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October 30, 2020

Ms. Hillary Salo
Technical Director
Financial Accounting Standards Board
401 Merritt 7
PO Box 5116
Norwalk, CT 06856-5116

RE: Proposed Chapter of Financial Accounting Concepts, *Concepts Statements No. 8, Conceptual Framework for Financial Reporting – Chapter 4: Elements of Financial Statements* (File Reference No. 2020-500)

Dear Ms. Salo:

We appreciate the opportunity to comment on the proposed Chapter of *Financial Accounting Concepts, Concepts Statements No. 8, Conceptual Framework for Financial Reporting – Chapter 4: Elements of Financial Statements.*

In addition to our responses to the Questions for Respondents in the Appendix, we have included in the body of this letter broader comments and suggestions related to the proposed Chapter:

- Comparisons with FASB Concepts Statement No. 6, *Elements of Financial Statements* (CON 6)
- Clarifying the authority of guidance within the proposed Chapter
- Clarifying the effect of contract inception on the notion of a 'present right'
- Control in the proposed asset definition
- Using 'residual' definitions in Concepts Statements
- Changes to the definitions of 'revenues' and 'gains'

Comparisons with CON 6

While we propose some clarifications to the proposed Chapter and modifications to the proposed definitions therein, we believe the proposed definitions, taken together with the accompanying guidance as we interpret it, have a valid conceptual basis. We believe defining an asset as 'a present right of an entity to an economic benefit' and a liability as 'a present obligation of an entity to transfer an economic benefit' based on the guidance underlying those definitions has conceptual merit.

To that end, we believe the proposed Chapter overemphasizes the similarity of the proposed new definitions to those in CON 6, which we believe will inevitably lead many stakeholders to apply the new definitions by comparison to conclusions reached under CON 6 rather than on their own requirements. We are concerned that some stakeholders could conclude, based on basis for conclusions (BC) paragraphs BC4.13 – BC4.17, that the proposed Chapter is principally an editorial exercise, eliminating redundant and misinterpreted language without substantive effect on what meets the asset and liability definitions, or on the analysis an entity should undertake to determine whether an item meets one of those definitions under the proposal as compared with CON 6.

While we understand the Board's impetus for explaining what it believes would change from CON 6, we suggest that the Board emphasize that substantive changes are, in fact, substantive, *even if* they don't result in a significant change to the population of items that meet the new definitions.

Clarifying comparisons with CON 6

To the extent the Board retains significant discussions comparing the proposed Chapter with CON 6, we believe the Board could improve those discussions by more clearly and prominently (e.g. in the Summary of a final Chapter and in the introduction to the BC) stating:

- Whether the Board *intends* for the proposed changes to the definitions of elements of financial statements to substantively change the population of items that meet those definitions as compared with CON 6; and
- Whether, and if so, how the Board *believes* the proposed changes do so.

We believe this would provide enhanced transparency and clarity about how practice should interpret and apply the proposed Chapter (noting that CON 6 is often applied in practice to situations in which recognition guidance does not exist in a specific ASC Topic).

The proposed Chapter, taken as a whole, including the BC, *mostly* suggests the Board's intent was merely to *clarify* the existing asset and liability definitions and not to substantially change the population of items that would meet those definitions (see paragraphs BC4.3 and BC4.8-9). In addition, paragraph BC4.13 states:

> *For assets, the considerations in this chapter **do not alter the population of items that were included under the previous definition of an asset in Concepts Statement 6**. For liabilities, however, **this chapter** fundamentally **expands the population of liabilities that were included under the previous definition of a liability in Concepts Statement 6** to include certain obligations to issue or potentially issue an entity's own shares. [emphasis added]*

If that is the Board's intent, it is partially obfuscated by:

- The volume of definitional changes, which may suggest that substantive changes in the population of items that meet those definitions *must* result therefrom; and
- The Questions to Respondents (which are more prominent than the assertions in the BC). Questions 1 and 5 about the proposed asset and liability definitions are prefaced by an assertion that the Board expects most items that met the CON 6 asset and liability definitions to continue to meet the proposed definitions. Because those Questions do not assert the converse – i.e. that the Board expects that most items that *did not meet* the CON 6 asset and liability definitions will continue to *not* meet the proposed definitions – they suggest the Board believes the proposed definitions will expand the population of items that meet them.

