

JPMORGAN CHASE & CO.

September 12, 2018

Ms. Susan M. Cospers
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

File Reference No. 2018-260 Leases (Topic 842): Narrow-Scope Improvements for Lessors

Dear Ms. Cospers:

JPMorgan Chase & Co (“JPMorgan Chase” or “the Firm”) appreciates the opportunity to comment on the Proposed Accounting Standards Update, *Leases (Topic 842): Narrow-Scope Improvements for Lessors* (the “Proposed ASU”), issued by the Financial Accounting Standards Board (“FASB” or the “Board”). JPMorgan Chase commends the FASB’s efforts to respond to lessor stakeholder feedback with this Proposed ASU and are supportive of the amendments which would permit lessors to exclude sales (and other similar taxes) collected from lessees from the transaction price. The Firm is also supportive of excluding costs paid directly by lessees to third parties on behalf of the lessor from variable lease revenue. However, the Firm has some concerns regarding the FASB’s definition of whether those costs are ‘readily determinable.’

Sales Taxes and Other Similar Taxes Collected from Lessees

The Firm supports permitting lessors to make a separate accounting policy election to not evaluate whether certain sales taxes and other similar taxes are costs of the lessor or costs of the lessee, similar to the policy election permitted in Topic 606, as amended in ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*. The Firm believes that without such policy election, evaluating who has incurred the obligation for sales and other similar type taxes would be onerous with little, if any, benefit to the users of financial statements.

However, the Firm believes that the policy election should be separate from and in addition to the election made under ASU No. 2016-12 and not required to be aligned with the previous election made under Topic 606. The determination of whether certain revenues, and their related taxes, are in the scope of Topic 606 was a complex determination, and therefore some entities may not have made such a policy election under Topic 606. However, lease revenue is more easily identified and centralized and thus, it may be more operationally possible for additional entities to make such an election under Topic 842.

Certain Lessor Costs Paid Directly by Lessees

The Firm supports excluding from variable lease revenue the costs incurred by the lessor in its role as lessor or owner of the underlying asset that are 1) paid by the lessee either directly or 2) paid by the lessor and reimbursed by the lessee. The Firm understands the FASB’s position that costs associated with the lease or lease property that are paid by the lessee should be reported gross by the lessor as revenue and expenses. However, the Firm views these items as revenues of the taxing jurisdiction or service/product provider and expenses of the lessee rather than of the lessor. The Firm believes that costs that are incurred by lessees either directly or paid by the lessor and reimbursed by the lessee should be reported net when the costs: 1) are paid to third parties (regardless of whether paid by the

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lessee or lessor), 2) are incremental to the lessor (i.e., costs that would not have been incurred by the lessor had it not been for the leasing transaction), 3) do not provide the lessor with any additional benefits, 4) are not established or adjusted by the lessor, and 5) are not for the transfer of goods or services being delivered by the lessor (separate from the right to use the underlying asset). The Firm believes that when the above criteria are met, the lessor is not in substance ‘earning’ revenue or ‘incurring’ the expense and thus, net reporting would be more appropriate and reflective of the substance of the transaction.

However, if the FASB continues to believe that gross reporting is most appropriate, then the Firm requests that the FASB clarify in the final ASU that the interpretation of ‘not readily determinable’ should not be solely determined by the existence of lessee-specific factors. For example, an entity may lease equipment and assets that are fixed in location and not mobile and thus, may not be subject to lessee-specific factors. However, to determine whether property taxes apply to those assets and the rate of those taxes would require a jurisdiction-by-jurisdiction tax law analysis, which would be an extreme operational challenge with little, if any, benefit to the users of financial statements. In some jurisdictions, these amounts may not be available to the lessor (e.g., due to privacy constraints¹). Therefore, the Firm requests that the FASB clarify that the amount of lessor costs paid by a lessee directly to third parties generally would not be readily determinable by a lessor when such costs not only are affected by lessee-specific factors (such as insurance costs paid by the lessee directly to the insurance provider when such costs are affected by lessee-specific factors such as deductibles or whether the underlying asset is insured under an existing and broader umbrella policy) but also when they are not readily available to the lessor.

The Appendix provides the Firm’s responses to the FASB’s relevant Questions for Respondents.

We appreciate the opportunity to submit our views. We would be pleased to discuss our comments with you at your convenience. If you have any questions, please contact me at 212.648.0404 or Laurin Smith at 212.648.0909.

