June 20, 2002

Suzanne Bielstein
Director of Major Projects
Financial Accounting Standards Board
401 Merritt 7
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Subject: Comments Regarding the Exposure Draft of the Proposed Interpretation for Guarantors Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others; File Reference 1124-001

Dear Ms. Bilstein:

I am writing on behalf of the Equipment Leasing Association (ELA) to provide comments to the Board regarding the Exposure Draft (ED) of the Proposed Interpretation of: Statement of Financial Accounting Standards (SFAS) No. 5, *Accounting for Contingencies*; SFAS No. 57, *Related Party Disclosures*; and SFAS No. 107, *Disclosures about Fair Value of Financial Instruments*. We welcome the opportunity to provide both information and commentary in response to the Board's request on its ED on accounting for Guarantees. A central part of the mission of the ELA and its Financial Accounting Committee is to provide educational information to the public as well as standards setters like the Financial Accounting Standards Board (Board) relative to data and analyses on leasing industry products, practices, and trends.

Organized in 1961, the ELA is a non-profit association that represents companies involved in the dynamic equipment leasing and finance industry to the business community, government, and media. ELA's diverse membership consists of independent leasing companies, banks, captives, financial services corporations, broker/packagers and investment banks; as well as service providers like accountants, consultants, equipment managers, executive recruiters, insurance companies, lawyers, publishers, and software providers. ELA promotes the leasing industry as a major source of funds for capital investment in the U.S. and other countries. Headquartered in Arlington, Virginia, ELA is a national organization with more than 850 member companies and a staff of 27 professionals. In 2002, equipment leasing is estimated to be a $244 billion industry.

We remain available as a resource to the Board and its staff to provide additional or clarifying information. Please feel free to contact me at any time to arrange for follow-on information.

Overview

While we applaud the efforts of the Board to improve financial disclosure of guarantees, we believe the ED may require balance sheet and income statement reporting of fair values that will be unduly expensive to calculate, lack transparency, and lack comparability and consistency among reporting companies. We believe that the emphasis should be on clarifying and expanding the disclosure requirements in the interest of minimizing breakdowns in compliance. However, we do not believe that the proposed application of fair value accounting to guarantees with a remote possibility of loss can be made operational in terms of relevance and reliability.

We are in general agreement with the proposed disclosure requirements, but disagree with the views of the majority of the Board regarding (i) balance sheet measurement and (ii) the lack of guidance on subsequent measurement and income statement reporting. We concur with the alternative views expressed by dissenting Board members in sections A31- A35 of the ED, recommending that the scope be limited to improving disclosure of guarantees.

If you choose not to limit the Interpretation to disclosure, we would recommend that you scope out guarantees that are embedded in contracts, that is those multi-term contracts that contain a guarantee as part of a contract. Alternatively, we would recommend that the scope of the Interpretation be expanded to include the fair value accounting for all elements of a contract that has a guarantee. Taking the latter approach broadens the issue to make it worthy of a Statement, rather than an Interpretation.

It appears that the proposed Interpretation as currently drafted would amend SFAS No. 5. Paragraph 9 of the ED states that the liability reported at the fair value of the entire guarantee (encompassing both the contingent and noncontingent elements). This proposed provision would essentially override the probable and reasonable estimable framework otherwise applicable in the recognition and measurement of loss contingencies. We believe that only the noncontingent element can be the subject of the proposed Interpretation and that any recognition and measurement of that element would also need to satisfy the fundamental recognition criteria inherent in financial statements (as discussed in the FASB Statement of Concepts).

We also believe that the Proposed Interpretation will require fundamental changes to accounting for lease contracts that currently follow the guidance provided by SFASNo.13, *Accounting for Leases*, as amended and interpreted by a number of Statements, Interpretations, Technical Bulletins and EITF Consensuses.

Leasing contracts are highly negotiated commercial transactions that require the parties to the contracts to allocate asset risk and to make a number of indemnifications, representations, and warranties regarding their behavior and obligations during the term of the lease. SFAS No. 13, as amended, provides guidance on the balance sheet classification and income statement reporting for the parties to a lease. This guidance relies on an assessment of all of the financial components to a lease contract. The ED proposes to bifurcate and report on a limited number of components to a lease contract but fails to address other related components that may provide offsetting value to the parties providing residual value guarantees.

