

March 24, 2005

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**VIA E-MAIL**

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
450 Fifth Street, N.W.  
Washington, D.C. 20549

**RE: Vail Resorts, Inc.**

Ladies and Gentlemen:

On behalf of Vail Resorts, Inc. ("Vail"), a publicly traded Delaware corporation (NYSE: MTN), we respectfully request confirmation from the Staff of the Division of Corporation Finance (the "Staff") that it will not recommend that the Securities and Exchange Commission (the "Commission") take enforcement action against Vail if it offers and sells condominium units, as described below, without registration pursuant to the Securities Act of 1933, as amended (the "Act").

I. Factual Summary

Vail is a leading developer and operator of mountain resorts in North America, operating Vail, Keystone, Breckenridge and Beaver Creek Resort in Colorado, Heavenly Resort in California and The Grand Teton Lodge in Wyoming. Vail plans to build a new condominium/hotel complex (the "Hotel") in LionsHead Village ("LionsHead") at the base of the Vail ski mountain.

The Town of Vail (the "Town") stretches along the base of the Vail ski mountain, and two sections of the Town, Vail Village and LionsHead, are the two main base areas of the Vail ski mountain where most visitors sleep, shop and eat. While the Town and the Vail ski mountain are inextricably linked in that each is economically dependant on the other, Vail does not control the Town, and therefore, Vail must first seek the Town's approval before undertaking any base area development project. Vail has worked closely with the Town for several years on a massive long-term redevelopment plan to transform LionsHead into a first-class mountain resort that will attract more visitors to LionsHead and enhance the guests' vacation experience. The redevelopment includes plans for construction of a new village plaza, the Hotel, residences, an ice rink, and several new shops and restaurants. The Hotel is a key component of the redevelopment plan. In approving the Hotel, the Town required Vail to use its best efforts to maximize Hotel occupancy to increase the number of guests staying, dining and shopping in LionsHead.

Hotel construction is scheduled to begin in the spring of 2005. The Hotel will feature 36 hotel rooms and 67 condominium units, 49 of which will include bedroom suites that can be

locked-off from the condominium and accessed through a separate entrance (these bedroom suites will be referred to herein as "lock-off rooms"). Additionally, the Hotel will offer amenities such as restaurants, shops, spa facilities, and meeting and conference facilities.

Vail will offer the condominium units for sale through its affiliate, Slifer Smith & Frampton Real Estate ("SSF"). The condominiums will range in price from approximately \$1.3 million to \$14 million and measure from approximately 1,600 square feet to 8,200 square feet. The lock-off rooms and the hotel rooms will be roughly 550 square feet in size. Rockresorts, LLC ("Rockresorts"), a wholly owned subsidiary of Vail and the manager of luxury resort hotels throughout the United States, will manage the Hotel, including the rental program described below.

Vail has extensive experience developing and marketing condominium projects at its resorts. When offering condominium units for sale in its other developments, Vail typically follows the guidelines established by the Commission in Release No. 33-5347, dated January 4, 1973 (the "Condominium Release"), and its progeny, including, most notably, the Intrawest Corporation no-action letter, available November 8, 2002 ("Intrawest"). However, because of the unique design of the Hotel, with its large number of lock-off rooms, and Vail's commitment to the Town to maximize the number of tourists staying in the Hotel, Vail would like to use a sales and marketing plan that takes advantage of the Hotel's design and affords condominium owners flexibility when deciding whether to participate in a rental program. Vail recognizes that although condominium owners value the sanctity and privacy of their residences, they might also value the opportunity to rent their home. The Hotel's design allows condominium owners to maintain the privacy of their condominium unit while placing their lock-off rooms in a rental program. Rather than forcing owners to choose between privacy and rental income, and risking that a high number of units will remain vacant for most of the year, Vail would like to offer incentives similar to those approved in the FC Beach no-action letter, available May 29, 1998 ("FC Beach"), to encourage condominium owners to make their condominium units or lock-off rooms available for rent. The incentives, which Vail proposes to offer through Rockresorts, are an important step in fulfilling its obligation to the Town and achieving the parties' mutual objective of maximizing the number of tourists in LionsHead by increasing the number of rooms available for rent in the Hotel.

