Prudential Financial

David S. Beard
Vice President, Corporate Counsel

Prudential Real Estate and Relocation Services
3333 Michelson Drive, Suite 1000, Irvine CA 92612
Tel 949 794-7965 Mobile 949 294-3942
Fax 949 794-7037
david.beard@prudential.com

November 12, 2004

Office of the Secretary
Federal Trade Commission
Room H-159 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Franchise Rule Staff Report, R511003 (the "Staff Report")

Ladies and Gentlemen:

This letter contains the comments of Prudential Real Estate Affiliates, Inc. ("PREA") to the Staff Report. These comments are intended to supplement and refine certain of those comments previously submitted by PREA on December 22, 1999, in response to the Commission's October 1999 Notice of Proposed Rulemaking.

Proposed Section 436.5(c): Item 3 (Litigation)

PREA notes and appreciates that the Commission has acknowledged PREA's prior comments in the Staff Report and has revised its original proposal to limit disclosure of parent litigation to those circumstances where the parent guarantees the franchisor's performance. PREA believes, however, that even when a parent guarantee exists, it is still appropriate for the Commission to establish an exemption from this disclosure requirement for parent organizations with sufficient net worth to satisfy those obligations.

During the five years since PREA's last comment letter, The Prudential Insurance Company of America has undergone a demutualization process. As a result, PREA is now a wholly owned subsidiary of Prudential Financial, Inc. Like its predecessor, Prudential Financial, Inc. has a diverse, worldwide business. Prudential Financial, Inc. provides a wide range of insurance, investment management, and other financial products and services to both retail and institutional customers, in addition to operating PREA's real estate brokerage franchise business. PREA is but one example of similarly situated franchisors which are subsidiaries of diverse, multinational corporations with substantial net worths. For any of these franchisors, should their parent corporation determine to guarantee the franchisor's obligations to its franchisees, this proposed requirement could result in the disclosure of a significant volume of information regarding litigation which will not only have no relevance to franchising or the franchisor's operations, but will only serve to confuse the prospective franchisee in evaluating the ability of the parent organization to perform on its guarantee.

In evaluating a guarantor, a prospective franchisee's primary interest is determining whether or not the entity in question has the financial wherewithal to satisfy its guarantee obligations. Requiring disclosure of all guarantor litigation, whether or not material to the guarantor, will in many cases result in substantial additional costs to the franchisor, will discourage parent organizations with unrelated businesses from providing guarantees

on behalf of their franchisor subsidiaries, and will not particularly advance the goal of providing relevant information to a prospective franchisee so that it may evaluate the costs, benefits and potential financial risks associated with the franchise relationship. PREA therefore advocates the adoption of a net worth exemption to the requirement of parent litigation disclosure under circumstances where the parent will act as guarantor of the obligations of the franchisor.

PREA has reviewed a draft version of the comments and analysis being submitted to the Commission today by John R. F. Baer and Rochelle B. Spandorf of Sonnenschein Nath & Rosenthal LLP (the "Sonnenschein letter") which addresses this same issue. Rather than providing a duplicative analysis here, PREA wishes to notify the Commission that it strongly supports the analysis and proposals set forth in the Sonnenschein letter with regard to disclosure of guarantor litigation, for the policy reasons cited in the Sonnenschein letter.

If the proposals set forth in the Sonnenschein letter are not adopted, PREA suggests that the Commission consider adopting an approach similar to the guidance provided by the Securities and Exchange Commission with respect to the disclosure of legal proceedings to securities investors, namely a standard which will require the guarantor to disclose only material legal proceedings other than ordinary routine litigation incidental to the guarantor's business. Adopting such a standard will afford prospective franchisees a level of protection similar to that which is sought for investors under Federal law and will provide prospective franchisees with information relevant to their decision regarding whether or not to invest in a franchise, while not overwhelming them with a discussion of proceedings which could not reasonably be expected to have a material adverse effect on the parent's ability to perform on its guarantee.

Another alternative is to combine the preceding proposals by providing a bright-line net worth exemption, yet still requiring guarantors who satisfy that exemption to disclose litigation which could reasonably be expected to have a material adverse effect on the guarantor's ability to perform on its guarantee.

PREA believes that adoption of one of the foregoing proposals will help to provide an appropriate balance between the need for prospective franchisees to receive information relevant to them in making their decision regarding whether or not to invest, while providing franchisors a manageable and appropriate framework in which to operate.

PREA sincerely appreciates the Commission's consideration of the proposals set forth in this letter.

Very truly yours,

PRUDENTIAL REAL ESTATE AFFILIATES, INC.

David S. Beard
Vice President, Corporate Counsel and Assistant Secretary