MANAGING A FRANCHISE REGISTRATION 
AND EXEMPTION PRACTICE

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October 11-13, 2006
The Westin Copley Place
Boston, MA

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I. PARADIGM: TRANSACTIONAL FRANCHISE ATTORNEYS AS PUBLISHERS

A. Similarities Between a Transactional Franchise Practice and a Publishing House

Many activities of a transactional franchise practice resemble those of a publishing house. Publishing, like franchise practice, is cyclical in nature. Work on a periodical, such as a newsletter, magazine, journal or newspaper, proceeds in regular stages through information gathering or idea generation, organizing, drafting, editing, proofreading, layout, printing and distribution, only to begin again when it is time to start on the next issue. A transactional franchise practice involves similar cyclical processes. The most obvious is the annual renewal cycle, but even the amendment process involves a series of important steps and dates that must proceed in an orderly fashion.

Lawyers, like publishers, employ research resources, document assembly, word processing, database, work flow and document management software, scanners, printers and various means of digital data transmission, backup and data security software and hardware, and other familiar tools. Our professional publications include not only franchise agreements, offering circulars and other components of a franchise disclosure package, but also carefully crafted letters, memoranda and other writings.

The similarities between the publishing and transactional franchise practice give rise to a useful paradigm. Transactional lawyers can use much of the same technology publishers use to produce publications.

B. Perspective: Creating and Maintaining Excellent Franchise Documents

A key objective of a good franchise attorney, like that of a publisher, should be to publish excellent written works. However, lawyers do not always apply the same care and broad perspective to the publications they produce in their practices that they do to other publications.

All of us have seen franchise agreements that evoke business relationships so terrifying they send chills up the spines of anyone who actually dares to read them. We have seen offering circulars so wordy that only the most dedicated reader can stay awake while plodding through pages of footnotes to Item 6. We have seen ponderous, lofty phrases that seem designed to serve no purpose other than to impress clients with the arcane knowledge of the lawyers who generated them. We have seen heavy disclosure packages with contradictory provisions, typographical and grammatical errors, awkward pagination and formatting and other oversights that detract from their polish and style.

Of course, our own work is never like that. Nevertheless, knowing what we do not like in documents written by others helps us understand what we do want in our own documents.

Without considering the end, we cannot hope to employ appropriate means. What are the characteristics of excellent franchise documents? Some key objectives in franchise document drafting are:

- Setting clear and understandable rules for the relationship between franchisor and its franchisees.
- Complying with the guidelines for disclosure documents formulated by the North American Securities Administrators Association ("NASAA") and with state and federal franchise laws.
Accommodating examiners’ concerns without compromising document quality.

Employing disclosure to shield our clients against misrepresentation claims.

Providing accurate, useful information to franchisor and franchisee in a readable, well-organized format.

How can we achieve those objectives? This paper will focus on how the transactional franchise attorney can create and maintain quality franchise documents. First, we will review state filing requirements. Then we will review the characteristics of excellent franchise documents, the tools and process one should have in place to create them, tips for speeding franchise registration and how to handle comment letters from state regulators. Finally, we will discuss how to avoid the registration process by the judicious use of exemptions.

II. REVIEW OF STATE FILING REQUIREMENTS

A. Initial Registration

Although federal law mandates pre-sale disclosure to prospective franchisees in every U.S. state and territory, it does not provide for review and approval of disclosure documents by federal authorities. However, in 13 states a franchisor must first register with a state agency and pay a franchise registration fee before it may sell a franchise in the state. In Wisconsin, a franchisor may offer a franchise without registering, but must register before completing a sale. See Exhibit A for a contact list of state examiners that administer franchise sales laws.

To register a franchise, a franchisor must submit a franchise registration application. Eleven of the registration states accept the Uniform Franchise Registration Application (“UFRA”) devised by NASAA and attached to the UFOC Guidelines. Three mandate much simpler filings. Some states have additional required or optional components described below. A table stating the required components of initial registration applications by state is in Exhibit B.

In 11 of the registration states, an initial franchise registration application consists of a disclosure document prepared according to the NASAA Guidelines for Preparation of a Uniform Franchise Offering Circular (“NASAA Guidelines”), as modified to reflect the individual state’s legal requirements drawn from its franchise sales law and regulations and its administrative interpretations and policy positions, an application fee and the UFRA included in the NASAA Guidelines. The UFRA includes most of the following:


2 Wis. Stat. § 553.21.

3 Available online at http://www.nasaa.org/industry_regulatory_resources/uniform_forms/3697.cfm.
1. **Cover letter** that identifies the applicant and lists the items included in the application.

2. **Application or “facing” page** that identifies the type of application (e.g., initial registration, renewal, annual report, amendment) and provides identifying information about the franchisor.

