





November 6, 2003

Mr. Robert H. Herz Chairman, Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116 Mr. Scott A. Taub Deputy Chief Accountant Securities and Exchange Commission 450 Fifth Street, N.W. Washington, D.C. 20549 Letter of Comment No: 40 File Reference: 1082-300 Date Received: 11/06/02

Dear Mr. Herz and Mr. Taub:

It is my belief that FIN 46 inadvertently and unintentionally affects franchise companies in a way that could be interpreted as requiring franchisors (the parent companies) to consolidate into their financial statements the financial statements of their franchisees (which are owned and operated independently, with franchisee-operators bearing the risk/reward). Franchising is not an industry but a method of distributing products and services that has been adopted by more than 75 different business sectors for expansion and growth. There are an estimated 1,500 franchise companies operating in the U.S. generating more than a trillion dollars in the U.S. economy annually.

As you are aware of Franchise contracts are entered into on an arms' length basis and without any equity rights in the business. The franchisor does protect, for business longevity and success, the trademark, name and quality. The franchisor receives a royalty from the franchisee but has no ownership interest in any franchisee assets, and the franchisee bears full risk of loss with regard to his assets. The franchisee has the ability to make decisions regarding the operations of his business including: the appropriate structure for the business, amount and timing of owner's compensation; lease versus buy determinations for franchise assets including land and buildings, pricing, forecasting, training, local advertising, hiring, staffing, compensation and firing as well as promotional opportunities for franchise employees, accounting methods; and deposit frequency and levels of cash on hand maintained. These 'participating' rights show that the franchisee has a significant amount of control over its legal entity. Furthermore, this shows that the franchise is effectively "leasing" its primary asset, its brand, to the franchisee for a specified period of time as stipulated in the franchise agreement.

If required to move to consolidation accounting for its franchisees, a franchisor's financial statements would include all assets, liabilities, revenues and expenses of its franchisees even though the franchisor has no legal obligations associated with the debt. The end result will be financial statements that do not reflect economic reality. Consolidation could also require franchisors to gather timely GAAP financial information from franchisees that they may not have the legal right to obtain and which the franchisee may not even maintain. Achieving consistency of the information reported would be a major challenge.

Therefore, our solution is to seek clarification in the instance where the franchisor has no equity ownership and its only interest is the fixed rate royalty fee it receives in connection with the franchise agreement. Franchisors should continue to apply the consolidation guidance of ARB 51 and continue to follow FASB Statement No. 45, Accounting for Franchise Fee Revenue. Defer the effective date of the Interpretation as it pertains to franchisors to allow thoughtful deliberation of the appropriate accounting for such arrangements and to address the unwieldy transition and implementation issues posed by FIN 46.

Thank you for your prompt consideration of our requests.

Sincerely.