



BDO Seidman, LLP
Accountants and Consultants

233 N. Michigan Ave.
Chicago, IL 60601
Telephone: (312) 616-4661
Fax: (312) 856-9019

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Mr. Lawrence Smith
Director TA&I--FSP
Financial Accounting Standards Board
401 Merritt 7
P.O. Box 5116
Norwalk, CT 06856-5116

Letter of Comment No: 5
File Reference: FSPFIN46-F

Dear Mr. Smith:

BDO Seidman, LLP is pleased to offer comments on the Proposed FASB Staff Position (FSP) FIN 46-f.

We agree with the guidance in the Proposed FSP. It is consistent with the way we interpreted paragraph 5(b)(1) of FASB Interpretation No. 46. We have the following suggestions to clarify or improve the guidance in the proposed FSP:

- The end of the first paragraph of the answer states that emphasis should be placed on (1) the ability of the equity group to make decisions that have a significant impact on the success of the entity and (2) the extent to which the equity group absorbs expected losses or receives expected residual returns. We believe emphasis also should be placed on (3) the degree to which the parties outside the equity group have valid business reasons to make or participate in decisions that are expected to be beneficial to both groups and (4) the equity group's control over the original decision to enter into the transactions that gave the parties outside the equity group decision-making rights. In the context of franchising, the Exhibit notes that the franchisor's rights typically relate to maintaining the image and quality of its brand—a valid business reason that benefits both the franchisor and the franchisee. In the context of franchising, the equity owners control the key initial decisions to (a) become a franchisee rather than opening some other kind of business, (b) enter a particular line of business (for example, restaurant versus card shop versus fast oil change facility), and (c) within the chosen line of business, affiliate with a particular franchisor. This contrasts with the situations we believe the Board intended to address in paragraph 5(b)(1), in which the sponsor/decision-maker solicits a passive investor or a *de facto* agent to become the owner of record.
- Either in the paragraph referring to the Exhibit, or in the Exhibit itself, we suggest noting that the analysis would be similar for other forms of distribution agreements, such as dealerships and distributors.

- In the Exhibit, we would suggest the following additional points:
 - The first bullet point refers to the franchisor's right to approve the geographic area in which the franchisee is permitted to operate. In our experience, the franchisee's territory typically is defined in the franchise agreement, and the franchisee does not enter the agreement unless it obtains the territory it wants. The territory, therefore, is not a franchisor decision after the franchise agreement is executed.
 - The franchisee often views the participation of the franchisor in decisions as a benefit. For example, the franchisor often has considerably more expertise in site selection or employee training than the franchisee, and the franchisee wants the benefit of that expertise. The definition of initial services in FASB Statement No. 45 includes assistance with site selection; the franchisor is not permitted to record initial franchise fees as revenue until those services are performed.
 - In addition to factors noted in the proposed FSP, the franchisee's control over day-to-day operations would include hiring, firing, and supervising employees, not just managers. In many franchise businesses, customers find variations from location to location in the attitude of the employees toward customers, the speed and friendliness of the service, and the cleanliness of the facility. These attributes significantly affect the success of a franchise, and they are substantially within the control of the franchisee.
 - The Exhibit should stress that the franchisee is an independent and active business owner who voluntarily chooses to affiliate with a particular franchisor and typically pays a significant fee to obtain franchise rights. Any franchisor rights to participate in decisions are part of the franchise agreement that the franchisee voluntarily decides to enter. Hence, control over the single most important decision—to affiliate with a particular franchisor—rests with the franchisee. As noted previously, this differs significantly from situations in which a sponsor/decision maker solicits a passive investor or a *de facto* agent to become the owner of record in an entity.

We would be pleased to discuss our comments with the FASB staff. Please direct questions to Ben Neuhausen at 312-616-4661.

Very truly yours,

s/ BDO Seidman, LLP