3. **Consent to service of process** signed by a representative of the franchisor and designating a specified state officer as the franchisor’s agent for service of process. This form must be accompanied by a notarized form of acknowledgment that indicates that the individual signing the consent form has authority to designate the agent on behalf of the franchisor.

4. **Certification page** signed by an authorized representative of the franchisor and certifying that the contents of the application (including the offering circular) are true and correct. The certification must be notarized.

5. **Supplemental information page** that provides information regarding the franchisor’s registration in other states and an estimate of the amount and source of the funds the franchisor must spend to fulfill its pre-opening obligations under each franchise agreement. State regulators consider this information in determining whether a franchisor's capitalization is adequate. Theoretically, the higher the estimate, the greater the necessary capital required, as reflected in a franchisor's audited financial statements.

6. **Sales agent disclosure form** that provides general personal information about each franchise sales agent (such as address and social security number), as well as a summary of the sales agent’s litigation and employment histories.

7. **Auditor’s consent** by the accountant that prepared the franchisor’s audited financial statements, permitting inclusion of the statements and the accompanying report in the franchisor’s disclosure document. There is no uniform form for the auditors’ consent, but a sample is included in the NASAA Guidelines.

8. **Guarantee of performance**, if the financial statements of an affiliated company are included in the franchisor’s offering circular, signed by the affiliate, absolutely and unconditionally guaranteeing to assume the duties and obligations of the franchisor to the franchisee under the franchise agreement.

Certain states require franchisors to file additional forms or meet additional requirements.

California requires a franchisor to submit annually a “Customer Authorization of Disclosure of Financial Records” that permits the agency to examine the franchisor’s bank records. Additionally, in 2005, the California legislature amended its’ Civil Code to provide that California notaries must use a prescribed form, which differs from the form included with the Uniform Franchise Registration Application, for acknowledgements. Certificates of acknowledgement from other states are acceptable in California as long as they conform to the law of the states where they are made.

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4 Cal. Corp. Code § 31111(b).


In Maryland, franchisors must submit quarterly reports of franchise sales to maintain registration.\(^7\) Virginia has the right to require franchisors to have a positive net worth as a condition to registration and has recently been exercising that right rather stringently.\(^8\) Illinois and Washington require franchise salespeople who are not franchisor employees to register separately as franchise brokers.\(^9\)

In some states, franchise registrations remain effective for a period of one year from the effective date of registration or renewal. In other states, franchise registrations expire at the end of a specified number of days, ranging from 90 to 120, after the franchisor’s fiscal year end. Franchise sales laws often require that renewal applications be filed on a specified earlier date to allow franchise examiners time within which to review applications.

Franchisors with December 31 fiscal year ends may find that review and approval of their renewal applications is delayed as examiners in states that tie renewal to year end are submerged in a tidal wave of April filings. A franchisor with a fiscal year end in a less busy month, such as July, August or November, has a definite advantage in this regard. You may wish to counsel your clients accordingly while they are still in formation.

In addition to the FTC Rule and state franchise sales laws, the offer and sale of a franchise may be subject to state business opportunity laws, sometimes known as "seller assisted marketing plans." While business opportunity statutes vary, many of these laws define "business opportunity" so broadly that the typical franchise may arguably be covered by the definition. Under these statutes, it is generally unlawful to offer or sell business opportunities without widely varying forms of presale disclosure and, in some states, registration.

Franchise counsel must be aware of these business opportunity statutes, although many franchisors are exempt from them. A detailed examination of these laws is beyond the scope of this article.\(^10\) A key point to keep in mind is that two types of exemptions or exclusions from the business opportunity laws are commonly available to franchisors. In some states, compliance with the FTC Franchise Rule by providing required disclosure will perfect an exemption from the state’s business opportunity law. In other states, if a franchisor has a federally registered service mark or trademark and does not make certain types of representations in connection with its offering, an exemption from the state’s business opportunity law may be available. A franchisor that registers a franchise offering or claims an exemption from registration in a state that also has a business opportunity statute usually will be exempt from the disclosure and registration provisions of the state’s business opportunity statute. As with state registration laws, an offering exempt from the registration/disclosure provisions of a business opportunity law will still be subject to any anti-fraud or other substantive provisions of that law.

Twenty-six states now have business opportunity statutes.\(^11\) As explained above, most do not require franchisors that comply with franchise sales laws to make additional filings under

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business opportunity laws. For purposes of complying with filing requirements, remember the following:

- Texas, Nebraska and Kentucky have one-time filing requirements for franchisors that wish to claim exemptions from their business opportunity laws on the basis that they comply with the FTC Franchise Rule.\textsuperscript{12} Texas and Nebraska have filing fees. Kentucky does not.

- Florida and Utah have annual filing requirements for franchisors that wish to claim exemptions from their business opportunity laws on the basis that they comply with the FTC Franchise Rule. Both states have filing fees.