Authority of guidance outside of the definitions

We believe it is unclear whether the definitions themselves have conceptual primacy over other guidance in the proposed Chapter. This question arises in our view because:

- Where references to CON 6 currently appear in the Codification, the reference is frequently to 'the ***definition*** of asset (liability)', e.g. in the ASC Master Glossary definitions of 'Financial Instrument' and 'Obligation', and in paragraph 410-20-25-1. We believe that if one were to look to the proposed definitions without equally weighing the supporting guidance (e.g. paragraph E29), different conclusions would be reached from those under CON 6 in many circumstances. We also do not believe it will be intuitive for stakeholders to, for example, consider all 23 asset paragraphs as part of the asset definition. The idea of doing so is contradicted by the BC, e.g. BC4.17, which at least *implies* that the definition is that in paragraph E16 only.

— Certain terms removed from the asset and liability definitions continue to be explained as integral thereto. For example, paragraph E28 asserts that a present right must have 'arisen from past transactions or other past events', while multiple paragraphs in the proposed Chapter and the BC refer to control or the 'notion of control' as still being an important aspect of the asset definition. If those terms have given rise to confusion (as asserted in BC4.16), but remain integral to the definition of an asset, it is unclear how their demotion from the definition itself to explanatory guidance resolves that confusion, unless the Board's intent is to communicate that the explanatory guidance is not equal in importance or authority to the definitions themselves.

We suggest the Board explicitly state whether readers should ascribe primacy to specific aspects of the guidance. ASC paragraph 606-10-05-6 provides a possible example of a format the Board could follow. The Board could express clearly whether the definition paragraphs and the supporting explanatory guidance have equal authority.

> ***606-10-05-6*** *Paragraphs presented in* ***bold type*** *in this Topic state the main principles. All paragraphs have equal authority.*

We also suggest that the Board address the authority of the BC. In Accounting Standards Updates, the Codification amendments are authoritative while the BC is non-authoritative. Because the Concepts Statements are entirely non-authoritative, we believe it is unclear whether the BC is an integral part of the proposed Chapter that has equal authority/relevance to the 'E' paragraphs.

Obligated counterparty performance

We believe the proposed Chapter should explicitly address whether entering into an enforceable contract creates a present right, i.e. whether it is an event that can give rise to an asset at that time. We believe the proposed Chapter should explicitly address whether contract inception creates a present right in advance of counterparty performance when that performance is an enforceable obligation of the counterparty under the contract. For example, would an intangible license asset exist at contract inception if the licensor has not yet provided a copy of the intellectual property (e.g. software) necessary for the entity to realize the economic benefits from its use, but is legally obligated to do so in the future?

Paragraph E29 (specifically, the excerpt below) appears to suggest that an asset would *not* exist in advance of the licensor's performance in our example.

> *E29….A benefit that is expected only because of an anticipation of the action or performance of either a counterparty or the entity is not a present right.*

However, we think some might question why an executed contract, defined in the Master Glossary as "An agreement between two or more parties that creates enforceable rights and obligations," does not give rise to a *present* right if it has been validly executed and compels the counterparty's performance on a noncancelable, non-optional basis. The confusion may be exacerbated by the discussion in paragraph E41, which concludes that a binding performance requirement – one that presumably has not yet occurred – gives rise to an obligation.

If the Board intends that the license in our example would not meet the definition of an asset at contract inception, it is not possible to intuit that intent from the proposed Chapter. However, this question about contract inception is important; therefore, it should be made explicit and prominent, and should include examples about license, lease and noncancelable purchase contracts in which this question is most likely to arise. To accomplish this, we suggest that the Board:

- Segment the section beginning on Page 12 of the proposed Chapter into two subsections (1) identifying enforceable rights and (2) determining when an enforceable right becomes a *present* right. This would more clearly signal that this section addresses two *distinct* concepts and two distinct decision points about whether an asset exists. First, concluding whether an enforceable right exists and second, determining the point in time at which that enforceable right becomes a *present* right.
- Link the essential asset characteristics in paragraph E17 to the explanatory guidance paragraphs that address each characteristic.[1] We believe this would signal to readers that the referenced paragraphs are integral to identifying and recognizing assets.
- Strengthen and expand paragraph E29 to remove ambiguities, and to specifically address right-of-use scenarios (possible revisions marked).

