Dear members of the International Accounting Standards Board,

We appreciate the opportunity to comment on *Exposure Draft Lease Liability in a Sale and Leaseback Proposed amendment to IFRS 16.* We are faculty members of the Department of Financial Economics and Accounting at Universidad Loyola Andalucía (Spain). We have been studying IFRS 16 *Leases* for a long time, and we would like to share with you our comments. We hope you find them helpful.

We disagree with the proposal because we believe that the lease liability recognised at the commencement date does not meet the criteria to be classified as a liability. A present obligation does not exist as the seller-lessee has the practical ability to avoid the expected lease payments.

We propose an alternative rationale to solve these cases. We believe that variable lease payments are linked to the sale price. Accordingly, variable payments of the sale and leaseback transaction may be analysed as a discount on the sale price and apply criteria for variable considerations under IFRS15.

Please do not hesitate to contact us for any clarification or further information.

Sincerely,

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Question 1—Measurement of the right-of-use asset and lease liability arising in a sale and leaseback transaction (paragraphs 100(a)(i), 100A and 102B of the [Draft] amendment to IFRS 16)

The [Draft] amendment to IFRS 16 Leases applies to sale and leaseback transactions in which, applying paragraph 99 of IFRS 16, the transfer of the asset satisfies the requirements to be accounted for as a sale of the asset. The [Draft] amendment proposes: (a) to require a seller-lessee to determine the initial measurement of the right-of use asset by comparing the present value of the expected lease payments, discounted using the rate specified in paragraph 26 of IFRS 16, to the fair value of the asset sold (paragraph 100(a)(i)); (b) to specify the payments that comprise the expected lease payments for sale and leaseback transactions (paragraph 100A); and (c) to specify how a seller-lessee subsequently measures the lease liability arising in a sale and leaseback transaction (paragraph 102B).

Do you agree with this proposal? Why or why not? If you disagree with the proposal, please explain what you suggest instead and why.

We do not agree with the proposal because we believe that the lease liability recognised at the commencement date does not meet the criteria to be classified as a liability. A present obligation does not exist as the seller-lessee has the practical ability to avoid the expected lease payments.

We propose an alternative rationale to solve these cases. For sale and leaseback transactions "*from an economic standpoint, the seller-lessee has sold only its interest in the value of the underlying asset at the end of the leaseback"* (IFRS16.BC266, similarly ED.BC10). Also, as IFRS16.BC267 notes, "*The lease payments and the sale price in a sale and leaseback transaction are typically interdependent because they are negotiated as a package*". Thus, we believe that variable lease payments are linked to the sale price. Accordingly, variable payments of the sale and leaseback transaction may be analysed as a discount on the sale price, and apply to them the criteria for variable considerations under IFRS15.

From an economic standpoint, why would the buyer-lessor propose variable payments on a sale-leaseback transaction?

- **Usage-based variable payments** limit the extra use that the seller-lessee could make of the leased asset, which affects the residual interest after the lease term. This clause could be interpreted as a discount on the sale price that is realised as the seller-lessee uses the asset; the higher the use over the lease term, the lower the sale price.
- **Performance-based variable payments** are included when both the buyer and seller disagree with the performance of the asset during the lease term. The variable payment protects the seller-lessee in case the asset does not perform as expected, e.g., a downturn in activity for a period. On the other hand, the buyer-lessor is compensated by the lower sale price of the residual interest provided that the asset outperforms during the lease term. These clauses are useful as the buyer-lessor involvement in the performance of leased asset is critical; for instance, if the buyer-lessor is the operator of a shopping centre and the leased asset is a space whose performance depends on the operator's success in attracting people to the shopping centre.
- **Index-based variable payments** is included to offset any loss of purchasing power of the leased asset, and it operates as a discount on the sale price of the residual interest.

In conclusion, lease variable payments under a sale and leaseback transaction operate as a discount on the sale price. The best estimate of these variable payments should form part of the transaction price, as it is very likely that a significant reversal of profit will not occur.

At the commencement date of the agreement, the seller-lessee is paid the sale price, but must meet future payments that are usually fixed but, in this case, need to be estimated. In our view, the transaction could be analysed using IFRS 15 with respect to the variable consideration of the transaction price. Thus, the liability that would arise at inception would be classified as a contract liability.

This contract liability would represent a deferred gain (deferred income) for the gain on the rights that were not transferred to the buyer-lessor. The entity should not remeasure the transferred rights for changes in actual lease payments based on actual usage retrospectively. Therefore, the contract liability should be recognised in profit or loss on a straight-line basis.

Question 2—Transition (paragraph C20E of the [Draft] amendment to IFRS 16)
Paragraph C20E of the [Draft] amendment to IFRS 16 proposes that a seller-lessee apply the [Draft] amendment to IFRS 16 retrospectively in accordance with IAS 8 Accounting Policies, Changes in Accounting Estimates and Errors to sale and leaseback transactions entered into after the date of initial application of IFRS 16. However, if retrospective application to a sale and leaseback transaction that includes variable lease payments is possible only with the use of hindsight, the seller-lessee would determine the expected lease payments for that transaction at the beginning of the annual reporting period in which it first applies the amendment. Do you agree with this proposal? Why or why not? If you disagree with the proposal, please explain what you suggest instead and why.

We consider that cost-benefit analysis is important in the first application of a new accounting criterion. The alternative use of hindsight for retrospective application could facilitate the transition to these new requirements.