- Franchisors that do not have federally registered marks must comply with the Connecticut business opportunity law before offering or selling a franchise in that state. To do this, they must augment their Uniform Franchise Offering Circular with substantial additional disclosures required by Connecticut and pay a fee to register under the business opportunity law.\textsuperscript{13} It may be easier to stay out of Connecticut until federal registration of a mark is complete. Once it is, a franchisor may claim the exemption by writing to the State. There is no fee for the exemption.

B. Registration Renewal Applications

To maintain the effectiveness of a state franchise registration, a franchisor must file a renewal application or annual report and amendment each year. As the offering circular submitted with a renewal application must contain year-end audited financial statements and statistical information regarding the year just ended, most franchisors begin their annual revision process shortly after the end of their fiscal year.

Registration renewal applications in the 11 states that use the UFRA must include all or most of the components of the initial application. In these states, a copy of the offering circular marked to reflect revisions from the previously registered offering circular (“redlined copy”) must be included to make it easy for examiners to spot changes. The other three states require renewal applications in the same form as their initial registration applications. A table listing the items needed in registration renewal applications in each registration state is in Exhibit C. If its franchise registration in a given state expires before its renewal application is declared effective, a franchisor may not lawfully offer or sell franchises in that state until the lapsed registration is renewed or the franchise reregistered.

In Virginia, if a renewal application is accompanied by a signed Affidavit of Compliance (Form E), the application becomes effective on receipt by the Virginia Corporation Commission,


\textsuperscript{13} Conn. Gen. Stat. §§ 36b-65(c) and (d).
unless the franchisor (1) has since its last application been convicted of any crime or been held liable in a civil action by final judgment, (2) is insolvent or in danger of becoming insolvent, or (3) submits with the application a revised offering circular that is not in compliance with Virginia’s franchise rules. If the application does not qualify for automatic effectiveness in Virginia, it will become effective only on the date granted by the Commission.\textsuperscript{14} Unfortunately, it is not often possible to be certain whether Virginia authorities will think an offering circular complies with Virginia law. Virginia franchise examiners routinely advise franchisors not to rely on an Affidavit of Compliance for renewal but to wait, instead, for an effectiveness order.

In Hawaii, Minnesota and New York, the annual report must also contain a report on franchise sales that includes: (a) the name, address and telephone number of each franchisee to whom a franchise was sold during the franchisor’s past fiscal year, (b) the date of each sale; and (c) the price paid and credit terms for the sale of each franchise.\textsuperscript{15}

Illinois allows filing of an annual report as late as one business day before the anniversary date of the registration.\textsuperscript{16} Franchisors may use the new disclosure packages they file in Illinois immediately upon filing if a registration was previously effective in that State. Comments may follow weeks or even months later.

One way to make the renewal process less burdensome for franchisors that are registered in all or most states is to see that all their renewal dates occur at about the same time, within 90 to 120 days after the end of the franchisor’s fiscal year. This is normally the time when a franchisor’s audited financial report is released. The offering circular must be amended to incorporate the most recent year’s audit report and bring other information current as of the franchisor’s fiscal year end. If a renewal date in any state does not coincide with the franchisor’s other renewal deadlines, the franchisor may change the renewal date for the next year by filing an early renewal application. It is a good practice to accompany that application with a letter explaining that the goal is to make the renewal date coincide with that of the franchisor’s other renewal applications.

C. Amending Registration Applications

A franchisor must revise its franchise disclosure documents upon the occurrence of any “material change”\textsuperscript{17} in the information contained in the disclosure materials. See Exhibit D. In many of the registration states, these changes must be filed with the state agencies where registration and renewal applications are filed. An amendment application consists of a cover letter, facing page and certification page as well as the amended offering circular, together with a copy marked to reflect changes from the offering circular previously registered.

\textsuperscript{14} 21 Va. Code Ann. § 5-110-60.


\textsuperscript{16} 815 Ill. Comp. Stat. § 705/10.

\textsuperscript{17} The FTC Rule defines a material change as “any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchised business or which has any significant financial impact on a franchisee or prospective franchisee.” 16 C.F.R. § 436.2. See Exhibit D for a list of the time periods allowed by registration states between material change and filing of an amendment. See also, Glenn, When Do You Have to Amend? When Can You Negotiate? Background and Observations on In Re Southland Corp., 10 Franchise L.J. (Fall 1990), at 21, which includes a list of events that might trigger the amendment requirement.
The amendment and approval process should entail less time for review by a state examiner than an initial registration or a renewal application. In Virginia, as with a renewal application, if the amendment application is accompanied by a signed Affidavit of Compliance, the application becomes effective upon receipt by the Virginia Corporation Commission. However, if the application does not qualify for automatic effectiveness in Virginia (as described in Section II.B. above), it will become effective only on the date granted by the Virginia Corporation Commission.

