November 12, 2004

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

Re: Franchise Rule Staff Report - R511003

Dear Mr. Clark:

The International Franchise Association ("IFA") is pleased to submit this comment in response to the Federal Trade Commission's ("FTC") Staff Report on the Trade Regulation Rule titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures – (Franchise Rule)."

We applaud the diligence and careful thought that has gone into the creation of the Staff Report. We also are gratified that the FTC has carefully considered the extensive comment of IFA and the rest of the franchise community as the Staff Report was developed.

International Franchise Association

Founded in 1960, the IFA is the voice of the franchise community in the United States. The IFA has in membership approximately 1,000 franchisors, 6,000 franchisees, and 350 product and service suppliers to the franchise community. And as our recently completed study the *Economic Impact of Franchised Businesses* shows, the franchise community is critical to the U.S. economy, providing 18 million people with jobs and contributing $1.53 trillion of economic output.

Throughout the years, the IFA and its members have worked together with public officials in the U.S. and abroad to achieve a regulatory structure that promotes the growth of franchising while protecting the interests of franchisees, franchisors, and the public. We believe that it is in the interests of all segments of the franchise

community that prospective franchise purchasers receive and carefully consider relevant information.

The IFA has numerous programs to support that mission, including a cooperative relationship with the FTC. For example, the IFA disseminates on its web site and through other means the "Federal Trade Commission's Consumer Guide To Buying A Franchise." The IFA also provides the FTC with complimentary booth space at the IFA's International Franchise Expo, a trade show that brings together franchisors and prospective franchisees.

In addition, the IFA provides a wealth of information on its web site to help prospective franchisees ask the right questions – of themselves and of franchisors – to determine if franchising is right for them and, if so, what type of franchise is the best fit. IFA also administers the Franchise Compliance Training Program developed in conjunction with and endorsed by the FTC, and conducts many other educational programs for franchisors focusing on their obligations regarding federal and state law and regulation governing franchising.

The IFA has an extensive self-regulation program grounded in the IFA Code of Ethics that all IFA members are pledged to follow. The IFA offers assistance in solving disputes between franchisees and franchisors through our Ombudsman Program and the National Franchise Mediation Program.

Staff Report

The International Franchise Association has been an active participant in the formulation of franchise regulation by the FTC since the development of the first Franchise Rule promulgated in 1978.

IFA has consistently supported regulatory policies designed to ensure that prospective franchisees receive relevant information about their proposed franchise purchase sufficiently in advance of their purchase to permit them to make an informed and unpressured purchase decision. IFA also has supported a proper balance between the legitimate disclosure needs of prospective franchisees and the compliance burdens and costs -- borne by both franchisors and franchisees -- that such disclosure inevitably requires.

We believe the new Franchise Rule largely meets that goal: providing for effective disclosure through appropriate requirements. We would, however, like to raise a few points for consideration.

1. While IFA appreciates the FTC's acceptance of IFA's proposed thresholds for the large transaction exemption, we believe it would be helpful to develop more detailed standards to define the term "real estate." Those standards could appear in the Rule or in compliance guides, but some clarification would be extremely instructive for franchisees and franchisors. For example, "real estate" may encompass raw land, buildings, leasehold improvements, fixtures and the like. If it is defined to include all of these items, the significance of the exemption will be diminished. One possible approach that would provide clarity would be to specifically define "real estate" as encompassing only the franchisee's investment in raw land.

2. The Staff Report's discussion of Item 3 notes that parent company litigation must be disclosed if the parent's financial statements are included in the UFOC (and, as required under the Rule, the parent guarantees the performance of the franchisor's obligations). We believe that such disclosure of parent litigation will clutter the disclosure document and will provide information of limited relevance to prospective franchisees. The disclosure of parent litigation may provide less, rather than more, relevant information. For example, if the parent is a public company, it may be the subject of securities litigation on an ongoing basis, the disclosure of which (along with the burden of updating such information on a continuing basis) will obscure and divert the reader's attention from the more relevant litigation involving the franchisor.

3. The Staff Report proposes that the franchisor disclose payments required to be made to third parties. We believe that such disclosure poses unreasonable risks to franchisors. Franchisees may be required as a practical necessity to make payments to a wide range of vendors, some of whom will be unknown to the franchisor. As a result, the franchisor may incur liability for non-disclosure of such unknown vendors, a result which appears to be inappropriate given the way franchise systems operate on a day to day basis.

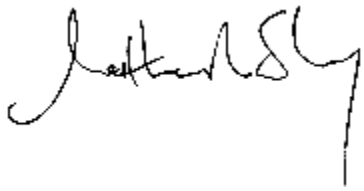
4. With respect to disclosure document delivery, the Staff Report proposes that a franchisor deliver the document "on reasonable request." The Rule should further define this term to avoid any obligation on the franchisor's part to provide disclosure to unqualified or disinterested buyers (sometimes referred to as "tire kickers"), research services or competitors.

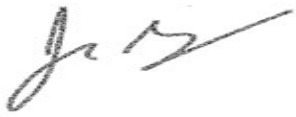
5. Finally, we believe that disclosure document delivery requirements should be uniform throughout the U.S. At present, the state franchise disclosure law delivery requirements vary considerably and such variation will become more problematic after the new Rule takes effect. IFA proposes that the FTC consider adoption of delivery rules that would preempt state franchise laws to the extent that they differ, particularly in those states that require disclosure at the first personal meeting (which also conflicts with the delivery on reasonable request mentioned above).

Overall, the new Rule represents a dramatic improvement over the current FTC disclosure format, as it will help ensure a regulatory climate and disclosure format that promotes a thorough evaluation of information relevant to franchise investors.

This has been a lengthy process and the FTC staff is to be commended for its persistence and for the comprehensive and thorough manner in which it solicited input from all interested parties. The FTC's efforts to involve all stakeholders in a dialogue about how to improve the Rule for the benefit of all parties should serve as a model for other regulatory agencies.

Sincerely,





Matthew R. Shay
Executive Vice President

John F. Gay
Vice President, Government Relations