

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

RE: Comments on Proposed FSP FIN 46-f

Dear Sir:

Thank you for providing us an opportunity to present comments on the Proposed FSP FIN-46-f. Friendly Ice Cream Corporation maintains a chain of over 530 full service restaurants, 155 of which are restaurants operated by 34 different, independent franchisees pursuant to franchise agreements with our wholly-owned subsidiary, Friendly's Restaurants Franchise, Inc. We wish to most emphatically state that any decision that would require Friendly Ice Cream Corporation to consolidate financial statements of its franchisees into its own financial statements would be unreasonable and almost assuredly impossible to implement in a manner that complies with FASB standards. And the result would be most likely unreliable, misleading and not a fair representation of the financial condition of Friendly Ice Cream Corporation. The connection between Friendly Ice Cream Corporation and each of the franchisees is a single license agreement, along with several ancillary contracts, that are entered into at arms length and without Friendly's having any equity rights in the franchisee's business. The license agreement permits the franchisee to use our Friendly's trademarks in their restaurant in accordance with the requirements of the Lanham Act, 15 U.S.C., which requires owners of trademarks to ensure uniformity in how their marks are used by licensees. Failure to adequately police uniformity may result in the owner forfeiting valuable legal rights to control a mark that is the foundation of a business.

To ensure system uniformity, Friendly's reserves rights to set mandatory standards to regulate how our trademarks are presented to the consuming public in both company and franchise restaurants. For franchisees, this includes, among others, our right to (i) approve the location of the restaurant, its design, trade dress and equipment; (ii) mandate the menu items that may be sold in the restaurants and approve the sources of supply for ingredients; supplies and uniforms; (iii) establish standards for training and certification for qualified restaurant managers; and (iv) promulgate uniform local, regional and systemwide marketing programs. Friendly's exercises these contractual rights in order to maintain uniformity in how our marks are presented to the public. Friendly's exercises no control over management of franchised businesses or the persons who operate as our licensees. Friendly's does not hire or fire employees at franchised restaurants nor make any employment decision for or on behalf of franchisees. Friendly's has no control over a franchisee's bank account. Friendly's does not make any of the day-to-day operational decisions at franchised restaurants. Friendly's employees responsible for managing the day-to-day operations of company restaurants customarily have little or no contact with licensees who operate franchised restaurants. For all these reasons, there is no basis to consider franchisees Variable Interest Entities or to require a consolidated financial statement of a franchisor and its multiple independent franchisees.

Furthermore, franchisors like Friendly's lack any contractual or statutory authority to implement the financial controls that would be required in order to ensure reliability of the financial data that must be gathered from multiple franchisees for consolidation with a franchisor's financial statement. Absent such controls, it is highly probable that any such consolidated statement would have no validity as a fair representation of the financial condition of the franchisor or its franchise system.

What then can be anticipated from such a consolidated statement? We are convinced that the result would be a surge in frivolous investor lawsuits that would prove to be indefensible. This proposal cannot therefore hope to work without first making statutory, ex post facto changes to the franchise legal relationship; changes that would be likely to fundamentally disrupt a method of distributing goods and services to the public that is extremely important to American commerce.

We hope you will carefully consider the potential legal and economic ramifications of implementing this proposal.

Very Truly Yours,

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John L. Cutter
President