In Illinois, as with renewal, the registration continues to be effective and sales activity can continue while an amendment application is under review. If a franchisor chooses to continue to offer and sell franchises in Illinois during this review period, and significant revisions to the offering circular are required by the examiner, in rare cases the examiner may require that the franchisor provide updated disclosure to all prospects and all franchisees that have completed transactions during the review period.

Particularly when working with a franchise administrator or a paralegal it is a good practice to use a checklist of filing components. If the franchise administrator or paralegal has an overview of the various documents that will accompany an application, it will be easier for him or her to produce the pieces in a timely fashion. This practice avoids the frustration of receiving bits and pieces of a filing after gathering what was thought to be all of the necessary information.

III. CREATING AND MAINTAINING EXCELLENT FRANCHISE DOCUMENTS

Now that we have a clear idea of what documents are required to register and renew offering circulars, what best practices can the franchise professional employ to elevate the quality of their clients’ franchise documents? As set forth below, completeness, accuracy and process are the hallmarks of a quality franchise practice.

A. Lesson One from Publishing: Characteristics of Excellent Documents

A primary characteristic of excellent franchise documents is that they are complete in every sense of the word. One of the most common errors is using the offering circular of a client’s competitor as a guide to appropriate disclosure. Other issues aside, it is unlikely that the competitor’s offering circular will cover every point that is relevant to our own client’s disclosure and it may cover points that are not relevant. There is no substitute for thoughtful use of the NASAA Guidelines and the NASAA commentaries to determine what information to include.

Another aspect of completeness in a set of franchise documents is that they embody our best work product in light of our current knowledge. The franchise bar regularly attends programs such as the Forum to improve its understanding of franchise law. The lessons learned at these meetings should find their way into our clients’ existing documents. Once we are back in the office, we should immediately reconsider our checklists and templates. A good time to update and upgrade client documents is at annual renewal time, using a checklist of provisions and disclosure points to add, delete or revise. As we become better lawyers, the documents we produce and maintain should also improve.

Excellent franchise documents must be understandable. Enforcement by franchise examiners of the “plain English” requirements of the Guidelines has forced lawyers to simplify disclosure documents. Unfortunately, we have too often gone to the opposite extreme when writing franchise agreements and ancillary documents. Archaic legal phraseology obscures fuzzy thinking. The active voice is more direct than the passive. Short sentences are clearer than long sentences.
Excellent franchise agreements are well-organized. Each provision should fit logically where it is placed and nowhere else in the document. If a franchise agreement is so loosely organized that a clause might be found in any of a number of places (or, repetitively, in all of them), it is difficult to use. Using article and section headings aids a reader's understanding. Using a section numbering protocol that assigns a unique number to each paragraph makes it much easier to locate a particular clause.

Excellent disclosure documents must be accurate and up-to-date. Conscientious franchise practitioners give careful attention accuracy and currency.

For reasons that may not be quite as apparent, excellent documents must also be interesting. Why? If documents are boring, readers are less likely read and understand them. Parties to a contract are unlikely to honor it if they do not know what it says. Prospective franchise buyers are less likely to become good franchisees if they do not understand what will be expected of them and what they may expect of their franchisor. Disputes are more likely to arise when franchisees are confused by the franchise offering documents. Pruning redundant disclosures and provisions from an offering circular or franchise agreement may not be as important as making sure all necessary material is included, but it is important.

Excellent franchise documents should be attractive. We should eliminate one-sided clauses that would never be enforced by a court or an arbitrator. They send the wrong message about the franchisor we are trying to protect. NASAA and the FTC have imposed constraints on presentation of digital franchise material, providing that only navigational aids and internal hyperlinks are permitted. We may not use multimedia effects, background music or smiling franchisees walking hand-in-hand into the sunset. But we certainly can employ clean, consistent styling and make good use of white space to present polished written works.

Finally, an excellent set of franchise documents must be durable and well maintained. Each amendment and annual renewal is a new edition of a published work. Each revision requires careful editing and proofreading. We should resist the pressure of time, unquestioning compliance with examiners' requests and the myriad of other forces that can erode the integrity and aesthetic appeal of our franchise disclosure packages.

B. Lesson Two from Publishing: Tools and Process

Certain tools can help us, as franchise document publishers, to achieve the ends described above. These tools include the following software:

1. Adobe Acrobat – not the ubiquitous “Reader,” but the full application. This versatile software can print any printable digital document or image to PDF (portable document format), organize, label, rearrange and catalog pages, allow client markup of drafts, permit assembly and book marking of complete disclosure packages for client use, provide a high degree of document security and perform a myriad of other useful functions in the publishing of digital documents. Although there are other PDF makers on the market, Adobe Acrobat has unparalleled documentation, learning tools and support.