> *E29. Transactions or other events expected to occur in the future do not in themselves give rise to assets today. ~~An intention~~ An existing contract to purchase inventory or equipment, even if noncancelable, ~~does not by itself meet the definition of an asset. A contract to purchase Eequipment to be acquired next year~~ is not a present right to that inventory or equipment today. In contrast, that ~~an existing~~ contract ~~to purchase equipment (a right to purchase equipment)~~ might give rise to an economic benefit that is distinct from the benefit embodied in the inventory or equipment itself.*
>
> *E29A. A benefit that is expected only because of ~~an anticipation of~~ the future action or performance of either a counterparty or the entity is not a present right. An existing lease contract that commences in the future because the lessor must still undertake future performance – that is, make the underlying asset available for the entity's use – for the entity to [control the] benefit from the right of use is not a present right. ~~In contrast, an existing contract to purchase equipment (a right to purchase equipment) might give rise to an economic benefit that is distinct from the benefit embodied in the equipment itself.~~*

  - Expand paragraph E17(a) to highlight the distinct elements of that essential characteristic. We believe a minor addition of the word 'enforceable' would accomplish this.[1]

Passage of time

We believe it is unclear how the passage of time influences when an asset or liability is recognized. Consider a license that requires no licensor performance, e.g. a license for which the licensee already has

[1] Our suggested edits to paragraph E17 for these comments are illustrated on page 6.

a copy of the licensed intellectual property or for which no delivery of intellectual property is required, but for which the contractual license period has not begun.

We believe some stakeholders will conclude that under the proposed definition an asset exists at contract inception, and that a time lag between contract inception and commencement of the license period is simply, conceptually, an attribute of the license because:

— the licensee has an enforceable right to use the licensor's intellectual property that it has obtained and that has arisen from, consistent with paragraph E28, the past event of both parties entering into the license contract;
— there is no performance required of either counterparty under paragraph E29; and
— the passage of time from contract inception to the contractual license start date is neither uncertain, nor is it a transaction, event or circumstance as described in Appendix A.

In contrast, we believe others may conclude that the CON 6-like language in paragraph E17 means the license asset does not exist until the entity can obtain the economic benefit of the license, e.g. by showing the licensed film or using the licensed trademark if that does not occur until the contractual license period begins.

We believe either conclusion about when a license asset exists in this example can be conceptually supported. However, we believe the increased emphasis on 'rights' in the proposed asset definition and elimination of control on one hand, and the combination of CON 6-like language and the Board's statements about expected change from CON 6 on the other, could lead to diversity as described above.

Control in the asset definition

We believe that it is preferable to explicitly refer to control in the proposed asset definition. While we do not believe it is essential to refer to control, the test of whether it should be included is not whether it is essential but, rather, whether:

— it is preferable to include it in the definition; and
— there is a viable alternative to address the issues described in the BC other than removing it from the definition (particularly in view of the Board's statements in paragraphs BC4.8 and BC4.13 that the proposed Chapter aims to clarify and make more precise the CON 6 definitions, and that the revisions should not alter the population of items that meet the asset definition).

Is it preferable to retain 'control' in the asset definition?

We believe explicitly retaining control as a part of the asset definition is preferable because it is widely used for purposes of asset recognition and de-recognition. For example, control is pervasively used in ASC 606 and ASC 842, and its definition in both was developed with the perspective that it is congruent with the meaning of control used in the CON 6 asset definition (paragraph BC120 of ASU 2014-09). Like our comments on the definition of 'revenues', we believe retaining alignment between the Concepts Statements and authoritative guidance that is unlikely to be amended for changes to the Concepts Statements is preferable.

The CON 6 asset definition is also used in practice where GAAP lacks recognition guidance. For example, ASC Topics 330, 340 (with limited exception) and 360 do not include recognition sections. We observe that the asset definition in CON 6 is frequently used to guide recognition of assets within the scope of those ASC Topics, and that considerations about whether and when the entity can obtain and control the economic benefit and others' access to it are often integral to entities' recognition decisions. Retaining an explicit and clear control condition within the asset definition is less likely to affect or complicate entities' use of the Concepts Statements in these situations for which the applicable ASC Topic does not include recognition guidance.

Is there a viable alternative to removing 'control' from the asset definition?

We acknowledge the discussion in paragraph BC4.16. However, in our experience there are not widespread issues surrounding the understandability of control in CON 6. In particular, we believe the explicit linkage between the concepts of control in CON 6 and in ASC 606 and ASC 842 (two standards that apply to most entities and have garnered significant attention, including specifically to the application of control therein) has *enhanced* understanding of the concept of control in CON 6. However, were we to accept the premise that some stakeholders have experienced difficulty understanding control in CON 6, the significant remaining references to control within the proposed Chapter appear to reduce the understandability that the Board seeks to enhance by removing the word from the definition. We believe that to the extent difficulties understanding control exist, including viewing it 'in the same manner as described in business combinations or consolidation accounting', they can be effectively remedied by more directly linking the term to how it is defined and applied, without substantial difficulty, in ASC 606 and ASC 842.

