STARWOOD

HOTELS & RESORTS WORLDWIDE, INC.

November 11, 2004

Via Federal Express

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

Dear Mr. Clark:

Starwood Hotels and Resorts Worldwide, Inc. ("Starwood") is pleased to submit comments on the proposed revised trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising" ("Revised Rule") that was contained in the Staff Report of the Bureau of Consumer Protection dated August 2004.

The Revised Rule and its accompanying Staff Report reflects the deliberate, thorough, and thoughtful effort by the FTC staff, and we have no fundamental disagreements with the proposed revisions from the current franchise rule. However, we are uncertain that the exemptions as drafted will exempt Starwood from the disclosure obligation, when from the FTC's staff's commentary it appears clear it is the intent of the staff to exempt the franchise offerings of Starwood and similar companies to sophisticated and wealthy franchise prospects from the disclosure obligation. We suggest clarification in the Compliance Guidelines which the Staff Report indicates will accompany the Revised Rule to clearly exempt such transactions.

Some brief background may be helpful. Starwood owns, manages and franchises Four Points Hotels, Sheraton Hotels, Westin Hotels and The Luxury Collection Hotels in each hotel market segment between mid-market and luxury, with a corresponding franchise investment for a "conversion" hotel, not including land, from approximately $1.5 million dollars to over $100 million dollars. Conversion hotels are where the hotel is built, but is converting from one brand to another, in contrast to "new build" hotels where the hotel is to be constructed and which generally cost more to develop. Our franchisees are typically very large insurance companies, public REITs and wealthy individuals who own numerous hotels and other businesses, but all of which generally designate the franchisee to be a special purpose entity. We believe both the level of franchise investment and level of sophistication of our franchises are intended to be exempt from the Revised Rule, but we are concerned without the following clarifications in the Compliance Guidelines that the exemption will not be clear.

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I. Proposed section 436.8(a)(5)(i): Large Investment exemption.

A. Real Estate is proposed to be excluded from the One Million dollar investment threshold, but we find no definition of "real estate." Is "real estate" land, land and improvements, or land, improvements and fixtures, or some other definition? We believe if anything is excluded, it should be only land, and all real estate improvements and fixtures should be counted in the sum invested.

B. We used the example above of a "conversion" hotel because this is quite prevalent in franchising, and generally the level of investment is lower than a "new build" and less clear within the Revised Rule. We believe the Compliance Guidelines should include in the franchise "investment" the fair market value of all of the components of "real estate" other than land included in the investment so that whether the potential franchise at the time of the franchise sale has owned the improvements for some time or has just purchased such improvements, there is a clear basis on which to quickly and easily determine the dollar level of "investment." Similarly, with personal property in a conversion situation, we suggest the replacement cost of such items should be the value considered in determining the "investment." In hotels and probably other franchises, it is not easy to determine the fair market value of existing personal property (beds, TVs, desks, chairs, etc.) to be used in the franchise and existing at the time of the franchise sale in a conversion situation. If the franchisor approved the existing property to be used as part of their System, then we suggest the cost of new comparable items which meet the specifications of the franchisor be used to determine this part of the "investment" since such cost is readily known and a clear determinate.

C. We suggest the proposal that this exemption only apply if at least one individual in the investor-group qualifies as "sophisticated" by investing at the threshold level be reconsidered or clarified. In our experience, almost never do two individuals invest in one hotel franchise as individuals. They do so as equity investors in some form of entity such as a limited liability company, corporation or partnership which is the franchisee. The franchisor should not have to look past the entity which is making the investment to determine if any holder of equity has personally made a sufficient investment in the entity for the exemption to apply. If the entity is the franchisee, the entity's "investment" at or above the threshold level should be the determinate of whether the exemption applies.

II. Proposed section 436.8(a)(5)(ii): Large franchisee exemption.

We agree with the recommendation that the Commission permit the aggregation of commonly-owned franchisee assets in determining the availability of the large entity exemption. Almost always, the franchisee in hotel projects is an entity which is either a special purpose entity or an entity with limited assets and limited net worth, which is part of a larger controlled entity structure. In fact, the more sophisticated the franchisee (major insurance companies, public REITs, the major Wall Street investment banking firms – all of which are our licensees), the more likely it is they have adopted a structure to put the fewest assets into the entity and the entity is newly created with limited experience, which is just the opposite of what the Revised Rule supposes (that sophisticated potential franchisees will have a large net worth and at least five years of experience) and obscures the reason for the exemption.

For this reason, for the exemption to be effective, it must allow within the qualifications (net worth and experience) of the franchisee, the qualifications of the parent and affiliates of the franchisee, any entity or person in common control with the franchisee, either by common ownership or contract, to cover these situations, and any sponsoring entity or trustee of public funding vehicles and securitized trusts, which are in common control with the franchisee or in control by contract with the franchisee. The entities of the type I mention above who structure such funds and trusts are among the most sophisticated franchisees imaginable and need to be included when considering the net worth and experience of the franchisee.

III. Other Proposed Sections

Section 436.5(u)(1)(iv)(Item 21). This disclosure requires separate audited financials from any "other entity that commits to perform post-sale obligations for the franchisor..." We are not sure this has any benefit for potential franchisees, but certainly entities under common control with the franchisor should not have to have separately audited financial statements, particularly where, as in Starwood's case, the parent Starwood's audited financial statements are used in Item 21 with a guaranty of the franchisor's obligations. Several entities under common control with Starwood and its franchisor subsidiaries provide services to the franchisee and none of such subsidiaries have separate audited financial statements. Starwood's audited financial statements and guarantee should be sufficient for all entities providing services to a franchisee which are a duty of the franchisor.

We appreciate the opportunity to share our views in your effort to improve the franchise rule.

Sincerely,

William Anderson

William E. Anderson, II
Vice President, General Counsel, Franchise Division