October 10, 2007

Mr. Robert Pozen
Chairman
SEC Advisory Committee on Improvements to Financial Reporting
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

**Re: Release Nos. 33-8836; 34-56293; File No. 265-24**

Dear Chairman Pozen:

I am writing on behalf of the Equipment Leasing and Finance Association ("ELFA") to provide comments to the Securities and Exchange Commission ("SEC") Advisory Committee on Improvements to Financial Reporting regarding the Discussion Paper for Consideration by the SEC Advisory Committee on Improvements to Financial Reporting. We welcome the opportunity to provide both information and commentary in response to the SEC Advisory Committee's request for comments, as a central part of the mission of the ELFA and its Financial Accounting Committee is to provide educational information to the public as well as standards setters and regulators like the SEC relative to data and analyses on leasing and finance industry products, practices, and trends.

ELFA is the trade association representing financial services companies and manufacturers engaged in financing the utilization and investment of and in capital goods. ELFA members are the driving force behind the growth in the commercial equipment finance market and contribute to capital formation in the U.S. and abroad. Its over 730 members include independent and captive leasing and finance companies, banks, financial services corporations, broker/packagers and investment banks, as well as service providers. The equipment finance business is estimated to be a $600 billion industry in 2007. For more information, please visit http://www.elfaonline.org/press/

**Overview**

We applaud the efforts of the SEC to improve the US system of financial reporting by reducing unnecessary complexity and making information more useful and understandable for investors. The ELFA has a particular interest in your project as the FASB and IASB have taken on a project to re-write the lease accounting rules and we see related issues in both projects. We appreciate the opportunity to comment on your paper and will use illustrative examples from our industry to support our points. We should first say that complexity takes two forms: complexity in the rules themselves and complexity in the implementation of the rules.

**Principles-based rules**

Participants in commercial transactions prefer certainty in accounting. Reported financial results drive share prices and compensation. Principles-based rules add uncertainty. They also leave questions which are dealt with by the Big Four in their interpretations. The Big Four do try to communicate similar interpretations, but there are occasions where they differ. In any case, these interpretations are, in effect, establishing GAAP or at least they are making the rules to supplement principles-based standards. They generally do not publish these interpretations, leaving participants in transactions to have to ask for advance rulings. The Big Four also have no upside in taking an aggressive position in today's environment. Preparers have no effective means of appeal. If the FASB staff is asked an interpretive question, they will not put answers in writing unless the issue rises to a level that merits an official pronouncement, like an FSP or FIN that involves FASB Board action.

The ELFA experienced this issue first hand in a difference in interpretation by the OCC audit staff over the valuation of residuals in leases. The FASB staff agreed with the ELFA interpretation but would not state it explicitly in writing. The result was unsatisfactory as the OCC did not interpret phone conversations in the same way as the ELFA and the FASB staff did. In effect, the issue resulted in one GAAP for banks and a different one for non-banks. This example also raises the point that regulators must work together in the development of accounting standards that have common principles to be used by all regulatory authorities with differences in application clearly understood but without affecting GAAP financial reporting. Allowing an independent approach to establishing GAAP creates conflicts and undue cost and complexity. Differences can exist between financial reporting and regulatory reporting but there must be one GAAP for financial reporting.

Complex transactions require detailed rules. If the standards are principles-based and offer little guidance, then some system of case law should be devised so preparers can determine how similar transactions were accounted for.

*Our recommendations*:

- Principles-based rules need guidance, examples and background information in the published standard sufficient to deal with the complexity of the activities covered by the standard.

- Other regulators like the OCC, as an example, should be required to formally sign off on new standards. The regulators should have common objectives and if not, differences have to be discussed and understood clearly. There must be one GAAP for financial reporting.

- The Big Four should document their interpretations after regulatory review, preferably by the FASB staff. The interpretations should be consistent and should be available to the public on a website. The FASB staff and SEC staff should also post Q&A guidance to that website. The website would then serve as so-called "case law" for GAAP.

**Interaction of accounting rules with other rules**

The tax and legal rules have accounting consequences and should be addressed early in the development of any accounting standard. Divergence from tax rules could lead to the need for deferred tax accounting and other reconciliations. Taxes are so important to the economics of some transactions that they must be considered so that the accounting reflects the economics. Accounting for rights and obligations requires an understanding of the legal definitions and legal analysis. An example of a difference in current rules we note is the use of exit values in fair value accounting that differs from the tax view, which is to use the entry value. Also there is currently substance-over-form consistency in classifying leases from a legal, tax and accounting perspective, but we may see divergence in the new lease accounting rules, at least based on initial discussions. These differences create the need for more complex deferred tax accounting.