Implementation Issues and Cost / Benefit Analysis

As described elsewhere in this letter, we question the benefits to be derived from the proposed recognition requirements contained in the ED. We also take issue with whether those benefits outweigh the costs that will be incurred in implementing the new requirements. In recent deliberations surrounding impairment accounting, the Board decided it was too costly to determine the fair value of all non-financial assets, so a decision was made to deal with accounting for impairment only when the asset value was obviously impaired. The analogy, therefore, is to keep in place the accounting for values related to guarantees within the guidelines of SFAS No. 5.

A company is likely to enter into hundreds or thousands of lease and other legal contracts each year. Very few of these contracts will be "standard form documents" and each contract may give rise to a number of explicit and implicit stand-ready obligations in the form of guarantees, indemnifications, or other contractual provisions. Accordingly, it is likely that a company would be required to dedicate substantial resources to the review of all of their contingent obligations under each and every contract. This would apply not only to contracts currently in force, but could apply to those that may have passed the stated maturity dates, since many indemnifications are in place beyond the maturity of the contract in which it is contained. We believe this to be a very costly process, which could take months to complete initially, and requiring substantial resources to monitor on a go–forward basis.

Once identified, valuing these contingent liabilities becomes an even more daunting task. As an example, in the case of a first loss residual value guarantee provided by a lessee in a synthetic lease, no active residual value insurance market exists for determining what a third party may charge to provide a similar guarantee. The premium in a residual value insurance policy doesn't necessarily represent the true fair value to the lessee, since this particular guarantee was provided in the context of an entire lease solution (as opposed to a stand-alone basis), which contains a provision allowing the lessee upside in the property through a fixed price purchase option (no market currently exists for residual value insurance where the insurer gets the upside). Alternatively, the lessee could attempt to value the contingent obligation through a review of the estimated future fair market value of the underlying asset and determine the likelihood and dollar amount the guarantor could be obligated to pay. Performing this review at closing may be feasible if the guarantor were to obtain an appraisal estimating the future fair market value. This appraisal would represent an additional cost in connection with the lease. Similarly, marking this liability to market over the term of the lease would require costly re-appraisals. While we recognize that this ED doesn't address subsequent recognition, the on-going cost of monitoring and evaluating these types of guarantees could be massive. In addition to the synthetic lease example presented above, another common guarantee is manufacturer or dealer residual guarantees. As explained above, there is no market to facilitate calculating a fair value.

With regard to indemnifications contained in contracts, in many cases, markets do not exist that would allow valuation of these contingent obligations. These indemnifications would need to be valued in the context of the contracts in which they're included. For example the development of economic models to value a lessee's tax indemnifications in U.S. leveraged tax leases would be extraordinary and costly, if not impossible – all for a risk which is considered remote.

While we believe the cost to implement the ED will be substantial, we also do not believe that the value of the information will outweigh such costs. We believe that the lack of guidance provided in the ED in establishing values for these obligations and the failure to address subsequent recognition issues, as discussed below, will lead to a lack of comparability between companies.

Subsequent Accounting

We believe that the lack of guidance provided in the ED with respect to subsequent measurement and recording is a major flaw in the document. It is clear from conversations that there is significant variability in views between the major accounting firms and our constituent leasing companies. We have the following questions, which require further guidance in order to apply this new Interpretation consistently:

1. When a contingent obligation is recorded, where does the offsetting debit go?

2. Is the answer to question 1 the same regardless of what type of contingent obligation (i.e. guarantee, indemnity, or performance letter of credit) gave rise to the liability?

3. If the answer to question 1 is that an offsetting asset is created, what happens to that asset over time? Is it amortized in all cases or for certain situations, does it remain on the balance sheet until the liability is liquidated?

4. What happens to the offsetting debit or credit when the liability is marked-to-market? Does it adjust the value of an asset, if one is recorded, or does it go through the income statement?

5. When and how is the liability liquidated? If an indemnity gave rise to the liability, and that indemnity survives the stated maturity date of the agreement, how long must the company continue to carry the liability on its books?

