COORS BREWING COMPANY

October 6, 2003

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

Proposed FASB Staff Position No 46-e, Effective Date of FASB Interpretation No. 46, Consolidation of Variable Interest Entities

Dear Mr. Smith:

In support of the proposed deferral of the effective date of FASB Interpretation No. 46 ("FIN 46"), we respectfully submit the following:

- 1. A summary of our concerns with the guidance,
- 2. An overview of the types of business arrangements we are involved in, and
- 3. A list of specific questions related to how the guidance should be implemented.

Summary of Concerns

We support efforts to improve existing authoritative guidance that provides readers a clear understanding of financial results, financial position, and related cash flows. We are concerned, however, based on spending a significant amount of time reading and applying FIN 46 to our manufacturing and sales joint ventures that its application may lead to less comparability and understanding of business results by users of the financial statements.

We are concerned that many of the terms are not well defined, which will likely result in conflicts in the application of them. We do not expect that the determination of variable interest entities based on a calculation of "expected losses" to be a concept that will result in consistent application, or to provide a framework for readers to better understand financial statements. The facts and circumstances of many business arrangements do not lend themselves to the type of modeling required by the guidance. The criteria for determining the primary beneficiary based on risk first, and reward second, along with the existing related party rules require subjective judgments that may result in an inappropriate determination of a controlling financial interest in many cases.

Our Business Arrangements

Our business is focused on brewing great beer, and the marketing and sales activities related to it. We have made decisions over time that certain aspects of the business are not core to us, and we entered into joint venture arrangements with third party companies whose main businesses are activities like can and bottle manufacturing, and distribution. We entered into these businesses to utilize our partners' expertise and share the financial improvements made through cost reductions, logistical improvements, and raw material purchasing power. In addition, we have entered into other separate arrangements under which unrelated companies perform certain functions (manufacture, package, market, or sell) for certain of our branded products in their countries, and under which we perform some or all of these functions for brands owned by other brewers in our core markets.

The most significant management decisions related to these businesses are equally shared by both owners through management committees that have the same number of members from each owner. Since overall management and control of the underlying assets does not rest with either owner, and the results of disposing of assets and/or terminating the venture will be shared by the equity owners, consolidation has not been appropriate since there is no controlling financial interest using the voting control model.

However, there are some functions more closely related to one or the other owner that are provided to the venture under supply arrangements, e.g., raw materials or labor. Many of these items are often provided at agreed standard prices such that the entity itself experiences little or no variability attributable to them. There are typically two "equal" owners in our business ventures, but there are circumstances that can result in some relatively insignificant unequal sharing of results over time.

Specific Questions

There are many concepts and terms within FIN 46 that have yet to be fully defined and/or interpreted. The ones of particular applicability to our facts follow:

1. How should the words "by design" in the first sentence of paragraph 5 be applied beyond the example in the footnote that states an entity does not become a VIE simply because it incurs losses that were not anticipated? For example, if it is possible for one party to absorb a greater share of expected losses or be entitled to a greater share of residual returns under a contractual provision, such as a formula by which one party can purchase the other party's interest upon an event of default, is the arrangement a VIE even if the parties don't expect either the event to occur, or have a basis to conclude there will be gain or loss if the event were to occur?

- 2. Is the exclusion from equity contained in paragraph 5(a)(3) for amounts provided to the equity investor directly or indirectly to be applied broadly, or limited to amounts intended by the parties to be a return of equity? Is there a time element to payments that are excluded (e.g., payments made years after the business has been operating, or payments made for any purpose, such as providing ongoing services at fair value, or raw materials acquired by an equity owner that are then sold to the business venture)?
- 3. The non-proportional voting and economic interest test in the last sentence of paragraph 5(b) appears to trigger VIE status in captive type arrangements (substantially all of the entity's activities either involve or are conducted on behalf of an investor that has disproportionately few voting rights) if the entity on whose behalf the activities are primarily conducted has a smaller voting interest than their interest in economic results.
 - a. What is the underlying intent of this requirement in light of the fact that paragraph 5(b) applies to the equity owners as a group, and in our operating ventures, there are only two equity owners that share all of the economic results and voting control?
 - b. How are circumstances involving special allocations of gain or loss to be considered? For example, many joint venture arrangements provide a special allocation of depreciation expense if one owner has contributed cash, and the other party contributes property that has been partially depreciated. Although the equity owner that contributed cash has a greater capital account, the other equity owner is allocated a greater share of income until the capital accounts are equalized. Is the greater economic interest based on the larger capital account, or the greater share of income, or based on the expected variability in cash flows that often do not follow the allocation of income?
 - c. Footnote 7 to this section indicates that the provision is necessary to prevent a primary beneficiary from avoiding consolidation of a variable interest entity by organizing the entity with nonsubstantive voting interests. How should companies reconcile the term "nonsubstantive" in this principles-based footnote with the term "disproportionate" in the actual provision? Disproportionate voting rights could be deemed to include a difference of only mere tenths of percentage points in a near 50/50 joint venture. However, voting interests in that case would clearly be substantive on both sides. Is the anti-abuse provision applicable only when a party has truly "nonsubstantive" voting rights? If so, what is the quantitative definition of nonsubstantive?
- 4. If one party supplies all of the raw materials to the venture, and the other party purchases all of the output from the venture, which party if one, or do both parties, meet the "substantially all criteria" of paragraph 5(b)?

