fasb.org

RE: File Reference – FASB No. 2013-270, *Leases (Topic 842): A revision of the 2010 proposed FASB Accounting Standards Update, Leases (Topic 840)*

Dear Mr. Golden:

The American Trucking Associations (ATA) appreciates the opportunity to comment to the Financial Accounting Standards Board (FASB, or the Board) on the proposal contained in the FASB Exposure Draft, proposed Accounting Standards Update (Revised) Leases (Topic 842) (the ED, or the Draft).

ATA is a federation of motor carriers, state trucking associations, and national trucking conferences that promotes and protects the interests of the trucking industry. Directly, and through its affiliated organizations, ATA represents more than 37,000 motor carriers of every size, type, and class in the United States, Canada, and Mexico.

As an indication of the size and scope of the industry we represent, in 2011 the gross revenues of motor carriers from hauling freight were \$604 billion, some 81 percent of the total for all U.S. modes of transportation, and roughly 4 percent of the Nation's gross domestic product. All told, there are some 750,000 interstate motor carriers operating in this country, the overwhelming majority of which are small businesses. The average motor carrier operates only six vehicles. Moreover, the majority of motor carriers are private rather than for-hire carriers, that is, entities whose primary business is something other than trucking.

ATA Supports Other Commenters

ATA is a signatory of the letter submitted to FASB on September 9 on this topic by a coalition of industries led by the U.S. Chamber of Commerce and the Equipment Leasing and Finance Association (ELFA). We agree fully with the points made in that letter.

Good stuff.



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ATA supports as well the detailed comments on this topic filed September 10 by the Truck Renting and Leasing Association (TRALA). ATA counts among its members some of the truck renting and leasing concerns, both large and small, that compose TRALA's membership, and we share their concerns both for themselves and for their leasing customers, many of whom are also ATA members.

Two Major Failings of the ED

The comments of the U.S. Chamber, ELFA, and TRALA discuss a variety of issues with the ED. ATA agrees that these issues are serious, and we agree with the way in which these commenters have characterized them, and with the remedies they propose. However, ATA believes that each of these issues, and certain others of importance to the industry we represent, stem from two major failings of the Draft and more generally of the Board's lease project.

First, the Board has not satisfactorily shown the need for this kind of thorough revision of lease accounting. The ED proposals involve very significant, potentially enormous costs for business, and no offsetting benefits for investors or other users have been convincingly demonstrated. Every change in GAAP entails some costs, but, when those costs are extraordinary or when the benefits of such changes are problematic, some additional justification of costs is warranted.

Second, the ED is based on what appears to be a rigid characterization of all leases as financing arrangements. This mischaracterizes a great many leases, including the majority of those entered into by ATA's members, which are operating leases of equipment. This flaw is a large contributing factor in the resulting complexity of many aspects of the ED, and the fact that adoption of the ED would tend to drive economic activity, rather than reflecting it.

Need for and Benefits of the Lease Project Remain Problematic

The Board's lease project appears to be driven, at least in part, by a desire to prevent abuse of current lease-accounting procedures. The instance of Enron and other scandals is sometimes mentioned in this connection. Yet those cases are examples where GAAP wasn't followed at all, and it is questionable whether a requirement to show on a balance sheet such transactions as were involved there would have been effective in the face of deliberate fraud.

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Even if, however, there is a need for drastic revision of existing standards with respect to real estate leases or the long-term lease of expensive equipment such as aircraft, this does not necessarily speak for such a need in the case of shorter leases of less valuable assets, such as motor vehicles. Not only are a large proportion of such transactions simply a different kind of lease altogether, as will be discussed below, but they will be, for a great many if not most lessees, of dubious materiality. ATA strongly endorses TRALA's suggestion that current accounting (that is, off-balance-sheet) be retained for operating leases, as currently defined, of equipment where the terms of the lease are sixty months or less and the cost of the equipment leased is \$250,000 or less.

It may be that in certain instances, enhanced footnote disclosure even in the case of these relatively insignificant leases may be warranted. However, a recent study published by the American Accounting Association indicates that footnote disclosure is perfectly adequate as a general rule.¹ A standard that requires thorough-going balance-sheet recognition may not be needed at all.

The changes to the accounting standards proposed in the ED could involve costs that were estimated in a study commissioned by the U.S. Chamber of Commerce to be well into the billions of dollars, as well as the loss of some 190,000 American jobs.² Whatever the actual effects of the Draft might be, the mere fact that numbers of such magnitude have been put forward should raise a red flag. The requirements of due process in standard setting would strongly suggest that the Board conduct a thorough and open cost-benefit analysis before proceeding with the ED. To date, no countervailing benefits have been suggested that would even begin to offset costs of such a magnitude.

For these reasons, ATA recommends that before the Board proceed with this project, it stand back and determine more carefully (1) whether there is a true need in the United States for so drastic a revision of the lease rules as is represented by the Draft, and (2) if there is, whether the costs of the approach taken by the ED are in fact offset by real benefits.

