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Federal Trade Commission
Room 159
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Re: Staff Report to the Federal Trade Commission Disclosure Requirements and Prohibitions Concerning Franchising Proposed Revised Trade Regulation Rule (16 C.F.R. Part 436) (the"Staff Report")

In response to the Staff Report and request for final comments to the proposed revisions to Trade Regulation Rule Concerning Disclosure Requirements and Prohibitions Concerning Franchising (16 C.F.R. Part 436) (the "Franchise Rule") Marriott International, Inc., a Delaware corporation ("Marriott"), offers the following comments:

Marriott maintains its principal place of business in Bethesda, Maryland, and is a publicly traded corporation listed on the New York Stock Exchange. Unless otherwise specifically noted, the term Marriott in this response is referring to Marriott International, Inc. and its affiliates and subsidiaries generally. Through its various predecessors, affiliates and subsidiaries, Marriott has operated, managed and franchised hotels since 1971. Marriott has also been both a franchisor and franchisee in the food service industry. Today, Marriott and its affiliates offer franchises for seven hotel brands in the United States and five hotel brands internationally. The domestic franchise brands include: Marriott Hotels and Resorts; Courtyard by Marriott Hotels; Residence Inns by Marriott; Fairfield Inn Hotels; TownePlace Suites by Marriott Hotels; SpringHill Suites by Marriott Hotels; and Renaissance Hotels and Resorts. Marriott franchises offered internationally include Marriott Hotels and Resorts; Courtyard by Marriott Hotels; Renaissance Hotels and Resorts; and Ramada International Hotels and Resorts (all of which, including domestic and international, are collectively referred to as "Marriott-Branded Hotels").

General Comments

Marriott is extremely supportive of the efforts and balanced approach undertaken by the Federal Trade Commission (the "Commission") to update and improve the disclosure provided to prospective franchisees and to balance the concerns of franchisors who shoulder the burden of preparing the disclosure and liability for compliance. Marriott is strongly in favor of, and recommends that, the Commission proceed with the adoption of the proposed Franchise Rule. Marriott also wishes to commend the staff at the Commission for the thoroughness with which they approached this task, as evidenced by the complete and comprehensive nature of the Staff Report and the review of the record collected over the nine-year period in which the Commission has been reviewing the Franchise Rule. Rather than re-ploughing old ground set forth in Marriott's comment letter dated December 22, 1999, submitted in connection with the Notice of Proposed Rulemaking and identifying all of the individual revisions that Marriott supports and those that it does not, Marriott has limited its specific comments to the clarifications listed below that Marriott believes are necessary for franchisors involved in sophisticated transactions to rely upon the exemptions that the Staff has recommended in the Staff Report.

Large Investment Exemption

Marriott is strongly supportive of a "large investment exemption." However, Marriott believes that the utility of the Franchise Rule would be improved by defining what constitutes an "investment" for purposes of the large investment exemption in Section 436.8(a)(5)(i). Consistent with the Staff Report's approach, Marriott believes that Section 436.8(a)(5)(i) should be revised to make clear that the franchisee's estimated investment for purposes of the exemption consists of the initial investment categories as set forth in Item 7 (including, but not limited to, investments in buildings, infrastructure, systems, equipment, franchise application fees and other start-up costs). Although Marriott does not necessarily agree with the Staff's decision to exclude any financing received from the franchisor or an affiliate of the franchisor and real estate from the calculation of the "investment" for purposes of the exemption, Marriott believes that the Staff has discussed the issue adequately in the Staff Report and Marriott will not comment further on it here. In the event that the Staff disagrees with respect to including the investment definition in the Franchise Rule, Marriott recommends that the suggested revisions discussed above be incorporated into the Compliance Guides.

Marriott agrees with the Staff's decision to recommend looking at the total investment made in acquiring the franchise, rather than focusing solely on the investment made when the franchisee signs the franchise agreement, so that the large investment exemption would be available where an existing franchisee switches brands (such as a Hilton becoming a Marriott). See Staff Report at p. 243 and fn. 780. Marriott believes that this approach may be viewed as inconsistent with looking at "the investment at the time of sale" of the franchise and, as a result, an explicit reference to conversions should be set forth in either Section 436.8(a)(5)(i) or in the Compliance Guides to avoid confusion.

Finally, Marriott is concerned by the Staff's proposal that the exemption apply only if at least one individual in an investor group qualify as "sophisticated" by investing at the threshold level. See Staff Report at p. 243. Such a proposal, while well-intentioned in its purpose, would

become a logistical nightmare for franchisors in determining whether the exemption is satisfied. It is typical for franchisees in large transactions to form joint ventures or obtain financial assistance from outside equity investors. Sometimes these relationships are not formalized at the time the franchise agreement is executed and may change after the franchise agreement is executed. As long as the franchisee entity is obligated to make an investment in excess of the threshold level for the exemption, Marriott sees little benefit to requiring a franchisee to break down the relative financial responsibilities of each equity investor which are, by their very nature, subject to modification. The approach suggested by the Staff also raises issues that are avoided with a bright line test focusing on the franchisee. If disclosure was not made previously in reliance on the exemption and another equity investor invests in the franchisee after the franchise agreement is executed, thus decreasing the responsibility of the other equity investors, is the exemption no longer available? If a franchisee executes a franchise agreement with the intention of obtaining other equity investors before the hotel opens, is the exemption not available? Once a franchisor can no longer focus on just the franchisee's obligations and is required to delve into the investment strategies of the persons or entities holding the ownership interests in franchisee and their business relationship, a level of risk becomes associated with relying on the exemption and its utility to franchisors and franchisees is greatly diminished.