## II. Marketing and Sales Plan

Vail's sales and marketing plan will predominantly follow the Intrawest sales model, but Vail would like to encourage participation in the Rockresorts rental program by offering incentives (similar to those approved in FC Beach) to: (i) prospective buyers who request additional information about Rockresorts rental management program; or (ii) individuals who have entered into binding condominium purchase agreements. Vail's proposed sales and marketing program is as follows:

- a) SSF sales representatives will offer and sell the condominium units and Rockresorts employees will offer and manage the rental program. See *Intrawest Corporation* (available November 8, 2002).
- b) SSF sales representatives will not receive additional compensation or other incentives for condominium unit sales to buyers who enter into a Rockresorts rental management arrangement. *Id.*

c) The Rockresorts rental management office will be separate from, but in close proximity to, the SSF Sales office. *Id.*

d) SSF will disclose, in the limited terms described below, the existence of the opportunity to place the condominium or the lock-off room in a rental program to potential buyers as one of the many optional services available to condominium owners. *Id.*

e) If a prospective buyer requests more information regarding rental options, the SSF sales representative will suggest that the buyer speak to a rental management company representative, either with Rockresorts or an unaffiliated rental management company of his or her choice. *Id.*

f) SSF sales representatives will make no representations regarding the potential economic or tax benefits that may be associated with condominium ownership. See *Intrawest Corporation* (available November 8, 2002); *FC Beach Joint Venture* (available May 29, 1998).

g) Rockresorts rental management representatives will only provide prospective buyers with publicly available information regarding the rental history of comparable developments in the area in response to a specific request from a prospective buyer. *Id.*

h) SSF and Rockresorts employees will make no representations concerning the rental income earning potential at the development. See *Intrawest Corporation* (available November 8, 2002).

i) Vail will take precautions to ensure that SSF and Rockresorts employees abide by this sales framework. *Id.*

j) Vail will permit potential buyers to enter into a rental management agreement after the execution of a purchase agreement and before the closing of the sale of the condominium unit; provided, however, the effectiveness of the rental management agreement will be conditioned upon the closing of the sale of the condominium unit. *Id.*

In Intrawest, the Staff permitted the following limited statement regarding the existence of a rental program: "Ownership may include the opportunity to place your mountain home in a rental arrangement." See *Intrawest Corporation* (available November 8, 2002). Vail plans to make the same statement to prospective buyers. Rockresorts will disclose the details of its rental management program, including the incentives, to potential buyers only in the two circumstances set forth in Section III below. In addition, Rockresorts plans to enter into rental management agreements with buyers during the period between the execution of the purchase agreement and closing on the purchase of the condominium unit. *Id.* The effectiveness of all rental management agreements will be contingent upon the closing of the sale of the condominium units. *Id.*

### III. Incentives

Rockresorts plans to inform buyers about the details of the rental management program and the incentives in the following circumstances:

a) if a prospective buyer makes a specific inquiry about rental management options (See FC Beach Joint Venture (available May 29, 1998)), SSF salespeople will suggest that the prospective buyer speak to a rental management company representative, either with Rockresorts or an unaffiliated rental management company of his or her choice. If the prospective buyer chooses to investigate Rockresorts as a rental manager, a Rockresorts representative will explain the rental management program and describe the incentives outlined below; or

b) after a buyer executes a purchase agreement (but before closing on the purchase of the condominium unit), Rockresorts personnel will contact the buyer and inform the buyer about rental management options. Rockresorts' disclosure in this regard will be substantially similar to the following: "As the owner of a luxury condominium unit in this project, you will have access to an assortment of amenities, including spa facilities, valet parking and ski valet service. In addition to these amenities, ownership also includes the opportunity to rent your condominium on your own or through a rental management company. There are many property management companies to choose from in Vail, including Rockresorts, and you are free to use any one of them should you decide to rent your condominium. If you select Rockresorts as your rental management company, however, we will offer you the following: [Rockresorts will include a list of the incentives discussed below]. Please contact us for more information."