2. Document assembly software – HotDocs, Amicus Assembly or another professional document assembly application is indispensable to a transactional franchise attorney. Creating and consistently using document templates will ensure quality for similar documents throughout a law firm. Using templates has the secondary virtue of reducing the possibility that unredacted client information will slip unnoticed from one client's document into that of another client. Although we, as lawyers, may have our limitations as programmers, even very simple templates can be extremely useful.
We can generate editable drafts of letters, reports and forms as well as franchise applications, agreements and offering circulars.

3. In addition to offering the integrated contact information, calendaring and to-do lists that we have come to expect, practice management software offers a number of significant benefits to franchise practitioners. Features to look for include: a) the ability to file documents, telephone messages, telephone call records, notes and email messages easily and digitally by client and matter, b) the ability to dial the telephone, start an email message, and fax or assemble a document directly from a client file, c) storage of information on contact relationships for conflict checks, d) integration with billing and accounting software, e) remote access to complete client files and f) the ability to calendar sets of interrelated work assignments, deadlines and other dates with one click of the mouse.

4. For any firm that shares documents on a network, document management software, such as Worldox or Hummingbird, to organize, index, secure and archive documents.

Software for use inside the law firm or office is not the only technological aid that can benefit franchise lawyers as much as publishers. Some of the major ones are:

1. A network-integrated scanner/printer/fax machine/photocopier of the highest quality and speed you can afford is a cost-effective work tool for any firm that maintains regional or nationwide franchise registrations. When you calculate the hourly cost of employee time to print the necessary copies of an initial, renewal or amendment filing for various states, it becomes obvious that the money spent on added capability in your printer/copier is well spent. When you calculate the cost of paper, toner, filing supplies and clerical labor required to maintain paper file copies of regional or nationwide filings and client disclosure packages, it becomes obvious that the money spent on a higher-speed scanner to enable digital law office filing is well spent.

2. A large capacity email box. It is no longer necessary to impose on clients the high cost of overnight delivery of paper drafts and completed disclosure packages. Clients increasingly demand the cost savings of instant electronic document delivery. To make this service possible, attorneys must ensure that their email provider, as well as their email software, permits delivery of numerous large documents as email attachments. Broadband, as opposed to dial up, internet access is the correct choice if available in your area.

3. Although there are many legal research resources that it is nice to have, the Business Franchise Guide, published by Commerce Clearing House, continues to be indispensable to the transactional franchise practitioner. It is the only service that conveniently provides all the legal materials we absolutely must have in one place. The online edition has the same navigational features as the paper edition, with the added advantage of search ability. CAVEAT: This resource includes some materials that are not up-to-date. Before relying on information it contains, check the citation in Westlaw or Lexis.

4. An increasingly common capability offered to clients by franchise law firms is the firm extranet. An extranet's primary virtue is that it permits clients to retrieve and download their own franchise documents directly from their law firm's server. It can also serve as a private web site intended only for a firm's clients. The most important characteristics to look for in an extranet are security and ease of use and maintenance.
5. One technological capability that transactional franchise law offices should have is redundant nightly backup of client data. The roster of New Orleans firms that survived the Hurricane Katrina disaster is largely composed of those who through good fortune or good planning preserved their client documents. Many of those who were put out of business did not. Even a good backup system may fail under the wrong circumstances. For those of us whose practices are centered on documents, redundant nightly backup – such as backup to both an external hard drive and an offsite backup service – makes as much sense as a good insurance policy.

C. Lessons Three and Four From Publishing: Before You File

1. Tickling Events in the Publishing Cycle

The publishing process follows a cycle of sorts. Each publication begins with one or more concepts. These are researched, organized and developed by writers. The drafts are then passed to one or more editors who revise and edit the completed works. Edited works then go to copyeditors or proofreaders for review. Authors are given an opportunity to review the resulting documents. Finally, the completed works are organized and compiled to present an attractive and readable finished publication. All these tasks are interrelated, both in terms of the time frame within which each phase must be completed and in terms of the conditions that make it possible for each participant in the process to do his or her job. At some point in time the cycle begins again and work commences on the next issue, book or edition.

A franchise law office also has its cycles of events that must be calendared. Two important instances relate to annual renewal of franchise registrations. The first is the annual cycle of client reminders tied to release of a new audit report. An experienced franchise attorney may remind the franchisor client to prepare to close its books about a month before its fiscal year ends. During the first month of the franchisor's fiscal year, a second communication from the attorney may remind the franchisor to start its audit. A third communication from the attorney may include a questionnaire or checklist and forms with which the franchisor may provide updated information to the lawyer so that the offering circular may be renewed or amended along with the new audit report. See Exhibit E. A fourth communication may elicit any missing information or documents that have not been submitted by a specified deadline. Additional reminders may pursue the laggard franchisor that is late to submit renewal information or documents. Finally, for those franchisors which have missed filing deadlines or whose renewal applications have not been approved prior to expiration, a clear admonition must be issued to suspend franchise offers and sales in the affected state on the expiration date.

