November 11, 2003







Robert A. Funk
Chief Executive Officer

Letter of Comment No. 39 File Reference: 1082-300

Date Received: 111163

Mr. Robert H. Herz Chairman, Financial Accounting Standards Board 401 Merritt 7 P.O. Box 5116 Norwalk, CT 06856-5116

Dear Mr. Herz:

I have the privilege to serve as Chairman of Express Personnel Services, a privately held franchisor of staffing services headquartered in Oklahoma City, having over 400 franchisees in the United States and employing over 250,000 people annually. There are an estimated 1,500 franchisors operating in the United States doing business with franchisees in more than 320,000 retail units. The franchise sector contributes more than \$1 trillion dollars to the U.S. economy annually.

I would like to comment on FASB Interpretation No. 46, Consolidation of Variable Interest Entities (FIN 46), which addresses how a business enterprise should evaluate whether it has a controlling financial interest in an entity through means other than voting rights and accordingly should consolidate the entity. I am specifically concerned about the possible implications of FIN 46 on the financial statements of franchise companies.

As it is currently written, FIN 46 affects franchise companies in a way that could be interpreted as requiring franchisors to consolidate into their financial statements the financial statements of their franchisees, which are independently owned and operated. There is great potential that FIN 46 will impose this unnecessary hardship on franchise businesses, add complexity and confusion to the reporting process, and make financial statements less accurate and more difficult to read.

Franchise agreements should not fall under FIN 46. Although a franchisor receives a royalty from a franchisee, the franchisor has no ownership interest in any franchisee assets and the franchisee bears full risk of loss with regard to its assets. The franchisee has the ability to make various decisions regarding the operations of its business, including the appropriate structure for the business, the accounting methods, pricing, forecasting, training, hiring, staffing, and compensation. The franchisee has a significant amount of control over its legal entity.

Consolidation of financial statements of franchise companies will not result in better financial reporting. If required to consolidate, 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.

The bottom line is that if FIN 46 is implemented in its current form, thousands of small businesses will be burdened with unanticipated costs and reporting requirements, and the financial statements of hundreds of franchisors will be distorted and rendered meaningless. As a result, FIN 46 will have a chilling effect on franchise expansion, thereby denying entrepreneurs the ability to own their own businesses.

I ask that you defer the effective date of FIN 46 as it pertains to franchisors to allow further deliberation of the appropriate accounting for franchise companies. I also request an opinion that permits franchisors to continue to apply the consolidation guidance of ARB 51 and continue to follow FASB Statement No. 45, Accounting for Franchise Fee Revenue, and FASB Statement No. 94, Consolidation for All Majority-Owned Subsidiaries.



Thank you for your attention on this important matter.

Sincerely.

Robert A. Funk Chairman & CEO