We suggest revising E16 and E17 to reintroduce control in the manner we have described in the preceding paragraph. We note that reintroducing control to the asset definition could also simplify the BC because it would no longer have to both explain its excision from the definition *and* assert its continued influence thereon. Our proposed edits to paragraph E17 reflect (1) a definition that closely aligns to the definition in the ASC Topics referenced in the preceding paragraph and (2) congruity in substance with the discussion in paragraph BC4.15. The suggested edits that follow also reflect our comments about paragraph E17 outlined on page 4.

> *E16. A present right of an entity <u>to obtain and control</u> an economic benefit*
>
> *E17. An asset has the following two essential characteristics:*
>
> *a. It is a present<u>, enforceable</u> right <u>(see paragraphs E22 through E30)</u>.*
> *b. The right is to <u>obtain and control</u> an economic benefit <u>(see paragraphs E31 through E36)</u>.*
>
> *~~The combination of these two characteristics allows an entity to obtain the economic benefit and control others' access to the benefit.~~ <u>Control of an economic benefit refers to the ability to direct how it is used and consumed, and restrict others' access to the benefit.</u>*

If the Board disagrees with our recommendation to retain control in the proposed asset definition, we provide alternative suggestions in our response to Question 3 of the Questions to Respondents in the Appendix to this letter.

Residual element definitions

We understand that accounting guidance often defines one population by reference to another for completeness, i.e. to ensure there are not items that meet *neither* definition. For example, ASU No. 2016-

10 identifies intellectual property (IP) as either functional or symbolic. The Board defined symbolic IP in paragraph 606-10-55-59(b) as all "Intellectual property that is not functional intellectual property" to ensure there were not forms of IP that could be construed to be neither functional nor symbolic. We believe this 'residual' approach is often appropriate when used in the Codification.

However, we believe the proposed Chapter should define what the Board believes each financial statement element *is*, not only what it is not. We believe the imperative described in the preceding paragraph that is often present when amending or adding to the Codification does not exist when drafting *Concepts* Statements. In the specific context of this proposed Chapter, we believe it would be preferable to define what gains and losses are, rather than defining them solely by reference to revenues and expenses.

Definitions of revenues and gains

While Concepts Statements are not authoritative, and the Board is not required to amend existing GAAP for changes thereto, we believe, as was and is often stated, that revenue is "special." On that basis, we agree with Ms. Botosan in her Alternative Views:

> *Ms. Botosan notes that the definition of revenue in Topic 606, Revenue from Contracts with Customers, is consistent with the definition in Concepts Statement 6. Ms. Botosan acknowledges that amendments to the Conceptual Framework do not affect existing authoritative guidance. Nevertheless, she believes that having a different definition of revenue in Topic 606 versus the Conceptual Framework is less than ideal.*
>
> *To further distinguish revenue from gain, however, the Concepts Statement 6 definition of revenue includes a reference to an entity's ongoing major or central operations, and the existing definition of gain includes a reference to peripheral or incidental activities. The proposed definitions eliminate this language. Ms. Botosan acknowledges that the Concepts Statement 6 definitions of revenue and gain are not perfect, but she believes that the proposed removal of that language will make the definitions less helpful when deciding between revenue or gain classification in standard setting.*

We believe eliminating reference to "the entity's ongoing major or central operations" in the definition of revenues and "from peripheral or incidental transactions of the entity"' in the definition of gains would reduce clarity in conceptually distinguishing between the two. It also would result in expanding the former at the expense of the latter in a manner we do not believe is conceptually appropriate.

While we have no attachment to the specific words in CON 6, we believe the notions captured therein are important and should be retained. With respect to 'revenues', we believe use of the term 'ordinary activities' in place of 'ongoing major or central operations' could be appropriate because we believe it is as understandable and enhances alignment between the Concepts Statements and ASC 606.

Absent re-introducing the concepts of 'the entity's ongoing major or central operations' and 'from peripheral or incidental transactions of the entity', we are unclear what sales or activities would *not* meet the definition of 'revenues'. The definition would appear to capture the sale of any good, even one that the entity uses as PP&E (e.g. a piece of equipment or a building) and then sells used, and that the entity does not sell as part of its ordinary activities. Under ASC 606 and the definition of revenues in CON 6, we do not believe this sale would be considered a revenue transaction; rather, it would result in a gain recognized under ASC 610-20. We acknowledge the discussion and examples in paragraph E90 but believe that discussion cannot be supported by the proposed definitions of revenues and gains as drafted. The notion that the nature of the entity and activity with which an item is associated dictate the composition of revenues and gains should appear in the definitions.

We have similar concerns about expenses and losses.

Other matters

We have additional comments on the proposed Chapter for which there is not a relevant Question for Respondents.

