

Letter of Comment No: 144  
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# FROST BROWN TODD LLC

2200 PNC Center  
201 E. Fifth Street  
Cincinnati, Ohio 45202-4182  
(513) 651-6800  
Facsimile (513) 651-6981  
www.frostbrowntodd.com

FREDERICK W. KINDEL  
fkindel@fbtlaw.com  
(513) 651-6965

June 16, 2003

## VIA OVERNIGHT MAIL

### Confidential

Mr. Lawrence W. Smith  
Director of Technical Application and Implementation Activities  
Financial Accounting Standards Board  
401 Merritt 7  
P.O. Box 5116  
Norwalk, CT 06856-5116

Re: **FASB NO. 46**

Dear Mr. Smith:

Our law firm is a multi-office firm based in the lower Midwest and upper Southeast. We maintain an extensive transactional practice, including representing principally borrowers on off-balance sheet financing transactions. As such, we have been advising clients and their accounting firms about the legal effect of the recent FASB changes on their current synthetic lease financings to be compliant under FASB No. 45 and FASB No. 46 ("FIN 46"). We share the public outrage toward certain companies which have manipulated accounting standards in their off-balance sheet transactions. We also appreciate the "post-Enron" climate concerning publicly traded companies and the mandate to FASB to promulgate accounting changes, which among other things, seek to address these past accounting abuses.

As transactional lawyers, we observe, however, that FASB adopted FIN 46 in December, 2002, and required an extremely aggressive timetable to apply that standard to existing off-balance sheet transactions. As we understand it, FIN 46 does not offer completely clear bright line criteria to accounting firms in applying that standard to variable interest entities. Consequently, each accounting firm has been required to formulate de facto standards and policies to address it as they have advised their accounting clients in its application. Without attribution to specific clients or their accounting firms, this approach has required our publicly traded clients to scramble to meet the June 15<sup>th</sup> deadline in order to maintain off-balance sheet accounting treatment of their current financings. Indeed, some of our clients have elected to place assets on their balance sheet or to refinance them on an on-balance sheet basis, because they did not believe that they could comply with this deadline.

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From a practical standpoint, publicly traded companies, who report their earnings on a calendar basis, have devoted their resources during the first quarter of this year to report their financial statements for calendar 2002, not to address FIN 46 considerations. They have not been given sufficient time to confer with their accounting firms to evaluate their current off-balance sheet financings in order to restructure and redocument them to be compliant with FIN 46. This process has also affected lenders and funding sources on these financings, in that they have been delayed in providing financing structures to be compliant with FIN 46, because they have not been given a reasonable time period to interact with publicly traded companies and their accounting firms not only to structure and document existing off-balance sheet financings, but also to secure funding sources from third parties on conduit or similar transactions, based on attendant changes required to these transactions.

We note that the mission of FASB is, among other things, the following:

To bring about needed changes in ways that minimize disruption to the continuity of reporting practice. Reasonable effective dates and transition provisions are established when new standards are introduced. The Board considers it desirable that change be evolutionary to the extent that it can be accommodated by the need for relevance, reliability, comparability and consistency.

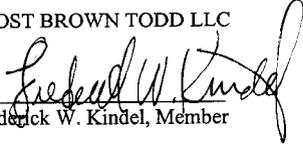
We question whether FASB, in their desire to be preemptive to adopt FIN 46, lost sight of that mission statement. Consequently, FIN 46 has placed an unreasonable, if not an unfair, burden on publicly traded companies and their audit firms to maintain off-balance sheet accounting treatment of their current credit facilities.

With the foregoing in mind, we respectfully request that FASB extend the June 15<sup>th</sup> deadline under FASB No. 46 to September 15<sup>th</sup>, 2003, in order to permit our clients and other companies to be given a reasonable time period to address the application of that standard on their off-balance sheet financings. We hope that this request will be favorably received by you and that a prompt response will be forthcoming. We appreciate your consideration of this request.

If it would assist you in your consideration of this request to arrange a conference call or meeting, I would be happy to participate in those discussions.

Sincerely yours,

FROST BROWN TODD LLC

By:   
Frederick W. Kindel, Member

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