A second, related cycle involves tickler items within the franchise law office. For each registration renewal filing, there is a series of important dates that must be calendared. These include:

- Reminders to send out the client reminders described above and to react appropriately if they are ignored.
- Filing dates and deadlines for renewal applications.
- Registration expiration dates.
- Filing deadlines for state-imposed reports.
2. **Linking Responsibilities - Example: Renewal**

Not only does the renewal cycle involve a series of dates that must be calendared it also entails a series of responsibilities that must be performed in a timely manner. Some of the chief tasks that must be performed annually for each franchisor include:

- Transmitting renewal instructions, checklists and forms to the franchisor client.
- Reviewing renewal information that the client submits.
- Identifying missing items, requesting them from the client, and following up on ignored requests.
- Revising or drafting new or amended franchise disclosures and agreements to fulfill changing client needs.
- Editing revised documents for clarity, consistency, directness and readability.
- Proofreading and formatting documents for professional presentation.
- Obtaining client review and approval of revised core documents.
- Assembling individual state renewal applications using approved core documents.
- Checking the assembled state filings for completeness.
- Calendaring post-filing responsibilities, including record-keeping, delivery tracking, status checks and reporting tasks.

When a registration renewal order is received, by the registration sate another series of interrelated tasks is triggered. These may include:

- Preparing disclosure instructions and client disclosure packages for transmittal to clients.
- Checking that clients have, in fact, received disclosure documents. This is particularly important if the new documents were emailed to the client.
- Preparing updated status reports.
- Tickling renewal-related dates and tasks for the coming year's franchise registration renewal applications.

Each of the dates and tasks described above is dependent upon or triggered by other dates and tasks in the renewal cycle. The orderly conduct of a transactional franchise practice depends upon having a system that ensures calendaring of each important date and performance of each important task. For a small or new franchise practice, use of a well-thought-out table or checklist can impose this discipline. For a more substantial practice, practice or process management software can be programmed to help us ensure that key dates are tickled and key tasks are assigned. A graphic depiction of how this works is presented in Exhibit G.
IV. WORKING WITH FRANCHISE ADMINISTRATORS AND PARALEGALS FOR OPTIMAL SUCCESS

Regardless of all the tools and process we have in place, all of this has no value if we don’t have the right support personnel in place. Effectively communicating with in-house franchise counsel, administrators, paralegals and business personnel is a critical component in producing quality franchise documents. Communicating with your own paralegals and delegating appropriate responsibilities to them is also an important component of a cost effective franchise law practice.

A. Overview

A franchise law practice employs paralegals to assist in document preparation, production, research and data collection. Franchise paralegals must understand general legal terminology as well as franchise-specific legal terminology. It is critical that they stay informed of new developments that affect franchise law. Additionally, strong computer skills and familiarity with database software are essential to produce the data necessary which is specific to a particular franchisor’s system. The role of paralegals is also impacted by their clients practice settings, in-house legal departments, in-house franchise administration departments or law firms.

A franchise paralegal is often assigned to work with a designated attorney or group of attorneys, manage particular tasks or act as liaison when working for a franchisor that employs outside counsel. It is critical for an attorney to understand the knowledge base of the paralegal with whom he or she is working. It is also important to be aware of competing business demands on the paralegal’s time which may affect the ability to deliver timely service.

A paralegal whose knowledge and perspective have been enhanced through experience and continuing education may attain the management position of “franchise administrator.” A franchise administrator is often responsible for ensuring that filing deadlines are met, managing the renewal and transfer processes, educating franchises sales personnel and monitoring their legal compliance, preparing and sending notices of default and providing disclosure documents to prospective franchisees. Franchise administrators frequently manage other paralegals, monitor the franchise system for legal compliance and administer the franchise program and documentation process.

B. The Franchise Paralegal and the Renewal Process

For most paralegals and franchise administrators, the process of renewing and updating a UFOC and its related documents is a large and consuming project. It requires not only an understanding of the process but also critical attention to detail. Initially, this role may include updating tables, obtaining signatures and compiling data on the franchisor’s sales results for the previous year. An experienced franchise paralegal/administrator often takes on a larger role. He or she may be the point person who works with numerous others, gathering data and understanding the effect of the strategic plan for the future year on sales, development, marketing, distribution, training and support. This data and modifications to the system are then integrated into appropriate sections of the UFOC and related documents so that they accurately reflect the franchisor’s business decisions and performance. If the franchisor has in-house counsel, the role of the franchise paralegal/administrator may expand to include functions normally performed by franchise paralegals in law firms. This role additionally requires that the experienced franchise paralegal/administrator manage completion of registration documents and numerous attachments, each having its own complexities and filing dates, and then assembling them with the appropriate signatures and checks that must arrive on time at state agencies.
C. The Franchise Paralegal’s Role in Information Gathering