— We believe the emphasized excerpts from the BC below are inconsistent with each other. The first suggests control may require more than an enforceable right, while the second suggests control is obtained merely by having a present, enforceable right. If control 'goes beyond' a legal right as stated, that would suggest control is not an implied facet of having the right but, rather, something additional.

> *BC4.15. The definition of an asset in Concepts Statement 6 associated assets with a particular entity by inclusion of the term* control. *Control often refers to the ability to direct, manage, or have power over something to obtain or access benefits or to increase, maintain, or protect those benefits.* ***Control goes beyond legal rights and includes the ability to obtain and control the benefit in other ways, including restricting, or otherwise prohibiting, the access of others to the economic benefit of the asset.*** *[emphasis added]*
>
> *BC4.17. While the Board concluded that the notion of control was an important aspect of the asset definition, it was not clear to the Board whether the explicit term control added anything significant to the definition of an asset.* ***Those considerations are addressed by inclusion of the term present right in the definition in this chapter****. If an entity has a present right to an economic benefit, that would seem to be sufficient to establish the fact that the asset is an asset of that entity.* ***Indeed, if an entity has exclusive rights, it presumably can deny or regulate access to that benefit by others, thereby implying control****. [emphasis added]*

— We believe the following emphasized excerpts in paragraphs E41 and E56 also appear inconsistent with each other. Paragraph E41 asserts that an obligation binds an entity to performance or action, while paragraph E56 asserts that an obligation can arise from a requirement to *not* perform or undertake an action. We believe these notions should be reconciled, and that examples of obligations not to perform or undertake an action that result in liabilities should be provided because we believe requirements *not* to perform are generally not accounted for as liabilities (e.g. a requirement to maintain exclusivity in a licensing arrangement is not accounted for as a performance obligation of the licensor).

> *E41.* ***A liability requires that an entity be obligated to perform or act in a certain manner.*** *Most liabilities are legally enforceable. Legally enforceable obligations*

include those arising from binding contracts, agreements, rules, statutes, or other requirements that would be upheld by a judicial system or government. Judicial systems vary in type and form, and the term judicial systems includes any such system that would enforce laws, statutes, and regulations. ***In the context most relevant to financial reporting, an obligation is any condition that binds an entity to some performance or action. In a financial reporting context, something is binding on an entity if it requires performance. Performance is what the entity is required to do to satisfy the obligation.*** *[emphasis added]*

E56. A second essential characteristic of a liability is that the obligation requires an entity to transfer or provide economic benefits to others or to be ready to do so. The obligation establishes the responsibility of the entity to fulfill the requirements of the obligation or otherwise satisfy or settle the obligation. ***Some obligations require an entity to refrain from engaging in certain types of activities*** *or to forgo an economic benefit to which the entity may otherwise be entitled. [emphasis added]*

— We believe the example in paragraph E25 is confusing. We do not believe the lease arrangement example illustrates two entities either sharing 'the same economic benefits at the same time' or sharing 'the same economic benefits at different times'. The economic benefits illustrated are *different* economic benefits, arising from different, separable rights, i.e. rights of use versus rights of ownership. During the lease term, the lessee has an exclusive right to the economic benefits from use of the asset, while the lessor has an exclusive right to the economic benefits from ownership of the asset; those sets of economic benefits are neither the same, nor shared at the same time. In the case of a lease, one might assert that the economic benefits from use that the lessee controls during the lease term subsequently revert to the lessor, illustrating 'rights to the same economic benefits at *different* times', if the Board wanted to use that illustration. We suggest edits, noting however that this example would not illustrate entities having rights to the same economic benefits at the *same* time.

E25. To qualify as an asset of an entity, that entity need not have an exclusive right to an economic benefit. Rights, including the ability to restrict access to a benefit, and restrictions may be single (held or imposed solely by the entity) or shared (held or imposed in conjunction with others). Two or more entities might have different rights and share the same economic benefit at the same time or might otherwise have rights to the same economic benefits at different times. ***For example, <u>in</u> lease arrangements <u>two entities have rights to the same economic benefits at different times; the lessee has the right to the economic benefits from use of the asset during the lease term, while the right to those economic benefits subsequently reverts to the lessor at the end of the lease term.</u> ~~unbundle the economic benefits of the underlying asset by giving (a) the lessee the right to hold and use the property for a specified interval and (b) the lessor the right to receive lease payments and any residual value.~~*** *Also, timeshare property owners have the rights to use property during specified time periods. Each entity has an asset based on its rights to the economic benefit. [emphasis added]*