¹ "Evidence that Market Participants Assess Recognized and Disclosed Items Similarly when Reliability is Not an Issue," *The Accounting Review*, 88:4, pages 1179-1210 (2013).

² Chang & Adams Consulting, *The Economic Impact of the Current IASB and FASB Exposure Draft of Leases*, February 2012, available here: http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2012-02-08-IASB-FASB-CA-Report-FINAL-v-3-2_.pdf.

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The ED Based in Part on Mischaracterization

Both the tax law and commercial law in this country distinguish between capital leases and operating leases, along the lines provided for in current GAAP. How a lease is characterized under these rules has important consequences for lessors and lessees alike. In particular, the current rules acknowledge the existence of tax benefits for one party or the other, depending on how a lease transaction is structured, and, even more important, under U.S. commercial law, an operating lease is an executory contract that does not represent debt to the lessee, either in bankruptcy or for purposes of debt covenants and the like.

The case may be different in Europe, both in terms of tax and less liberal bankruptcy laws, but also in terms of how various industries are structured. The procurement of rolling stock by European motor carriers, for instance, is controlled, to a far greater extent than it is in this country, with our networks of truck dealers, by truck manufacturers. And there are essentially no truck lessors as there are in this country, and so no truck operating leases as they are understood in the United States. It may actually be the case that equipment leases in Europe are effectively finance leases. But such is certainly not the case in this country.

The ED, however, ignores the legal and industrial structure prevailing in the U.S., and, in effect, characterizes all leases of equipment as capital leases. ATA submits that much of the complexity within the Draft stems from this mischaracterization. And this same distortion would be a major source of the potential costs of the ED for business, as firms would have to resort to tax-deferred accounting for literally millions of equipment leases, in order to reflect the tax consequences of these transactions; and would have in many cases to amend debt covenants to re-distinguish, as it were, leases that represent debt in bankruptcy and leases that do not. Where this cannot be done, lending banks may have to bolster their capital in order to comply with Basel III requirements – or stop lending. The ensuing costs and complications would frequently determine the form taken by various types of transaction: the rules would drive economic activity rather than reflecting it.

Ironically, the balance-sheet information resulting from the changes proposed in this area by the ED would likely be less useful to investors and other users than the information they have today from footnotes or other disclosures. Current information is at least founded on accounting definitions that comport with business realities, and is in that sense relatively transparent, so that users with different needs for the data can fit it to their various purposes. Information presented under the ED, however, would in many cases be related to transactions whose presentation is based on misclassification. Because of this

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distortion, such information would lack the transparency users depend on. ATA submits that the Board should not permit form to prevail over substance in this respect.

None of this is to say, of course, that capital leases of equipment do not exist in this country, nor that in certain applications they may not even comprise a majority of lease transactions. ATA does very strongly suggest, however, that, in the context of U.S. law and practice, to treat capital leases and operating leases as the same sort of transaction will not work in this country. Nor, we submit, is such treatment necessary to a successful revision of the U.S. lease accounting standards.³ Circumstances in the rest of the world may be different enough to justify distinct treatment.

Conclusion and Recommendations

In conclusion, ATA recommends:

The Board should thoroughly reconsider the necessity for so drastic a revision of the lease accounting rules as is set forth in the current ED. A realistic and open cost-benefit analysis should be a part of such reconsideration. This analysis and reconsideration should be completed before the Board proceeds with this project.

The Board should reconsider the treatment of operating leases of equipment in the ED, and adopt in its stead the current distinctions that separate such leases from capital leases;

The Board should consider allowing leases of equipment for terms of 60 months or less, where the cost of the asset leased is \$250,000 or less, to continue to be treated as required by current GAAP.

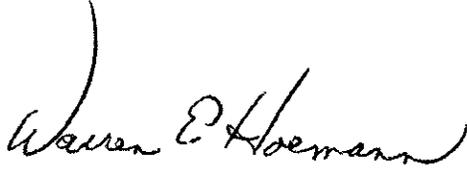
If the Board determines to go forward with its project in something like the form contained in the current Draft, the Board should adopt the detailed suggestions contained in the comments submitted by the Truck Renting and Leasing Association.

³ See, AAA Financial Accounting Standards Committee, "Evaluation of the Lease Accounting Proposed in G4+1 Special Report," *Accounting Horizons*, 15:3, American Accounting Assn., Sept. 2001, pp. 289-298, and the recommendations therein.

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ATA thanks the Board for the opportunity to comment on the current Draft.

Sincerely,

A handwritten signature in cursive script that reads "Warren E. Hoemann". The signature is written in black ink and is positioned to the left of the printed name.

Warren E. Hoemann
Senior Vice President – Industry Affairs
American Trucking Associations

A handwritten signature in cursive script that reads "Robert C. Pitcher". The signature is written in black ink and is positioned to the right of the printed name.

Robert C. Pitcher
Vice President – State Laws
American Trucking Associations