Vail's planned incentives are, to a great extent, similar to those approved by the Staff in FC Beach. In consideration for entering into a rental program for ten years, for example, FC Beach provided furnishings for the condominium and preferred golf privileges for the owner. See FC Beach Joint Venture (available May 29, 1998). Vail plans to offer the following incentives to those condominium owners who agree to place their lock-off rooms in the Rockresorts rental program for a minimum of five years:

a) Vail will fully furnish the lock-off rooms to ensure that the lock-off rooms resemble the hotel rooms. Vail estimates that the furnishings will cost approximately \$25,000 per lock-off room. Vail's objective is to provide guests of the Hotel with a consistent, high-quality experience regardless of whether they stay in a lock-off room or a hotel room. The rental management agreements are nontransferable. If the condominium owner sells the unit within the first five years of entering into the rental management agreement, the owner will be required to reimburse Vail for the pro-rated value of the furniture pursuant to the terms of the Rockresorts rental management agreement.

b) Vail will offer two complimentary season passes, valid for skiing at Vail, Beaver Creek, Keystone and Breckenridge and valued at approximately \$1,500 each, to those buyers who agree to enter into a rental management agreement within one year of executing the condominium purchase agreement. Encouraging owners to act within this reasonable timeframe is necessary to allow Vail time to furnish the lock-off rooms to match the Hotel rooms prior to opening the Hotel.

Vail also plans to reduce the annual condominium association dues by \$5,000 for those owners who agree to place their entire condominium in the Rockresorts rental management program. This discount will apply for each year during the term of the rental management agreement (not to exceed five years) that the condominium owner keeps the unit in the rental program.

An owner of a condominium unit containing a lock-off room agreeing to rent the entire unit will receive all of the above incentives. Vail does not intend for any of these incentives to discourage owners from choosing to rent the unit through another rental company or not to rent the unit at all. Rather, there are significant business and civic reasons for the incentives. The Hotel will offer many amenities, including convention space, the success of which will depend on the number of rooms available for rent. Since Vail has found that most groups reserve hotel rooms and convention space years in advance, Vail needs to maintain enough rooms to meet the needs of future groups. Additionally, because Vail's commitment to the Town is long-term, Vail needs to ensure that it will have enough rooms in the future to continue to meet its commitment to the Town. See FC Beach Joint Venture (available May 29, 1998).

If a buyer decides to place his or her condominium unit or lock-off room in the Rockresorts rental program, the rental management agreement that Rockresorts intends to use will cover initial terms up to five years long. Provided that an owner's condominium unit has not been rented, he or she may choose to occupy the condominium unit during any period committed to the rental program by providing notice to Rockresorts at least 15 days prior to the desired date of arrival. Owners will have the ability to terminate the rental management agreement (i) at the end of the initial term or any renewal period by providing written notice to Rockresorts, (ii) upon a default by Rockresorts or (iii) in the event a bankruptcy proceeding is instituted by or against Rockresorts. Upon termination by the owner, he or she will be obligated to recognize all existing confirmed reservations and reimburse Vail for the pro-rated value of the lock-off room furniture.

#### IV. Property Management

As a high-profile company, Vail faces significant security concerns in developing and operating its properties. For example, in 1998 the Earth Liberation Front, an environmental terrorist group, set fire to the Two Elk Lodge, Vail's flagship on-mountain restaurant. In addition to razing Two Elk to the ground, the blaze also consumed four other buildings, which housed dining and ski patrol operations, and damaged three chair-lifts. The total value of lost assets resulting from the fire was over \$12 Million, making it one of the most costly acts of eco-terrorism in United States history.

In light of its own experience and heightened national security concerns, Vail proposes to provide mandatory property management services through an affiliate to all condominium owners, regardless of whether they participate in any rental management arrangement. The recorded condominium documents will state clearly that all condominium owners must use the prescribed property management company for various housekeeping and maintenance services. Vail believes this policy is necessary for the following reasons:

- a) Although the Hotel will include condominium units, it will still function as a luxury hotel, requiring a high level of security. In order to provide a level of security commensurate with industry standards for luxury hotels, Vail must limit third-party access to Hotel facilities. Requiring all property owners to use the property management company for certain services will enable Vail to properly screen maintenance and housekeeping staff and limit the number of strangers in and around the Hotel.
- b) The condominium units and Hotel guestrooms will be in close proximity to one another. Third-party maintenance personnel, unfamiliar with Hotel operations, may compromise the health, safety and comfort of Hotel guests and condominium

owners by providing faulty work or unknowingly damaging systems that affect multiple units. To minimize these dangers, the property management company will employ in-house maintenance staff with a thorough understanding of Hotel operations.