*Our recommendations*:

- The regulators should seek market information including types of transactions, common terms, dollar sizes, volumes, etc.

- The regulators should commission a tax and legal study of common structures in the activities covered by new standards.

- Any rules that contemplate divergence between tax and accounting should consider the deferred tax accounting implications.

**Defining the economics**

The accounting for any transactions should reflect the economics to provide meaningful information to investors. Regulators should articulate what they think the economics or commercial effects are in the activities for which a new standard is designed. Motivations of market participants, i.e., why they enter into the transactions, are one guide to understand the economics. In addition to the terms and conditions in a contract, the tax consequences to the parties are important in transactions with unique tax attributes to determine the after tax profits. One example in the leasing industry is accounting for operating leases for lessors, as stated in FAS 13, which involves fixed asset accounting rather than accounting for a financial investment. Other than in short term leases like car rentals, lessors view an investment in a lease as a financial investment. However, the accounting rules do not reflect this, as the earnings in an operating lease are not amortized at an after-tax constant yield versus the lease investment net of tax balances.

Another FAS 13 example is the failure to reflect tax benefits in non-leveraged true leases. Lessors factor the deferred tax benefits in their pricing and offer a tax effected lease rate (reduced rents) to their customer, yet the earnings recognition ignores it. This causes back ending of earnings, again, because the after tax yield on the lease investment net of tax balances is not used to recognize earnings.

*Our recommendations*:

- The regulators should understand the market and why market participants enter the transactions.

- The tax effects of common transactions must be understood by the regulators.

- In the background information in any standard the regulator should specifically identify what the economics are in the transactions and how the rules are designed to reflect those economics in the financial reports.

**Cost/benefit analysis**

Complexity of implementation and the benefits associated with it is a critical issue facing our industry. The FASB necessarily has to approach each issue they deal with from a theoretical basis. Using their conceptual framework for guidance, the Board looks for the theoretically best answer. The theoretically best answer often leads to very complex accounting, particularly when applied to small-sized, high volume transactions. The consequences can be excessive costs, increased complexity and results that may not be understandable or meaningful. Examples in our industry that we see in the development of new lease accounting rules are complex present value calculations to record leases, divergence from tax accounting that does not capitalize true leases, deferred tax accounting for true leases, the possibility of fair value accounting, allocating rent payments between principal and interest and possibly depreciating an asset that will never be owned. These processes may be easily accomplished in large, long-term transactions

--like the leasing of a company's headquarters building or an airplane--but not for two- or three-year leases of PCs or company cars that involve thousands of items that get delivered at different times over the year and turn over quickly. These assets usually are replaced with new leased items rather than purchased at lease expiry. The ELFA estimates that 30% of operating leases involve transactions with terms of five years or less (the other 70% involve real estate and large ticket equipment leases like airplanes), yet those equipment leases account for the overwhelming majority of the lease transactions done each year. The complex accounting rules appropriate for the small number of large ticket transactions simply may not be appropriate for the vast majority of leases.

*Our recommendations:*

- There needs to be an explicit calculation of costs to implement, similar to that required of the U.S. Treasury in support of tax law change or preparation time estimates developed by the IRS for completing tax forms.

- Field testing should serve as the basis for making extrapolations and should include publicly and privately held preparers. Pro forma accounting and financial reports should be performed using market data and choosing types of preparers to understand the impact of implementation and reported results to determine if the objectives of the proposed standard will be met.

- There needs to be a reevaluation one year after implementation (commonly used in business to assess success) and decide if changes should be made to standards that do not provide planned benefits considering the implementation costs.

**Correcting compliance issues**

Regulators should proactively review current reporting in the interest of identifying issues and resolving them in a timely manner. An example of this is real estate lease restatements, in which widespread practice had been established with consistency among many lessees although inconsistent with GAAP.

*Our recommendations*:

- The Big Four should assist by raising compliance issues in cases involving more than one client.

We certainly appreciate the opportunity to comment on this important SEC initiative. We remain available as a resource to the SEC and its staff to provide any additional or clarifying information that may be helpful.

Sincerely,

*Kenneth E. Bentsen, Jr.*

Kenneth E. Bentsen, Jr.
President
Equipment Leasing and Finance Association