Large Franchisee Exemption

Marriott also is strongly supportive of the rationale behind the "large franchisee exemption" located at Section 436.8(a)(5)(ii) and the recommendations to the Commission regarding the same in the Staff Report. However, Marriott believes that certain revisions to proposed Section 436.8(a)(5)(ii) are necessary to accurately capture the spirit of the exemption and its rationale.

In the Staff Report, the Staff agreed that the net worth and prior experience prerequisites may not make sense when applied to franchisee spin-off subsidiaries or affiliates that are formed primarily for tax or limited liability purposes. As a result, the Staff recommended that the Commission permit the aggregation of commonly-owned franchisee assets in determining the availability of the large entity exemption. See Staff Report at 248. Marriott believes that with slight modifications Section 436.8(a)(5)(ii) could better reflect the intent of the Staff as set forth in the Report.

First, the exemption refers to "the franchisee (and its parent and any affiliates)." "Parent" is defined in Section 436.1(m) only with respect to the franchisor and not franchisee. Marriott believes that the use of parent inconsistently may cause confusion in the interpretation of the Franchise Rule. As a result, Marriott recommends that the definition of "Parent" be revised as follows to contemplate its application to franchisees or franchisors:

> "Parent means an entity that controls the franchisor or franchisee, as the case may be, directly, or indirectly through one or more subsidiaries."

Second, as drafted, the exemption does not clearly permit the aggregation of commonly-owned franchisee assets as recommended by the Staff. Section 436.8(a)(5)(ii) refers to "the

franchisee (and its parent and any affiliates)" and, as a result, requires that each of: (i) the franchisee; (ii) its parent; *and* (iii) any affiliates, each satisfy the net worth and prior experience prerequisites. Marriott believes that the assets of the franchisee should be considered collectively with its parent and affiliates in determining whether the net worth requirement is satisfied and the experience of the franchisee, its parent and affiliates should be considered individually in determining whether the experience requirement is satisfied. Marriott recommends that the exemption be re-written as follows:

"(1) The franchisee or its parent or any affiliate of the franchisee has been in business for at least five years and (2) the franchisee, individually or together with its parent and affiliates, has a net worth of at least $5 million."

Fractional Franchise Exemption

Marriott believes that the definition of "fractional franchise" in proposed Section 436.1(g) should be expanded so that the experience of the current officers or directors of the franchisee and its affiliates and parent is examined in determining whether a fractional franchise exists. The same rationale that the Staff applied in deciding that the prior experience prerequisite may not make sense when applied to franchisee spin-off subsidiaries or affiliates that are formed primarily for tax or limited liability purposes in connection with the large franchisee exemption applies equally in the context of the fractional franchise exemption. As a result, Marriott recommends that Section 436.1(g)(1) be re-written as follows:

"(1) The franchisee or its parent or any affiliate of the franchisee or any of the current directors or officers of any the foregoing has more than two years of experience in the same type of business; and"

Obligation to Furnish Documents

Marriott strongly supports the Commission's position on contract negotiations that no additional contract review period be required where the changes are the result of negotiations initiated by the franchisee. See Staff Report at 262 and 263. Marriott further believes that Section 436.2(b) proposed by the Commission is a giant step towards alleviating the burdens described in Marriott's comments to the NPR created by the previous five business day hold requirement. That said, Marriott believes that there is some ambiguity in the language of Section 436.2(b), and recommends that it be revised as follows:

> "(b) For any franchisor to alter unilaterally and materially the terms and conditions of the basic franchise agreement attached to the disclosure document and related agreements without furnishing the prospective franchisee with a copy of the revised franchise agreement and related agreements at least seven days before the prospective franchisee signs the revised agreements. Changes to those agreements that arise out of negotiations initiated by the prospective franchisee do not trigger this seven day period."

Marriott is concerned that the use of the language "result solely from" in the proposed Franchise Rule in the Staff Report may be read too narrowly and may lead to liability or

confusion with respect to the quid pro quo exchanges that naturally occur in the negotiation. For example, if franchisee requests a royalty reduction, credit towards conversion costs and pre-agreed transfer rights, and the franchisor asks for a longer term and a better upstream entity as the guarantor in exchange. While both parties are getting what they bargained for based on negotiations initiated by the franchisee, Marriott is concerned that if the proposal is read narrowly, the concessions the franchisor obtained in connection with the negotiation exchange would not meet the "result solely from" test. Therefore, Marriott suggests using slightly broader language as described above. The other revisions are simply intended to clarify that negotiated changes to the franchise agreement and any related agreements are exempt from the seven day contract review period.

In conclusion, Marriott would like to reiterate that it is in support of the Commission's proposal overall, but would greatly appreciate the Commission's thoughtful consideration of the revisions identified above.

Respectfully submitted,

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