For some franchise paralegals/administrators, a tickler and checklists provided by the attorney they work with begin the renewal process. An example of such a checklist is included at Exhibit H. Others may have established their own timelines based upon their experience and availability of management personnel from whom information must be obtained. Normally, renewal is tied to the fiscal calendar year that triggers the beginning of the annual update process. Most departments within a franchise organization complete year-end reports from which information may be derived for use in preparing renewal documents. A sales department compiles sales results, often segmented by product or region, a franchise development team reports on the number of units opened/closed/transferred, a training group assesses its results and modifies next year’s program, a real estate department determines current construction costs for building out a franchised outlet, a marketing department completes its budget and reviews results to determine future strategy and a finance department reviews departmental budgets and compiles the franchisor’s financial results for delivery to the auditor. For publicly traded companies, this type of activity is routine because an audit is necessary for inclusion in the franchisor’s annual report. For privately held companies and franchise companies that have been established to segment franchising from business activities of affiliates, preparation for an audit can be demanding.

A franchisor’s annual update of its disclosure documents must be complete by the earliest renewal date of the franchisor’s fiscal year. In setting a due date by which management personnel should deliver information needed for the project, a paralegal/administrator must allow time for compiling, proofreading, drafting, reviewing and completing the renewal application. Each department should designate an employee to provide this information by the specified date. Refer to Exhibit H for a checklist that shows the information due from each department.

D. Using Technology to Document Results

One of the more challenging tasks facing a franchise organization is working with the company’s database software. New franchisors often have sophisticated accounting software in the finance department, while other departments try to adapt Excel or Access to track necessary information. As franchisors grow and add information technology departments, they usually customize database software, such as ACT, Filemaker or a proprietary application, to track data throughout the organization. This provides necessary information for investors, parent companies, officers and executives. When a large number of people may have the ability to input data into the system, obtaining usable information for use in preparing franchise documents presents a challenge for the paralegal. Franchise attorneys and paralegals may help by providing guidance on what information must be tracked in each part of the company and how best to track it. An extremely helpful technique is to provide a sample of the required output to each person who may contribute to the input.

A franchise paralegal or administrator often serves as coordinator between departments within a company that are involved in the renewal project as well as between company and law firm. This often means that the data is obtained in more than one format. It must then be entered into the appropriate item of the UFOC. Ideally, every franchise company would use a standard database to collect information from and provide data to each department for its respective users. However, because customized software requires a significant investment, a franchise paralegal or administrator must sort through reports provided in various formats to provide the necessary results.
E. Communication with the Franchise Organization

Preparation of a franchise registration or renewal application demands an extraordinary amount of information from all participants. To gather this data expeditiously, a franchise paralegal or administrator must understand the communication process and the expectations of the attorney with whom he or she works. For those who have worked together in the previous year, it is advantageous for all concerned to review and discuss what procedures did and did not work well. Communication updates are critical for both parties; particularly if you are not working in the same building and do not regularly meet in person. Checklists are extremely helpful. Those provided by a law firm may need to be modified for a franchisor's internal use. Many delays occur because one party makes an assumption about the other party’s activities, rather than asking for clarification. Continued communication allows both parties to focus on one another's needs and provides insight into any challenges that may surface during the registration process.

V. SPEEDING REGISTRATION WITHOUT COMPROMISING QUALITY OR CONTENT

Once we have the processes and tools in place to permit the production of excellent franchise documents, what can we do to facilitate registration in a timely manner? The following tips may help expedite the process.

A. Maintaining Core Documents and State Specific Components

Most franchise attorneys representing franchisors that register nationwide or in a number of states maintain one “core” disclosure package (the offering circular and exhibits) that conforms to federal law and the NASAA Guidelines. Additional components may be added and subtracted in registration states to make the package conform to state law. This approach, as opposed to preparing an entirely different offering circular for use in each registration state, is recognized by UFOC Guidelines. It is also recommended by the authors.

A “multistate” form of this core set of documents may be used by the franchisor to provide disclosure in all non-registration states. The effective date of the disclosure document (stated on the federal cover page, which must be the first page of the document) is generally the date on which the package is completed and ready for use by the franchisor.

In each registration state, a franchisor must be careful to provide disclosure to prospective franchisees using the identical supplemented disclosure package that the franchisor registered with that State. Pages a franchise attorney may add to conform to specific state laws (“state pages”) include a state cover page, a federal cover page revised to reflect the date of the state disclosure document, and an acknowledgment of receipt (required by Item 23 of the offering circular) that identifies which state’s offering circular was provided to a prospective franchisee.