Potential Amendment to Existing Lease Accounting Guidance

The ED is an Interpretation of SFAS No. 5, 57, and 107, yet calls for fundamental changes to lessee balance sheet reporting for operating lease contracts as specified by SFAS No. 13. The rules for lease classification are well established and clearly defined. SFAS No. 13 defines the criteria for classifying a lease as an operating lease and requires no balance sheet reporting by the lessee for an operating lease that fails to meet the four classification criteria. One of the criteria requires the measurement of the maximum amount of lessee payments which includes the maximum possible amount due under a guarantee of the residual value.

The ED may have unintended consequences in permitting similar lease transactions to be accounted for differently. The ED would require balance sheet reporting for contingent residual value guarantee payments but no reporting for payments that are certain. This dichotomy provides an invitation to financial engineers to restructure lease obligations to achieve desired balance sheet results.

We believe that this fundamental change to SFAS No. 13 should be undertaken only in the context of revising lease accounting as a whole.

Current accounting literature, including SFAS No. 13, SFAS No. 98, *Accounting for Leases*, EITF Consensus No. 90-15, *Impact of Nonsubstantive Lessors, Residual Value Guarantees, and Other Provisions in Leasing Transactions*, and EITF Consensus 96-21, *Implementation Issues in Accounting for Leasing Transactions Involving Special Purpose Entities*, requires disclosure on leasing transactions including residual value guarantees and reporting requirements for guarantees related to an impaired asset.

Disclosure of Residual Value Guarantees

We agree with the proposed disclosure requirements in the proposed Interpretation regarding residual value guarantees, but believe that there is existing literature that already requires such disclosures. We understand that there are concerns regarding inadequate compliance to the existing guidance but we feel that compliance inadequacies will not be resolved by expanding disclosure requirements. Disclosures of information relative to lease transactions and residual value guarantees are required by the existing accounting literature including SFAS No. 13, SFAS No. 98 and EITF Consensus No. 90-15, and No. 96-21. Further, the Securities and Exchange Commission (SEC) requires disclosures regarding contingent obligations in its *Management Discussion and Analysis* (MD&A), as noted in EITF No. 90-15. As we understand it, this Interpretation will help clarify the scope of guarantees and will consolidate disclosures into one place.

In December of 2001, a petition to the SEC was prepared by the major accounting firms, with the endorsement of the American Institute of Certified Public Accountants, requesting further interpretation from the SEC regarding disclosures. The SEC's response was a letter to registrants dated January 22, 2002, that reminded registrants of current disclosure requirements regarding contingencies and off-balance sheet transactions in the MD&A. Lessees responded by making significant improvements to their disclosures regarding residual guarantees and operating leases. Attached to this letter is a sample of lessee disclosures for 2001 and compares them to disclosures provided by the same lessees for identical transactions provided in 2000 (Appendix A). This sample is indicative of a large number of reports that were reviewed.

Residual Value Guarantees

The most common uses of residual value or asset value guarantees are by (1) manufacturers and vendors, along with credit guarantees to a lessor or secured lender, to support the sale of equipment and subsequent lease financing - often in exchange for upside through purchase options or remarketing agreements; and (2) lessees to ensure a return to an investor in exchange for certain beneficial rights conveyed to the lessee in the lease.

In the latter instance, a lessee guaranty of a residual value is granted in exchange for and as consideration for the value of a purchase option that allows the lessee to purchase the asset. The residual guarantee and purchase option are set at the expected future fair market value. In the absence of a purchase option, the lessee is unlikely to guarantee an investor's return. Failure to recognize only the risks of a lease and not the benefits of a contract does not provide a fair depiction of the arrangement taken as a whole. For readers of financial statements, there would be insufficient information to determine the value of the contract in its entirety.

Evaluating the components of a contract in aggregate is supported by the Board's example of a puttable convertible bond cited in the Exposure Draft [A6. (a) (4)]. In that example, the embedded put option was determined not to represent an independent guarantee because the guaranteed party's asset was viewed as an investment in the entire contract. This conclusion is analogous to a guaranteed lease residual in a lease arrangement with both "put" and "call" features.