- 5. If one or both owners' equity at risk is reduced to zero under paragraph 5a, and all substantial management decisions are made by a Board of Managers equally represented by both owners, is it intended that paragraph 5(b) would result in VIE status since the management decisions are now interpreted to be shared with a non-equity owner?
- 6. Paragraph 8(a) of FIN 46 defines expected losses and expected residual returns using the words "net income or loss." Is this term meant to be discounted cash flows as reflected in Appendix A, actual GAAP income or loss, or cash basis income or loss?
- 7. Paragraph 8(b) refers to the fair value of the entity's assets. Are the assets limited to actual assets recorded on the entity's books under GAAP? For example, paragraph B9 states that a service contract can be a significant variable interest if its terms are not based on fair value. However, how could this contract enter into the calculation of expected losses or residual gains of the entity if the favorable contract is not a recorded asset under GAAP? Further, Footnote 2 to section 5(a) indicates that equity investments in an entity are interests that are required to be reported as equity in that entity's financial statements. If assets in paragraph 8(b) are intended to include assets not actually recorded on an entity's books, is there a conceptual disconnect between these two sections?
- 8. If one owner retains the variability in the cost of some inputs that are charged to the entity, e.g., the venture is charged at standard or planned rates such that their impact on the financial results of the venture is either nonexistent or fixed, should the variability retained by that owner be considered in the determination of "the entity's" results?
- 9. Paragraph 8(c) includes fees paid to a decision maker as part of expected residual returns, but does not define a decision maker. Is there a definition of a decision maker that includes whether there must be one, or can there only be one decision maker? Note that paragraph 14 states, "a direct or indirect ability to make decisions that significantly affects the results of the activities of a variable interest entity is a strong indication that an enterprise has one or both of the characteristics that would require consolidation. Is this the test for determining a decision maker? Can both parties be a decision maker if both make decisions that impact the business, either individually or through a management committee? Is it possible for a joint venture that is a partnership of equals to have no decision maker? Or in that case, are both parties clearly decision makers? Similar to question 2 above, are there limitations on what amounts paid to a decision maker are not included under this paragraph (e.g., for certain services or sale of materials, and for what period of time)?

- 10. It is not clear just what a variable interest is and how each variable interest impacts the determination of whether a variable interest entity exists, and if so, who is the primary beneficiary.
 - a. Paragraph 2(c) defines variable interests as contractual, ownership, or other pecuniary interest in an entity that change with changes in the entity's net asset value. See question 7 above for the question of how contracts that are not recorded for GAAP can be considered variable interests since they are not recorded on the entity's books.
 - b. Paragraph 12 states that a variable interest does not include interests in specific assets unless these assets make up over 50% of the total fair value of the entity's assets, or if the holder has another variable interest in the entity as a whole. (Except interests that are insignificant or have little or no variability.) How are the words insignificant or little or no variability to be quantified and applied?
 - c. Paragraph 14 states that an enterprise shall consider the rights and obligations conveyed by its variable interests in the determination of whether it will absorb a majority of the entity's expected losses or receive a majority of the entity's residual gains. Is the reference to expected losses or residual gains meant to include the impact to the equity owner that might not be born by the entity (see question 8 above)?
- 11. Paragraph 16(d) includes as de facto agents those parties that have an agreement that precludes the sale, transfer, or encumbrance of their interest in the entity without the prior approval of the other party. Is this language to apply in circumstances where the reason for the inability to sell is based on the complicated and intertwined business relationships between the parties such that the restriction is on its own merits, reasonable?
- 12. How are the tests of paragraph 17(a) dealing with principal/agency relationship, and paragraph 17(b), the party with the "activities that are most closely associated with the entity" to be applied? How is the presence of a principal/agency relationship to be evaluated in a manufacturing or sales joint venture arrangement, and what factors are to be considered in determining which party's activities are more closely related to the entity? Similar to the issue raised in question 4 above, if one equity owner supplies all of the raw materials to the venture, and the other party purchases all of the output from the venture, which party if one, or do both parties meet the "activities most closely related to the entity" test?
- 13. Is the "closely related activity test" in paragraph 17(b) the same as the "substantially all criteria" of paragraph 5(b)? Additional examples would be welcomed that address the judgmental decisions required for these provisions. Specifically, examples that address operational or manufacturing arrangements, such as contract manufacturing, royalty arrangements, and combinations thereof, would be appreciated.

We are concerned that that the intent of the interpretation was to ensure that certain types of contractual arrangements would be consolidated by entities that have a clear controlling interest. However, as a result of the far-reaching implications of certain provisions, and the judgment required by them, many entities that were created as equal joint venture partnerships are captured by the scope of the interpretation. The fine details of most agreements will make it nearly impossible to maintain an absolute 50/50 balance in terms of expected gains and losses, and VIE status is very easily reached more often than not. As a result, accountants will struggle to no end with judgmental decisions trying to determine who the primary beneficiary might be in a joint venture that was truly created by two willing parties who intend to operate the entity as equals.

We support a deferral of the effective date of FIN 46 until such time that its terms are defined and its impact on different types of business ventures is understood and believed to result in better information for users of financial statements.

I would be happy to discuss these comments with you in more detail. I can be reached at (303 277-3409.

Respectfully,

Ron Tryggestad Vice President and Controller Coors Brewing Company