— Paragraph E25 also appears to be inconsistent with paragraphs E17 and E20. While paragraph E25 states, "'To qualify as an asset of an entity, that entity need not have an exclusive right to an economic benefit," paragraph E17 states that the two essential characteristics of an asset allow "an entity to obtain the economic benefit and control others' access to the benefit," and paragraph E20 states, "The ability to restrict others' access is a component of an asset of an entity because the ability to restrict creates an advantage in the form of privileged access and control of economic benefits." We are unable to reconcile those statements. It is unclear how an entity can control others' access to an economic benefit if it does not have an exclusive right to that benefit. We believe this is a unit of account (or evaluation) conflict in the drafting, and that paragraph E25 perhaps should refer to a *set of* economic benefits, such as the mineral resources of a parcel of land identified in paragraph E26. For an entity to have an asset with respect to mineral rights for a parcel of land, we agree that the entity need not have an exclusive right to *all of* the mineral resources in the parcel of land. However, in the paragraph E26 example the entity would in fact have an exclusive right to its undivided interest in those mineral resources, including the ability to control others' access to its share of the mineral rights. We suggest that the Board clarify this point, which we believe would help to resolve the inconsistency that exists between these paragraphs.

> *E25. To qualify as an asset of an entity, that entity need not have an exclusive right to a set of ~~an~~ economic benefits (for example, the production capacity of a power plant or transportation capacity of a pipeline). Rights, including the ability to restrict access to a benefit, and restrictions may be single (held or imposed solely by the entity) or shared (held or imposed in conjunction with others, including as part of a joint operation or a joint arrangement). Two or more entities might have different rights and share the same set of economic benefits at the same time, such as the example in paragraph E26, or might otherwise have rights to the same economic benefit(s) at different times. For example, lease arrangements unbundle the economic benefits of the underlying asset by giving (a) the lessee the right to hold and use the property for a specified interval and (b) the lessor the right to receive lease payments and any residual value. Also, timeshare property owners have the rights to use property during specified time periods. Each entity has an asset based on its rights to the economic benefit.*

* * * * * * * * *

Our responses to the Questions for Respondents are included in the Appendix to this letter.

If you have questions about our comments or wish to discuss the matters addressed in this comment letter, please contact Kimber Bascom at (212) 909-5664 or kbascom@kpmg.com, or Scott Muir at (212) 909-5073 or smuir@kpmg.com.

Sincerely,

KPMG LLP

KPMG LLP

Appendix – Responses to Questions for Respondents

Question 1: The Board expects that most assets that met the definition of an asset in FASB Concepts Statement No. 6, Elements of Financial Statements, will continue to qualify as assets under the definition of an asset in this proposed chapter. Do you agree that the definition of an asset in this proposed chapter is consistent with the Board's assertion? If not, please provide examples.

We believe the Board's assertion is likely accurate. However, we believe that applying the proposed definition may result in *more* items meeting the definition of an asset than would result from applying CON 6. We believe the principal possible additions to the population of assets from the proposed definition based on our interpretations thereof would be:

- certain rights to use or access another entity's assets that do not meet the definition of a lease (e.g. because of a substantive substitution right) or a license (e.g. because the entity would incur a significant penalty from exercising its contractual right to take possession of the underlying software) and related financial assets for the supplier; and
- assets reflecting a present right to obtain/receive a stand-ready service.

With respect to the former, it seems clear that the entity has a present right to an economic benefit in these circumstances that does not depend on 'anticipated' action or performance (see paragraph E29). It also seems clear that the supplier has a present right to a corresponding economic benefit (i.e. payment) for its performance. We acknowledge that under GAAP, the proposed Chapter would not result in recognizing these conceptual assets.

As for the latter, paragraph E29 appears to preclude a determination that an enforceable right is a 'present right' if the service provider's performance is merely 'anticipated'. However, we believe that once a service provider begins to 'stand ready' (i.e. undertake performance consistent with the nature of its promise), paragraph E29 no longer prohibits that determination. In the absence of that prohibition, we believe it can at least be asserted that a present right to an economic benefit (e.g. the right to access and store software and data in a cloud computing arrangement, or access maintenance resources when needed) exists on commencement of the stand-ready service. We note that this appears to be consistent with the conclusion in paragraph E61 about when a present obligation is created for a stand-ready service provider.

Based on the discussion in paragraph BC4.13, the above may not reflect the Board's intent or expectations. If that is correct, we believe the stand-ready service interpretation can be mitigated by referring to "the continued action or continuing performance of either…" in paragraph E29. This would change the sentence to indicate that only the service provider's past performance to date on its own gives rise to a present right, which is then immediately consumed, in scenarios in which the provider's performance is ongoing (e.g. in an infrastructure-as-a-service or software maintenance arrangement).