Measurement of the fair value of residual guarantees will be difficult for many asset types and likely result in lack of comparability in the fair value of guarantees among companies. Certain assets such as automobiles and trucks may have detailed, readily available published value information. A great many assets, however, have no easily obtainable valuations. As we have already identified in the cost/benefit analysis, determination of fair value will be difficult and expensive and inconsistencies will likely be rampant between different companies.

Indemnities

We understand that the ED proposed including indemnification agreements within its entire scope, meaning that it requires both specific disclosures and the initial recognition and measurement of a liability at fair value. The ED appears to cover both stand-alone indemnification agreements and contracts with embedded indemnification provisions. The ED also appears to require that an indemnifying party (guarantor) record a liability or contingent obligation to make payments to the indemnified party (guaranteed party) based on the occurrence of a specified event or circumstances, such as an adverse judgment in a lawsuit or the imposition of additional taxes due to either a change in tax law or an adverse interpretation of the tax law. Based on the limited guidance at paragraph 9 and A13, the proposed Interpretation appears to imply that the guarantor should measure its contingent obligation to stand ready to perform by determining the payment a guarantor would need to make either to a third party (e.g., insurance provider) or the original guaranteed party to release the guarantor from its obligations. It also appears to require this measurement approach in all circumstances, regardless of whether the triggering event is within the control of the guarantor or arises from the nature of the guarantor's normal business activities, whether the risk of loss has been insured, or whether the indemnity merely serves as a confirmation of normal and customary allocation of rights, duties, and obligations.

Assuming that the above paragraph represents an accurate assessment of the proposed Interpretation as drafted, we believe that the Board would create an accounting model where the recognition of contingent liability for an enterprise's inherent risk of loss arises as a by-product from its normal and customary contracting activities. For example, a commercial airliner has an inherent exposure to loss arising from its own acts or omissions, the acts of others (terrorists), accidents, or doing business in multiple jurisdictions. Under FAS 5, the airliner does not recognize a liability for these exposures to loss unless it meets the conditions for accrual (probable that one or more future events will confirm a loss from an existing condition, situation, or set of circumstances; and the amount of the loss can be reasonably estimated). However, if the airliner agrees to hold a financial provider or a supplier of goods or services harmless from such airliner-related losses through indemnity provisions, the proposed Interpretation apparently triggers liability recognition even though the FAS 5 criteria have not been met and no true economic risk shifting has occurred.

We have particular concerns about the application of the proposed Interpretation to net lease contracts. The discussion below explains why we believe that the general indemnities used in effectuating a net lease arrangement should be excluded from the entire scope of the proposed Interpretation. We also explain why we believe that the “acts, omissions, and representation” special income tax indemnities contained in leases should also be entirely excluded for conceptual reasons and cost-benefit considerations. We believe that current “triggering event” model provides more decision useful (relevant and reliable) information in the accounting for loss contingencies from remote future events than the proposed “stand ready” model.

Definition of an indemnity. An indemnity represents a means of holding counterparty (the indemnitee) harmless against loss or damage arising from the acts or omissions of the indemnifying party (the indemnitor), the business of the indemnitor, and certain casualty events. An indemnitor agrees to make the indemnitee “whole” by making a compensatory payment.

Net lease arrangements. A net lease serves to separate the risks and rewards of ownership and use of the leased property. The lessor invests in the lease property and, depending on the type of lease, assumes credit, residual, and income tax related risks and rewards. The lessor affords the lessee the right to the use of the leased property usually for a stated term. Under its right to use, the lessee typically operates the leased property (or directs others to operate it) and/or controls access to the leased property. Consistent with its use of and control over the leased property, the lessee assumes responsibility for maintenance, insurance, and taxes (a triple net lease). The lessee customarily indemnifies the lessor for risks of loss arising from its use/control of the leased property and its general business activities.

A net lease preserves operating risk with the lessee and allows for the transfer of certain other risks and rewards of ownership (critically, residual interest and/or income tax benefits). Further, it allows regulated financial institutions to participate in lease financing. Federal regulations permit net leasing, as it constitutes an activity consistent with the banking business. Federal regulations bar regulated financial institutions from assuming operating risks. Hence, the purpose of the indemnification provisions is to effect the separation of use and ownership and to facilitate competition, not to convey something of incremental value between the parties.

