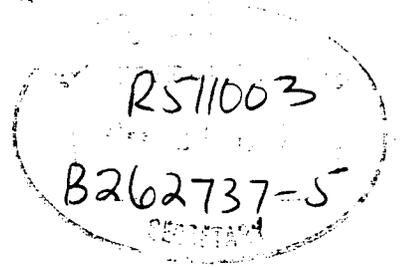




WENDY'S INTERNATIONAL, INC. 3191

JACK SCHUESSLER
President and Chief Operating Officer
U.S. Operations



December 17, 1999

Federal Express

Mr. Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Room 159
Washington, D.C. 20580

Re: 16 CFR Part 436 -- Franchise Rule Comment

Dear Mr. Clark:

Wendy's International Inc. (Wendy's) submits these comments in response to the Commission's Notice of Proposed Rulemaking to amend its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures." We appreciate the opportunity to participate in this rulemaking process.

Wendy's is a quick service restaurant system based in Dublin, Ohio. This November we celebrated our 30th year in business. The Wendy's system is comprised of over 7000 restaurants in all 50 states and 33 countries. Annual system sales exceed \$7 billion. Wendy's International, Inc. owns and operates over 1000 of our restaurants and the remainder are owned and operated by more than 500 franchisees. Wendy's employs over 30,000 people. The system employs over 175,000. Wendy's shares are traded on the New York Stock Exchange by more than 100,000 shareholders and 5,500 WeShare members. (At Wendy's, any full-time employee who is with the company for at least one year enjoys a WeShare stock option benefit.)

We have a considerable interest in the success of all Wendy's system restaurants and we demonstrate that interest by our significant efforts in support of the franchisees who own and operate over 75% of those restaurants. Through franchising, our system has grown tremendously over the past 30 years. Our franchisees have been and are a critical element in our historical and future growth and success. As the Commission has recognized in its past rulemaking, there is a delicate balance between affording protection through regulation and the potential chilling effect on both franchisors and franchisees of unnecessarily burdensome and expensive regulations. If regulation is considered necessary at the federal level, we agree that its most effective point of emphasis is pre-commitment disclosure.

We support the comments to the Commission from others concerning disclosure of territorial plans and other matters which are proprietary and the time of availability of financial information, especially for audited franchisors. Supplementing those comments, we have a few areas of concern for the balance of regulated disclosure. These relate to ambiguities in required disclosure of litigation, potential inconsistencies in FTC and Securities and Exchange Commission policies and requirements, the monetary level above which an investor is considered sophisticated, and treatment of paperwork reduction.

First, as it relates to litigation disclosure the proposed rule provides that a franchisor disclose pending actions against its franchisees. Wendy's believes that this new disclosure requirement, if adopted at all, should contain a materiality component, which limits the cases disclosed to (a) specifically enumerated types of claims which are significant to the entire franchised system, and (b) a significant dollar amount. This would eliminate the burden on franchisors to disclose small cases involving, for example, insignificant breach of contract claims, and cases in which the franchisor must sue the franchisee for indemnity to defend on simple tort claims. Neither of these "nuisance"-type claims, in Wendy's view, adds significant information to aid the franchisee's investment decision, and tracking and monitoring these cases while pending adds significantly to the franchisor's disclosure burden.

Second, as an entity we strive for full and timely disclosure of material information to the marketplace. We are mindful, as well – see *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438 (1976) – that the effect of material information can be reduced by surrounding or obscuring it in information that is not material. Conversely, we are concerned that the fact of disclosure of non-material information can have the effect of artificially inflating the impact of that information. While we would not suggest that disclosures under the proposed rule should parallel exactly disclosures under SEC regulations, we do submit that mandated disclosure of non-material minutia could have unintended and detrimental market effects and therefore we recommend consultation between the two Commissions in connection with the scope and impact of required disclosures.

Third, the definition of sophisticated investor has an unnecessarily high threshold and requires clarification. Wendy's is among the more expensive quick-service restaurants to develop. Nevertheless, it is unlikely (with the exception of multiple units) that the \$1.5 million threshold would often be met in connection with the development or sale of a Wendy's restaurant, although many of our franchisees have very sophisticated structures and usually are represented by counsel. We ask that the Commission consider lowering this threshold. Compare the accredited investor thresholds under SEC Regulation D.

It also appears that the investment amount of \$1.5 million is intended to exclude those expenses incurred during the first three months of operation which are not offset by sales, as provided in the UFOC. These are expenses acknowledged in the UFOC as being a material part of the initial investment for purposes of disclosure. To ignore these expenses in calculating the \$1.5 million investment effectively understates the actual investment of the franchisee, and

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therefore, artificially raises the threshold. Moreover, it is not clear whether the \$5 million net worth / 5 year experience exemption applies to individual investors, investor groups or only the named corporate franchisee. If it is as the proposed language suggests, the rule would encourage investors with substantial experience and net worth to create a new corporation (or a different form of entity) and effectively negate the exemption. Compare consolidation rules for accounting and tax treatment.

Finally, we are concerned about the Commission's rules with respect to the form of disclosures as discouraging the use of electronics and electronic records. The paper reduction efforts of the federal government and its commissions and agencies need not be emphasized – the initiatives are wide ranging and increasing in areas including in procurement, securities filing and registration, taxation, and others. States are enacting electronic signature statues, mandating electronic filing, and otherwise following the lead of the federal government in this area. Private industry activity is moving in consistent directions. There is no reason apparent to us for this Commission to require forms of contracting and record retention inconsistent with other initiatives and directives of the federal government and which may inadvertently impact on otherwise valid states' laws governing private contracting and record retention. The rule as proposed would add burden and attendant expense for both franchisors and franchisees to no purpose.

We thank the Commission for consideration of our comments.

Sincerely yours,



Jack Schuessler
President & COO – U.S. Operations

JS/mas

cc. Via Telecopy
Matt Shay, International
Franchise Association
Dennis Wiczorek, Piper, Marbury,
Rudnick and Wolfe