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International Counsel

VIA E-MAIL AND UPS

February 22, 2013

Mr Alan Wein
c/o- Franchising Code Review Secretariat
Business Conditions Branch
Department of Industry, Innovation, Science, Research and Tertiary Education
GPO Box 9839
Canberra ACT 2601

Re: Review of the Franchising Code of Conduct

Dear Mr Wein

We have recently become aware of the review of the Franchising Code of Conduct (the **Code**), announced on 4 January 2013.

We, at 7-Eleven, Inc. ("**SEI**"), have a long association with franchising in Australia and operating under the Code. We also have substantial experience operating and franchising 7-Eleven stores in many other countries around the world. As a consequence, we felt that it was important to respond to your Code review and raise a particular concern we have about the current operation of the Code.

7-Eleven is a two-tier franchised system. The owner of the intellectual property, and in one sense the ultimate franchisor, is SEI, a United States entity. The 7-Eleven unit franchise business in Australia is run through a master franchise arrangement with 7-Eleven Stores Pty Ltd ("**SEA"**) which began over 27 years ago. SEA manages a franchise system in Australia with over 500 franchisees and over 600 store locations. SEI is not a party to the unit franchise agreements in Australia, and has no real involvement with the unit franchisees that SEA appoints.

SEA is a major Australian corporation, and was awarded the Established Franchisor of the Year award in 2012 by the Franchise Council of Australia, its fourth time to be recognized by the FCA. It also received the 2011 Australian Retailers Association Retailer of the Year Award.

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Nevertheless, given our structure, both SEI and SEA are required to comply with certain ongoing disclosure requirements under the Code. While we appreciate the need for Australian and international franchisors to be treated in a consistent manner, we respectfully request relief from compliance obligations that are unnecessary and add compliance cost for no material benefit. In our case we are currently obliged to provide each prospective Australian 7-Eleven franchisee with a 79 page disclosure document notwithstanding the fact that little if any of the information is relevant or useful to them. Indeed it has the propensity to confuse, and would be likely to add to their cost in reviewing the documentation.

We can understand the need to provide disclosure at the time of signing an initial master franchise agreement, although we think the US approach of having a sophisticated investor exemption still makes a lot of sense. However most countries do not have an ongoing obligation to update disclosure documentation or provide continuous disclosure. And Australia is certainly unique in requiring multi level disclosure to unit franchisees.

We provide further comments on these issues below.

Background

As you are aware, in 2008 the Code was modified to remove what was commonly known as the "foreign franchisor exemption." In short, this exemption provided that the Code did not apply to a franchise agreement if the franchisor was resident, domiciled or incorporated outside of Australia and granted only 1 franchise or master franchise to be operated in Australia.

The practical effect of this exemption was that franchisors such as SEI, who have only granted one franchise in Australia and do not otherwise have any relationship with Australia, did not need to comply with the Code. This included exemption from the requirement to make disclosure to incoming franchisees, as well as the requirement under clause 6(1) of the Code to annually update a disclosure document, to provide a copy of the disclosure document on request under clause 19 of the Code and provide continuous disclosure under clause 18 of the Code.

The removal of the "foreign franchisor exemption" now requires all international franchisors, regardless of their location, the number of franchises they grant or their contact with Australia, to comply with the Code and, in particular, the requirements set out in clause 6B(2) of the Code. Clause 6B(2) requires preparation of a disclosure document by <u>both</u> SEA and SEI in the case of a new franchise grant to a unit franchisee.

Under the current provisions of the Code SEI and SEA can choose between providing a prospective Australian sub-franchisee with two separate disclosure documents (one for each entity) or providing a joint disclosure document. To date, SEI and SEA have elected to prepare separate disclosure documents. This is because the businesses are completely separate and unaffiliated, and therefore, it is

simpler and more cost effective, allowing each entity to mange its own compliance costs and risks. However, this arrangement is far from ideal for SEI, SEA or 7-Eleven sub-franchisees.

7-Eleven's master franchisor disclosure document is inappropriate for Australia sub-franchisees

The Code requires that SEI's disclosure document address its franchised business – namely, the 7-Eleven master franchise. As such, most of the information included in the SEI disclosure document is of little relevance to Australian subfranchisees. From our perspective, the only information that Australian sub-franchisees may specifically need to know about the master franchise relationship is: (1) what happens if the master arrangement ends; and (2) does SEA have a right to operate the Australian network and, in particular, to use the intellectual property of SEI. The latter point is already addressed in section 7 of the SEA disclosure document. The former point could also be easily addressed by a simple amendment to the SEA disclosure document, rather than the provision of an entire, second document to each sub-franchisee.

Increased time and costs

The SEI disclosure document is currently 79 pages. This document is currently provided to sub-franchisees together with the SEA disclosure document. Accordingly, sub-franchisees will receive a franchise pack that is likely to consist of over 200 pages of documentation. This is both costly for sub-franchisees to review and potentially confusing for them in terms of understanding the legal relationships and the relevance of SEI to the sub-franchisee.

In addition to the compliance cost to sub-franchisees, it costs SEI approximately US$3,000 - $4,000 per year to update its disclosure document. This document is not relevant to sub-franchisees in Australia, nor to SEA as a major corporation and sophisticated franchisee.

The master franchisee is an entity of considerable substance

In 7-Eleven's particular case, the master franchisee, SEA, is itself an entity of significant substance. As mentioned above, it has operated the 7-Eleven network in Australia for over 25 years, and manages one of the largest franchise systems in Australia – SEA clearly has experience in operating a franchise network and has successfully done so for a prolonged period. The sole concern of unit franchisees in Australia will be the experience, resources and information provided by SEA. Similarly, as a major Australian corporation and highly sophisticated master franchisee, there is no value to SEA in our disclosure document.

Concluding remarks

We hope that our experience and views on this matter can help improve this aspect of the Code for all affected businesses in Australia. We understand that the International Franchise Association and the Franchise Council of Australia have raised these issues with you, and recommended the creation of a

sophisticated franchisee exemption to compliance for foreign franchise systems. We concur with those views.

Another alternative might simply be to provide that clause 6B(2) of the Code does not apply if the franchisor is a foreign franchisor. Our major concern is the annual updating requirement, and the provision of excessive and irrelevant information to Australian sub-franchisees.

We are grateful for the opportunity to participate in this review, and would be pleased to discuss our submission or any matters arising at any time should you wish to do so.

Yours sincerely,

J.H. Snow, III
International Counsel