Sincerely yours,



Bret Dooley

¹ The lessor may not be able to gain tax information for a jurisdiction since personal property or similar type taxes paid by the lessee may be considered confidential by the taxing jurisdiction. This will force the lessor to reach out directly to the lessee requesting a copy of the personal property tax invoice that was paid. In many situations, the leased asset will not be the only item on the personal property tax invoice and therefore, the lessee may not be willing to share the documentation.

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Appendix – Responses to Questions for Respondents

Question 1: Should a lessor’s accounting for sales tax and other similar taxes collected from lessees be aligned with Topic 606? If not, please explain why?

As indicated above, the Firm supports permitting lessors to make a separate accounting policy election to not evaluate whether certain sales taxes and other similar taxes are costs of the lessor or costs of the lessee, similar (and separate from and in addition) to the policy election permitted in Topic 606, as amended in ASU No. 2016-12, *Revenue from Contracts with Customers (Topic 606): Narrow-Scope Improvements and Practical Expedients*.

The determination of whether certain revenues, and their related taxes, are in the scope of Topic 606 was a complex determination, and therefore, some entities may not have made such a policy election under Topic 606. However, lease revenue is more easily identified and centralized and thus, it may be more operationally possible for additional entities to make such an election under Topic 842.

Question 2: Is the proposed accounting policy election, as written in this proposed Update, operable? If not, please explain why.

Yes. If the policy election is separate from and in addition to the election made under ASU No. 2016-12, the Firm believes that the proposed accounting policy election is operable.

Question 3: Would the proposed accounting policy election result in a reduction of decision-useful information to users of a lessor’s financial statements? If so, please explain why.

No, the proposed accounting policy election would not result in a reduction of decision-useful information to users of a lessor’s financial statements.

Question 4: Should a lessor’s accounting policy election for sales taxes and other similar taxes collected from lessees be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.

The accounting policy election for sales taxes and other similar taxes collected from lessees should be applied to all existing and new lease contracts. In this case, prospective application would involve greater operational complexity than application to all existing and new lease contracts.

Question 5: Should a lessor be required to exclude certain lessor costs paid directly by lessees to third parties on behalf of a lessor as variable payments when the uncertainty in the amount is not expected to ultimately be resolved? If not, please explain why.

Yes. The Firm further believes that costs that are incurred by lessees either directly or paid by the lessor and reimbursed by the lessee should not be considered variable payments when the criteria noted above are met. Furthermore, requiring the lessor to record revenue and expenses based on costs that the lessee pays would require the lessor to rely on third party information (e.g., from the lessee or other parties) that cannot be easily obtained or validated to estimate a portion of revenue and expense reported in the lessor’s financial statements.

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Question 6: Are the proposed amendments for the accounting for certain lessor costs operable? If not, please explain why.

It depends on how the proposed amendments are interpreted in practice. As mentioned above, the Firm requests that the FASB clarify in the final ASU that the interpretation of ‘not readily determinable’ is not solely affected by lessee-specific factors. We are concerned that a strict interpretation that readily determinable equates to lessee-specific factors only will develop based on the wording in paragraph BC18. Therefore, the Firm requests that the FASB clarify that the amount of lessor costs paid by a lessee directly to third parties generally would not be readily determinable by a lessor when such costs are either: 1) affected by lessee-specific factors (such as insurance costs paid by the lessee directly to the insurance provider when such costs are affected by lessee-specific factors such as deductibles or whether the underlying asset is insured under an existing and broader umbrella policy), or 2) is not readily available to the lessor.

Question 7: Would the proposed requirement for a lessor to not report certain lessor costs paid directly by a lessee to a third party on behalf of the lessor result in a reduction of decision-useful information to users of a lessor’s financial statements? If so, please explain why.

No. The requirement for a lessor to not report certain lessor costs paid directly by a lessee to a third party on behalf of the lessor would not result in a reduction of decision-useful information to users of a lessor’s financial statements. The Firm believes that when the certain criteria are met (as discussed above), the lessor is not in substance ‘earning’ revenue or ‘incurring’ the expense and thus, net reporting would be more appropriate and reflective of the transaction.

Question 8: Should the proposed amendment in paragraph 842-10-15-40A to exclude certain lessor costs paid directly by lessees on behalf of a lessor as variable payments be applied to new lease contracts only or to all existing and new lease contracts? Please explain your rationale.

The proposed amendment in paragraph 842-10-15-40A should be applied to all existing and new lease contracts in order to minimize the operational complexity that would be associated with multiple accounting treatments for similar contracts.

Question 12: Should the effective date for the amendments in this proposed Update be aligned with that of Update 2016-02? If not, please explain why.

Yes. The effective date for the amendments in this proposed Update should be aligned with that of Update 2016-02.