General indemnities. Net lease contracts generally contain the following two types of general indemnities: (1) general indemnity, covering third-party claims or other losses arising from operation of the leased asset or the overall transaction; and (2) general tax indemnity, covering sales, use, stamp, property, and other taxes that may be imposed in respect of the use and operation of the leased property and certain other aspects of the negotiating, closing, and fulfilling of the transaction. In concept, as long as a party to the lease performs as agreed, it should not incur any unexpected out-of-pocket loss or incremental cost as a result of these indemnities.

We believe that the proposed requirement for the lessee to record a liability associated with the relief of general operating risk would be inconsistent with the basic framework of SFAS No. 5. Under the ED, the lessee-user would essentially be required to accrue for the risk of loss from “acts or omissions” and “general business” risks, or for future events that, even if they occurred, would not qualify as confirming an existing situation or circumstance.

Special tax indemnity. True leases generally contain certain a special tax indemnification agreement for the benefit of the lessor against the loss of some or all of the contemplated tax benefits. Tax benefits, along with credit and residual assumptions, constitute an integral part of the pricing of a true lease. The special tax indemnity addresses who should ultimately bear the loss of a contemplated tax benefit arising from a future adverse event. Depending on the negotiated terms and conditions, the following future events can trigger a claim under the tax indemnification provisions:

- Acts or omissions of the lessee;
- Misrepresentations by the lessee;
- Successful challenge by the IRS to the legal interpretations of the law;
- Changes in tax law; and
- Casualty events.

Under tax law, the lessor suffers the loss of tax benefits in the first instance. The lessor then presents a claim. Accordingly, the lessor bears tax risk and legal and credit risk in the recovery of any loss.

Today, in “big ticket” leases, a separately negotiated tax indemnification agreement (TIA) generally protects the lessor from the loss of contemplated tax benefits arising from “acts, omissions, and misrepresentations” of the lessee. In “small ticket” or “middle ticket” leases, the lease agreement generally contains an “all events” special tax indemnification provision as part of the standard form language. In practice, claims under the special tax indemnify are rare and more often than not arising in unusual situations, such as in relationship with bankruptcy proceedings.

When a triggering event occurs, the computation of claim can be quite complex. For example, certain claims require the lessor to show the actual loss incurred while others require the application of a stipulated set of assumptions. Additionally, since most tax events alter the timing but not the amount of the tax benefits, many claims either explicitly or implicitly contain a “reverse indemnity” provision, where the lessor is subsequently obligated to repay amounts to the lessee (or the present value equivalent). Finally, since “big ticket” leases are highly negotiated, each TIA has markedly different triggering events and computational mechanics.

Unlike financial obligations, no active market exists for the transfer of a contingent obligation arising under a tax indemnification agreement. Further, no reasonable estimate can be derived under valuation techniques, particularly with respect to acts or omissions or misrepresentation triggers. Since the potential claim depends on custom provisions and ever changing facts and circumstances, how can an indemnitor reasonably determine the amount that it theoretically would be required to pay over to transfer the risk of loss to a hypothetical third party?

In summary, we believe that general indemnities should be entirely excluded from the scope of the proposed Interpretation. We also believe that "acts, omissions, and misrepresentation" special tax indemnities should be entirely excluded from the scope for conceptual reasons and that "all events" special tax indemnities should be excluded from the recognition and measurement requirements and the maximum loss disclosure for cost-benefit considerations. Accordingly, we believe that the Board should retain the existing accounting guidance on tax indemnities in lease agreements under EITF 86-33, *The Indemnifications in Lease Agreements*, a pronouncement which builds on the contingent rent provisions of FAS 13.

Summary

The requirement to provide expanded disclosure that includes all guarantees, reported in one place of the footnotes may help mitigate compliance issues. The Board should reconsider its attempt to also cause those guarantees to be recorded at their fair value, even if payment under the guarantees is not probable. If the Board pursues that approach, we recommend that a more comprehensive project be put on its agenda to review the cost versus benefits, to deal with the complexity of contracts with embedded guarantees, and to provide detailed guidance for the initial and subsequent measurement and accounting.

The ELA would be happy to discuss these comments further with the Board and/or staff and provide additional information that would be helpful.