Question 2: In particular, respondents are asked to focus on internally generated intangible assets. Is the definition of an asset in this proposed chapter helpful in resolving issues of identifying intangible assets?

We understand that the genesis of this question is the long-running debate about whether goodwill and certain intangible assets recognized in a business combination meet the conceptual asset definition.

It is unclear that the proposed nonauthoritative guidance would have practical significance related to this debate given the extent of GAAP that exists in this area and the consistent lack of Board and stakeholder appetite to consider changes to the accounting for internally generated intangible assets, including research and development.

Question 3: The Board's definition of an asset in this proposed chapter does not include the term control. However, this proposed chapter explains why and how control is interrelated to the definition of an asset. Is this discussion sufficient or is the term control necessary to include in the definition of an asset? If the term control is necessary to include, please explain how its inclusion would change the population of items that would meet the definition of an asset in this proposed chapter.

We reiterate our view in the body of this letter that the Board should explicitly retain control in the proposed asset definition.

If the Board elects not to retain control in the asset definition, we believe it would be helpful for the proposed Chapter to:

— de-emphasize how much the asset definition still includes the 'notion of control' or how 'interrelated' it remains to the asset definition; and
— use words other than 'control' in the guidance wherever practicable to do so (e.g. it seems the Board could easily use 'restrict' in place of 'control' in the last sentence of paragraph E17 and 'decision-making rights over' in place of 'control of' in the third sentence of paragraph E20).

We believe eliminating the term control throughout the proposed Chapter is preferable to suggesting that while control has been removed from the asset definition because it is confusing and unnecessary, control as a concept is still integral to that definition. If, as in paragraph BC4.16, control is so misunderstood that it needs to be removed from the asset definition, it seems necessary to substitute appropriate language wherever practicable to do so.

Even if the Board retains control in substantially the same manner as in the proposed Chapter, we believe it would be helpful to define control consistent with the edits we suggest to paragraph E17 in the body of this letter. We believe that as long as the asset definition purports to 'maintain the notion of control', it is useful to provide a familiar definition of control within the Chapter that refers to more than the aspect of restricting others' access to the economic benefit, which we believe is an incomplete notion of control.

Question 4: The Board decided that an obligation to transfer either assets or, in certain limited circumstances, an entity's own shares would meet the definition of a liability. Is the discussion in this proposed chapter of the limited circumstances in which the entity's own shares would meet the definition of a liability sufficiently clear?

We do not believe that the proposed Chapter is clear about why only an obligation to transfer a variable number of the entity's own shares meets the definition of a liability. We believe the Board's rationale in paragraph BC4.31 is effectively that obligations to transfer a fixed number of shares are akin to sharing an ownership (i.e. equity) position with the recipient.

While we understand the distinction between obligations to transfer a fixed versus variable number of shares, it is not clear to us why the obligation to transfer the fixed number of shares doesn't meet the proposed definition of a liability. That issue must be addressed first, before arriving at the residual equity definition. Regardless of the equity characteristics outlined in paragraph BC4.31, we do not believe the proposed Chapter adequately explains why a present obligation to transfer a fixed number of the entity's own shares is not 'a present obligation of the entity to transfer an economic benefit' to the counterparty, particularly in view of the discussion about contingent liabilities.

Question 5: Other than as described in Question 4, to allow certain share-settled instruments to be liabilities, the Board expects the liabilities that met the definition of a liability in Concepts Statement 6 will continue to qualify as liabilities under the definition of a liability in this proposed

chapter. Do you agree that the definition of a liability in this proposed chapter is consistent with the Board's assertion? If not, please provide examples.

Consistent with our response to Question 1, we believe the Board's assertion that CON 6 liabilities would also meet the proposed definition of a liability is likely accurate. Also consistent with our response to Question 1, we believe the proposed liability definition may increase the population of liabilities compared with the population under CON 6.

Although we recognize the ongoing conceptual debate about recognition versus measurement in the context of liabilities (see paragraphs BC206 and BC207 of ASU 2016-02 related to variable lease payments as an example), we have observed, consistent with paragraph BC4.10, that CON 6 is often interpreted as having a probability *recognition* threshold. That is, many stakeholders do not believe a liability exists unless a future sacrifice of economic benefits is probable (as that term is used in CON 6). Multiple places in the proposed Chapter (e.g. paragraphs E61 and BC4.10) suggest that additional liabilities would be recognized because 'probable' no longer appears in the liability definition, and that probability is a measurement, rather than recognition, consideration.