Although the property management regime will remain entirely separate and distinct from any rental management arrangement, it may nevertheless impact the way third-party rental management companies manage Hotel condominium units. Notwithstanding the foregoing, condominium owners will be free to enlist third-party rental managers to rent their homes. Vail will ensure that all third party rental management companies have open access to the property management services at rates equal to those charged to Rockresorts for such services. The rates shall reflect the actual cost, overhead expense and reasonable profit for providing those services. See FC Beach Joint Venture (available May 29, 1998). The Condominium Release states that a continuing affiliation between the developer "of a project and the project by reason of maintenance arrangements does not make the unit a security." See Release No. 33-5347, dated January 4, 1973.

#### V. Legal Analysis

The Condominium Release states that a condominium offered in conjunction with any of the following three collateral arrangements constitutes the offering of a security:

- a) if the condominiums, coupled with a rental arrangement, are offered and sold with an emphasis on the economic benefits to the purchaser to be derived from the managerial efforts of the promoter, or a third party designated or arranged for by the promoter, from rental of the units;
- b) the offer to participate in a rental pool; or
- c) the offering of a rental or similar arrangement whereby the purchaser must hold his or her unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his or her occupancy or rental of his or her unit.

Vail's proposed offering of condominium units does not involve any of these collateral arrangements. We are of the opinion that the offer and sale of condominiums in the manner described above is consistent with the guidelines provided in the Condominium Release and will not constitute the offer and sale of a security within the meaning of Section 2(a)(1) of the Act, for the following reasons:

1. No Emphasis of Economic Benefits. Vail will not offer the condominiums to prospective buyers with an emphasis on the economic benefits derived from the managerial efforts of Rockresorts. All sales, advertising materials and presentations by SSF sales representatives will focus on the unique opportunity available to potential buyers to be a part of the new, revitalized LionsHead. Mention of the mere existence of a rental program by real estate sales personnel will be limited to a statement akin to the one approved in Intrawest.

We believe that Vail's proposal to allow Rockresorts to communicate details of rental management opportunities to buyers after they execute a binding purchase agreement is a logical extension of Intrawest and does not violate the Commission's prohibition on emphasizing economic benefits of condominium ownership. Vail understands and respects the

Commission's policy of limiting developers and promoters in their ability to discuss the details of any rental management program when offering condominium units for sale so that a buyer's primary inducement for purchasing a condominium unit is the desire to own the underlying real estate and not the lure of rental profits. Once the buyer has entered into a binding purchase agreement, however, the buyer has made the decision and commitment to purchase a condominium unit.

Vail requires buyers to pay an earnest money deposit equal to 10% of the purchase price upon the purchase agreement is signed. Once construction of the Hotel begins, Vail requires buyers to pay an additional deposit equal to 5% of the purchase price. Once executed, the purchase agreement legally binds both parties and can only be terminated by the buyer if Vail defaults on its obligations or fails to satisfy certain contingencies related to construction of the Hotel. For example, if Vail fails to secure purchase agreements covering at least 50 condominiums before August 1, 2005, Vail must return the deposits, and the purchase agreements become null and void. Should a buyer default on his or her commitment to purchase a condominium, the purchase agreement authorizes Vail to keep, as liquidated damages, the buyer's deposits (between 10% and 15% of the purchase price depending upon whether the buyer defaults before paying the construction deposit). As noted above, condominiums in the Hotel will range in price from approximately \$1.3 million to \$14 million. Accordingly, the purchase agreement requires defaulting buyers to forfeit between approximately \$195,000 and \$2.1 million. Absent a default by Vail, the buyer cannot (without sacrificing a substantial sum of money) terminate the purchase agreement or otherwise avoid his or her obligation to close on the condominium purchase. Consequently, although the closing may not take place for some time after execution of the purchase agreement, the decision and commitment to purchase a condominium unit are made at the point of signing the purchase agreement. See *Intrawest Corporation* (available November 8, 2002).