Sincerely,

Michael Fleming

Michael Fleming,
President
Equipment Leasing Association

Appendix A

This appendix references examples of operating lease disclosures for a sample group of 5 companies for fiscal year end 2000 and fiscal year end 2001. Company names, dates, and certain details have been deleted so as to avoid singling out specific companies. We have omitted irrelevant information. The sample here is similar for a much larger number reviewed for this project.

Example Company A

December 31, 2000

In [date], we entered into an operating lease agreement for two corporate headquarters office facilities in [city, state]. The lease is for a period of five years and is subject to standard covenants including financial ratios. We have an option to purchase the buildings at any time during the term for an amount equal to the total investment of the lessor. At the end of the lease term, we may exercise the purchase option or renew the term of the lease. In addition to these possibilities, we may elect to have the buildings sold to an unrelated third party. …[and] to pay the lessor the difference between the total investment in the buildings and the net sales proceeds. In no event would we be required to pay more than a maximum guaranteed residual amount as set forth in the lease. If we default during the term of the lease, the lessor could require us to purchase the buildings for an amount equal to our option price. As of [FYE], we were in compliance with all financial covenants.

December 31, 2001

In [date], we entered into a five-year lease agreement for our corporate headquarters office buildings. Under the agreement, we have an option to purchase the buildings at any time during the lease term for $xxx million, which is the total investment of the lessor. The lease is subject to standard covenants including liquidity, leverage and profitability ratios. As of [FYE], we were in compliance with all covenants. In case of a default, the lessor may demand payment equal to the lessor’s investment or that we surrender the buildings. The agreement qualifies for operating lease accounting treatment under SFAS 13 and, as such, the buildings and the related obligation are not included on our balance sheet, but the lease payments are reflected in the schedule of future minimum lease payments. At maturity, we can either purchase the buildings for an amount equal to the lessor’s investment, which is approximately $xxx million, or terminate the lease. If we elect to terminate, we are obligated to use our best efforts to arrange the sale of the buildings to an unrelated party and will be required to pay the lessor any shortfall between the net remarketing proceeds and the lessor’s investment, up to a maximum guaranteed residual amount. The lessor is a multi-asset leasing company with a substantive net worth, not a special purpose entity.

Example Company B

December 31, 2000

Operating Lease Agreements. We have entered into operating leases for xxx of our [facilities]. Under these agreements, the lessor is required to purchase the property, pay for the construction costs and lease the facility to us. The following table includes information related to these operating leases:

Location	Operating Lease Amount	Lease Begins	Lease Ends
XXXXX	$xxx million	Month/Year	Month/Year
YYYYY	$yyy million	Month/Year	Month/Year

December 31, 2001

We have entered into operating leases known as synthetic leases for [x] of our properties. Effective [date], we entered into an operating lease facility. The real property is owned by a special purpose entity. Under this agreement, an unrelated third party borrows funds, purchases the property, pays for the construction and subsequently leases the facility to us. Because this is accounted for as an operating lease, the related fixed assets and lease liabilities are not included on our balance sheet. The termination date of this operating lease facility is [date]. At termination, we must select from one of the following alternatives:

- We may purchase any or all of the properties for the sum of the amounts due and outstanding under the lease and any costs and expenses incurred to exercise the purchase option (approximately $xxx million to purchase all properties).
- We may purchase any or all of the properties for the sum of the amounts due and outstanding under the lease and any costs and expenses incurred… (approximately $xxx million).
- We may sell any or all of the properties to a third party, subject to a guarantee that the lessor will receive no less than 85% of the property cost plus any unpaid interest and rents under the lease agreement. (This obligation, which could total as much as $xxx million, is included in future operating lease commitments in [year]).

We have not yet determined what course of action we will take upon termination of the existing facility; however, we believe it is unlikely that we will vacate those properties upon termination. We believe that we will have sufficient cash or financing capabilities to execute one of the available alternatives. In addition, we may be able to negotiate a new lease term based on fair market values at the time of termination…

Changes are currently being proposed to the current accounting for synthetic leases, which may make them less desirable in the future. The proposed changes in the required accounting for these transactions may adversely affect our results of operations and our consolidated balance sheets.