The population of conceptual liabilities may increase due to the questions we raise in the body of this letter about 'obligated counterparty performance' and 'passage of time'. As noted, we believe the proposed Chapter should be clearer about whether entering into an enforceable contract gives rise to present rights and obligations. In applying the proposed Chapter, we believe the same types of transactions that could give rise to new assets would also give rise to new liabilities in those cases, for the customer and the supplier.

Question 6: In practice, the more challenging applications of the definition of a liability in Concepts Statement 6 were related to business risks, constructive obligations, and stand-ready obligations. Is the discussion of those three areas in this proposed chapter adequate to understand and apply the definition of a liability?

We believe the discussion around stand-ready obligations is incomplete because it sidesteps the question of whether service-related stand-ready obligations such as those discussed in FASB/IASB Joint Transaction Resource Group Agenda Paper No. 16 give rise to assets and liabilities under the proposed Chapter. As discussed in our response to Question 5, we believe at least many stand-ready service obligations would give rise to assets and liabilities under the proposed definitions. Without explicitly addressing these common stand-ready service obligations, we believe the most significant questions related to stand-ready obligations overall are left unanswered.

Question 7: The Board suggested that integration with presentation principles would be helpful in distinguishing between the components of comprehensive income. To facilitate this distinction, paragraph E92 of this proposed chapter references presentation principles. Is distinguishing revenues from gains and expenses from losses essential as a matter of elements, or should those distinctions be exclusively a matter for presentation concepts? Please explain.

We believe that the fundamental difference between revenues and gains and between expenses and losses is more than a matter of presentation. Consistent with our comments about the definitions of revenues and gains, revenues reflect inflows or other enhancements of assets of an entity or settlements of its liabilities (or a combination of both) from the entity's core activities, which are distinct from other inflows or other enhancements of assets that should be defined as gains and are relevant to financial statement users.

We believe retaining elemental definitions of revenues, expenses, gains and losses is preferable to treating those items as presentation matters only. Even under a view that there is not a fundamental difference between revenues and gains and between expenses and losses, we believe there is strong precedent for not enacting significant changes and retaining these items as elements in the Concepts Statement in the face of diverse opinion.

Question 8: As described in Question 7, this proposed chapter seeks to distinguish between revenues, expenses, gains, and losses. Do the definitions of and other explanatory language related to revenues, expenses, gains, and losses make the distinction between these elements sufficiently clear?

Please see our comments on residual definitions and the definitions of revenues and gains in the body of this letter.

Question 9: The Board has concluded that, other than when exceptions are specifically noted in this proposed chapter, the elements described in this proposed chapter would apply to not-for-profit organizations. Do you agree with this conclusion?

Yes. We agree with the Board's conclusion.

However, we understand that there is presently confusion about whether equity transfers, which were added to ASC 958 by ASU 2016-14, fit the definition of any of the elements described in the proposed Chapter. We note that this is not a new issue; the issue exists with the current definitions.

An equity transfer is defined in the ASC Master Glossary as a transaction directly between related not-for-profit entities if one controls the other or both are under common control. Equity transfers are described as "similar to ownership transactions between a for-profit parent and its owned subsidiary (for example, additional paid-in capital or dividends)." However, an equity transfer is nonreciprocal by definition as "it embodies no expectation of repayment, nor does the transferor receive anything of immediate economic value (such as a financial interest or ownership)." In the proposed Chapter, the elements 'investments by owners' and 'distributions to owners' result in a change in ownership interests. Therefore, although equity transfers are defined as similar to ownership transactions, they do not appear to have all of the characteristics of those two elements.

The fact that equity transfers do not clearly meet the definition of any of the proposed (or existing) definitions of elements has contributed to the diversity that exists in the net asset classification of equity transfers and the presentation of those transfers within changes in net assets. Resolving whether and how equity transfers fit within the conceptual element framework may reduce some of the diversity in practice.

Question 10: This proposed chapter was developed on the basis of Concepts Statement 6, though several paragraphs have been removed or adapted. Are any of the paragraphs from Concepts Statement 6 that have been removed in drafting this proposed chapter necessary to keep? If so, why?

We do not believe that removing or adapting specific paragraphs from CON 6 drives the issues on which we have commented in this letter. Therefore, we do not have recommendations about specific deletions or adaptations from CON 6.

Question 11: "Appendix A: Accrual Accounting and Related Concepts," includes discussion of several concepts that are used in this proposed chapter and in other chapters of the Conceptual Framework. Is this material helpful in a chapter discussing the elements of financial statements?

We do not believe this material is linked sufficiently to the core guidance. It is unclear to us how the material influences whether an item meets the definition of an element in the core guidance. To enhance the usefulness of Appendix A, we believe the Board should explain how a stakeholder should use Appendix A to help it identify financial statement elements.