

December 7, 2010

Technical Director  
Financial Accounting Standards Board  
File Reference 1850-100, FASB  
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PO Box 5116  
Norwalk, CT 06856-5116

sent via email to:  
Director@FASB.org  
Subject: File Reference 1850-100, FASB

**Re: Proposed Account Standards Update - Leases (Topic 840)**

Dear FASB,

This letter is being written relative to two questions:

Question 8: Lease term

Question 9: Lease payments

In addition, I would like to offer FASB/IFRS a complimentary copy of our software, Lx LseMod Corporate v15. It was prepared with the assistance of our CPAs and reflects our interpretation of the proposed changes for leases. Since our software also includes a comparison of Current GAAP to the Proposed GAAP, you can easily see the impact of different scenarios.

In particular, Lx LseMod Corporate v15 includes exact day Transaction Date, exact day Lease Commencement and End Dates, and a 30-year initial lease term. You can include Percentage Rents, up to 30 additional years of renewal options, and exclude Executory Costs. All calculations are done on a monthly basis. To my knowledge Lx LseMod is the only commercially available real estate lease analysis product that includes all the features listed above.

**My Background:**

I was a corporate real estate manager for 18 years for two Fortune 500 companies. In 1996 I started selling a lease & scenario analysis software program called LseMod designed to do site selection financial analysis to ensure tenants were making an informed decision prior to executing a lease. Over the years, LseMod has been enhanced to be compliant with current GAAP, even to the point of incorporating GAAP accounting for subleasing.

With the proposed change to GAAP, we have completed a major upgrade to include the new proposed changes to GAAP and can quickly make changes as needed when the new GAAP is finalized. Since LseMod incorporates all the proposed changes, I am, in a sense, indifferent to the changes. Please view my comments as those of a corporate real estate manager, not as a software developer.

**Question 8: Lease term**

I am opposed to the inclusion of Renewal Options in the lease term. My reasons are as follows:

- (1) In a 20-year retail lease with two “more likely than not to be exercised” 20-year renewal options, the total charge to the P&L for Right-to-Use and Interest Expense would include a discounted value of the year 60 rent. This year 60 timeline does not seem reasonable to me.

If the final document must include Renewal Options in the Right to Use calculation, consider capping the renewal term at 5 or 10 years maximum at the time of the Transaction Date, i.e. not a rolling 5 or 10 years since that would require a recalculation monthly and an adjusting entry to the balance sheet and the P&L.

- (2) When is a Renewal Option actually exercised? Did the tenant exercise the renewal option as drafted, or was there a renegotiation including rent or lease term (as I believe is the case in many renewals) and although the lease was renewed, what really occurred was the term was extended and possibly the renewal rent and concessions changed from what the lease initially provided. How does a tenant determine if “past practices” include exercising the renewal option as written in the lease, or a renegotiation?
- (3) In the real world, since having renewal options written into the lease will now adversely impact a tenant’s P&L, tenants will no longer negotiate for renewal options. A renewal option is a significant advantage to a tenant, a valuable intangible asset, and by not having the ability to include renewal options in a lease, the tenant is at a disadvantage in any renewal negotiation and the landlord has an advantage. Bottom line, including renewal options in the current lease Right-To-Use significantly weakens the tenant’s ability to get the best deal at the time of the renewal and ultimately will serve to adversely affect the value of the enterprise.

It seems to me the inclusion of Renewal Options is an attempt to reconcile U.S. leases with some international leases. For example, some international leases may be for 10 years with a right to terminate the lease after 5 years, a break clause. There is a significant difference between a right to terminate early and a renewal option. A work-around would be to apply the renewal concept as currently proposed, but only to leases with early termination/cancellation options so that the term and associated rents includes the term most likely to occur, i.e. exercise the break clause or lease the space for the full term.

### **Question 9 – Lease Payments**

I am opposed to the inclusion of ALL contingent rental payments, in particular, percentage rent (typical in retail leases). My reasons are as follows:

- (1) In my opinion, percentage rent is a Cost of Goods Sold. Just like Sales Commissions, percentage rent is a Variable Cost based on sales. If there are no sales, there is no percentage rent.
- (2) Inclusion of percentage rent will require massive recalculation and reconciliation on a monthly basis, “the no accountant left behind act.” Not only will there be a monthly balance sheet reconciliation, but the P&L will need to be adjusted monthly based on a probable different forecast of sales and associated rents.
- (3) If renewal options are included, then the percentage rent calculation is truly a wild ass guess since how does one forecast sales in 20 years? In 60 years?

Note: In the case of rent adjustments (increases) based on CPI or some other inflation factor, I agree that the inflation factor must be estimated and included in the Right-To-Use calculation. For example, if rent is at \$30/sf/year and increases at 75% of the CPI, then the tenant should estimate the annual increase.

Thank you for taking the time to read my comments. Again, if FASB/IFRS would like a complimentary copy of our software, Lx LseMod Corporate v15, please contact me at [jduport@Lucernex.com](mailto:jduport@Lucernex.com) or 408-

253-4067. Also, please note, the opinions expressed herein reflect my personal options and are not meant to reflect the opinions of Lucernex Technologies.

Sincerely,

James R. Duport  
Consultant  
Lucernex Technologies  
Plano, Texas