Example Company C

December 31, 2000

The Company has two operating lease agreements totaling $xxx million for the purpose of financing construction costs of certain new properties. Under the operating lease agreements, the lessor purchases the properties, pays for the construction costs and subsequently leases the facilities to the Company. The leases provide for substantial residual value guarantees and include purchase options at original cost on each property.

December 31, 2001

We use capital, operating and other off-balance sheet leases to finance about xx% of our real estate. These lease agreements involve a special purpose entity which meets the criteria established by generally accepted accounting principles and is not owned by or affiliated with the Company, its management or officers. Operating and off-balance sheet leases are not reflected in our balance sheet in accordance with generally accepted accounting principles. The net present value of capital lease obligations is reflected in our balance sheet in long-term debt. As of the end of fiscal 2001, our debt to equity ratio was x%. If the estimated present value of future payments under the operating and other off-balance sheet leases were capitalized, our debt to equity ratio would increase to approximately xx%.

The following table summarizes our significant contractual obligations and commercial commitments as of [FYE]:

Contractual Obligations	Total	2002	2003	2004
Long-Term Debt	$	$	$	$
Capital Leases	$	$	$	$
Operating Leases	$	$	$	$

Contractual Commitments (1)	Total	2002	2003	2004
Guarantees	$	$	$	$

1 Commercial commitments include….guarantees provided under certain off-balance sheet leases.

Example Company D

December 31, 2000

Item 2. Properties. … In 19xx, we began development of a new manufacturing facility of approximately xxx,000 square feet in [city, state] under an operating lease arrangement. Note attached lease as exhibit.

December 31, 2001

We lease various real properties under operating leases that generally require us to pay taxes, insurance and maintenance and are commonly referred to as synthetic leases. A synthetic lease represents a form of off-balance sheet financing... Our synthetic leases are treated as operating leases for accounting purposes and as financing leases for tax purposes. Upon termination or expiration, we must either purchase the property from the lessor at a predetermined amount…, sell the real property to a third party, or renew the lease arrangement. If the property is sold to a third party at an amount less than the amount financed by the lessor, we have agreed to pay the lessor up to an agreed upon percentage of the amount financed by the lessor.
In addition, no Company officers or employees have any financial interest with regards to these synthetic lease arrangements or with any of the special purpose entities used in these arrangements. In the event of a default, the maximum amount payable under the residual value guarantee would equal 100% of the amount financed by the lessor, and our obligation to purchase the leased properties or pay the related residual value guarantees could be accelerated. We believed at the lease's inception and continue to believe that the occurrence of any event of default that could trigger our purchase obligation is remote.

There are no impairments in the fair value or use of the properties that we lease under synthetic leases wherein we believe that we would be required to pay amounts under any of the residual value guarantees. We will continue to assess the fair values of the underlying properties and the use of the properties for impairment on an annual basis.

Example Company E

December 31, 2000

The Company had the following minimum commitments under noncancelable operating leases having terms in excess of one year primarily for real property: 2001-$xxx million; 2002-$xxx million; 2003-$xxx million; 2004-$xxx million; 2005-$xxx million, and $xxx billion in 2006 and thereafter. Certain of the leases contain escalation clauses and renewal or purchase options. Rental expenses under operating leases were $xxx million, $xxx million, and $xxx million in 2000, 1999, and 1998, respectively.

December 31, 2001

The Company uses off-balance sheet special purpose entities ("SPEs") where the economics and sound business principles warrant their use…The Company leases real estate and equipment from various SPEs which have been established to facilitate the financing of those assets for the Company by nationally prominent, creditworthy lessors. These assets consist principally of office buildings, warehouses, and machinery and equipment. The use of SPEs allows the parties providing the financing to isolate particular assets in a single entity and thereby syndicate the financing to multiple third parties. This is a conventional financing technique used to lower the cost of borrowing and, thus, the lease cost to a lessee such as the Company. There is a well-established market in which institutions participate in the financing of such property through their purchase of interests in these SPEs. All of the SPEs established to facilitate property leases to the Company are owned by institutions that are truly independent of, and not affiliated with, the Company. These institutions maintain substantial equity investments in their SPEs. No officers, directors or employees of the Company, or its affiliates hold any direct or indirect equity interests in such SPEs.