Further, by executing a purchase agreement, a buyer evidences his or her desire to purchase a condominium based on the prevailing facts and circumstances. Details that come to light after the buyer has committed to purchase a condominium cannot influence the buyer's purchase decision. Accordingly, statements and disclosures that, prior to execution of a purchase agreement, may have been interpreted to improperly emphasize economic benefits of condominium ownership, no longer pose a danger because condominium buyers have already made their purchase decision.

For these reasons, Rockresorts' communication of information about the opportunity to rent the condominium unit or lock-off room and the availability of incentives to condominium buyers after they execute a binding purchase agreement is consistent with the Staff's guidance in *Intrawest* and does not create a security under the standards set forth in the *Condominium Release*.

2. No Rental Pool. Vail will not offer owners the opportunity to participate in a rental pool. Absolutely none of the income earned from the rental of the lock-off rooms or—in the event that an owner decides to rent his or her whole unit—the condominiums will be pooled and shared among the condominium owners; rather, each condominium owner will receive rental income that is derived directly from the rental of his or her own lock-off room or condominium unit under the terms of the rental management agreement. See *Intrawest Corporation* (available November 8, 2002); *ResidenSea Limited, The World of ResidenSea Limited* (available June 6, 2001); *FC Beach Joint Venture* (available May 29, 1998).

3. No Restriction on Rental or Occupancy. The rental program will not materially restrict an owner's right to rent or occupy his or her condominium or lock-off room. Owners will be free to choose whether to rent (i) the condominium and lock-off room, (ii) only the lock-off room, or (iii) neither. If an owner decides to rent all or part of his or her condominium, then he or she may choose to rent the unit himself or herself, through an unaffiliated rental management company or through Rockresorts. The Rockresorts rental agreement described above allows owners to occupy their units when the units are otherwise committed to the rental program upon reasonable notice to Rockresorts. Furthermore, owners who choose to enter only their lock-off rooms in the rental program will still be able to occupy their condominiums without restriction or interruption since the lock-off rooms constitute only one of the bedroom suites in a three or four bedroom condominium and less than one third of the smallest condominium's total square footage. We do not believe that the mandatory property management services, which, as discussed above, will be provided to all condominium owners, constitute a material restriction on an owner's right to rent his or her unit through a third party rental management company. The voluntary nature of the rental program, the existence of only reasonable restrictions on an owner's ability to occupy the unit and the various options allowing owners to choose how to participate in the rental program are consistent with recent no-action letters. See Intrust Corporation (available November 8, 2002); FC Beach Joint Venture (available May 29, 1998).

#### VI. Conclusion

Vail's proposed plan for selling and renting condominium units as described herein does not create a security as that term has been interpreted by the Commission in the Condominium Release and by the Staff in response to numerous no-action letters. The offer and sale of condominium units in the Hotel will not involve (i) an emphasis on economic benefits to the buyer to be derived from the rental of the units or the managerial efforts of Rockresorts; (ii) the offering of participation in a rental pool; or (iii) the offering of a rental or similar arrangement whereby the owner must hold his or her unit available for rental for any part of the year, must use an exclusive rental agent or is otherwise materially restricted in his or her occupancy or rental of his or her unit. Further, as stated in Intrust, prospective buyers will not be led to believe that they will profit from the ownership of a condominium unit by any means other than the appreciation in the value of the property. See Intrust Corporation (available November 8, 2002).

The sales model proposed herein is for the offer and sale of a limited number of multi-million dollar luxury condominiums in the Hotel. For the reasons discussed above, we do not believe that the offering of incentives as part of a flexible rental management arrangement is a significant or material departure from existing Staff guidance.

In light of the foregoing, we respectfully request the Staff's confirmation that it will not recommend to the Commission that it take enforcement action against Vail if it were to offer and sell condominium units in the manner described herein without compliance with Section 5 of the Act. If for any reason you conclude that you cannot respond affirmatively to our request, we would appreciate the opportunity to discuss the matter with you prior to the preparation of your response, and ask that you call the undersigned at (303) 223-1154 or Jeff Knetsch of our firm at (303) 223-1160.

Sincerely,

/s/ Kevin R. Rohnstock