The date on the state cover page should be the date the registration became effective. The format for a state cover page is prescribed by the UFOC Guidelines, but examiners in various states may demand the addition of cover page caveats, such as a warning that a franchisor licenses its principal mark from another company, is new and inexperienced or is in precarious financial condition. A fact of which new franchise lawyers may be unaware is that the language of any prescribed caveat is negotiable. Counsel does not have to use the precise words requested by an examiner. As long as the caveat clearly addresses the examiner’s concern, he or she will usually accept modified language that limits and conditions the scope of the warning to fit the facts of the particular case.
Most franchisors include in their offering circulars an optional state-specific addendum to following Item 23. A state addendum is used to provide additional disclosures that are not called for by the UFOC Guidelines but that state authorities or regulations in various states require. By placing these disclosures in a state addendum, a franchise attorney may maintain the uniformity of the core document. Placing the disclosure in an addendum at the end of the offering circular also dims the spotlight on unfavorable disclosures that are not material to the offering or required by the NASAA Guidelines.

Several states refuse to register a franchise agreement that includes certain types of provisions, such as a designation of an out-of-state venue for dispute resolution, that their regulatory authorities consider objectionable. By attaching state specific addenda to the franchise agreement and any other franchise-related agreements in the disclosure package, such as a pre-franchise agreement or area development agreement, the franchisor may delete the offending provisions or add language required by one state only to the agreements used in that state. Frequent subjects of state addenda are mandatory disclaimers of restrictions on termination, non-renewal and transfer, non-competition covenants, waivers and releases, liquidated damages clauses, designation of out-of-state governing law or venue. State addenda to agreements are usually unnecessary in Hawaii, South Dakota and Virginia.

When an examiner asks a franchisor to substitute a clause designating the examiner's state law or venue for the home state provision in a client's franchise agreement, ask whether it is appropriate to question whether that is required by the examiner's state law. Use addenda to delete offending provisions from your agreements, when the law of a registration state makes it necessary. For example, a franchisor is probably better off with no venue clause in its agreement, than with a provision that may take it thousands of miles from home to arbitrate or litigate.

B. Preparing and Filing Applications

These tips may assist in preparing and filing registration applications:

- When drafting offering circulars and agreements, anticipate the comments you may receive from state examiners based on previous comments and draft the documents to obviate them.

- Make changes in your documents when you receive updated information about a state agency. For example, confirm that addresses of state agencies are current.

- File applications on a timely basis, based on your previous experience with that state as well as with state law.

- File complete applications or explain any omissions in the cover letter and advise when they will be remedied.

- Confirm that the offering circular is complete, clear and responsive to all UFOC Guideline disclosure requirements.

- Provide tables of contents for your franchise agreements as well as for your offering circular.

- Do not submit advertising materials with a franchise registration application, because their review may delay approval of the application. File them separately.
Discuss standards for determining adequate capitalization with your clients while they are in formation and annually, for the first year or two, about a month before the end of the franchisor's fiscal year.

Unless there are a large number of changed pages, flag them for the franchise examiner’s convenience.

When speaking with a prospective client who is unfamiliar with franchising and explaining the requirements of registering an offering circular, it quickly becomes apparent that franchising is indeed a unique way of doing business. It includes many players. All of the players strive to do the best job they can, each providing the others with useful information in an effort to achieve a common goal, getting the franchise registered in a state.

Obviously there is not enough time for attorneys and examiners to connect on a personal basis on each occasion, but an unspoken sense of being on opposite sides often underlies communications between franchise attorneys and franchise examiners. If you are working with a franchise paralegal/administrator that assembles documents and submits them for registration, involve him or her in communicating with the examiners when items are missing or incomplete. Similarly, if, for example, an examiner complains that a table is inconsistent or that it is preferable to have insurance requirements listed in a particular item, it can be productive to involve the franchise paralegal when he or she is in a better position than you are to explain what may appear to be an inconsistency. During the renewal season, both franchise attorneys and examiners are under incredible pressure to meet requirements and timelines. Allow the franchise paralegal/administrator to “be the buffer” who understands the needs of the other party and can help to resolve comments from examiners.

C. Responding to Comment Letters

Upon filing, a franchise registration application is assigned to one of the franchise examiners of the regulatory agency. He or she reviews the application for conformity to the NASAA Guidelines and applicable state law. The examiner’s response is usually stated in an order or notice of effectiveness or a “comment letter” which requests additional information or revisions to the offering circular. However, it is increasingly common for examiners to communicate their comments by telephone, fax or email. These less formal comment communications should be encouraged, because they expedite the review process.

Comments by state examiners may address the following subjects:

- Disclosure materials that do not conform to NASAA Guidelines
- Outdated, deficient or incomplete financial statements
- Misuse of state specific addenda
- Incomplete applications
- Confusing language in the disclosure document
- Addition of caveats to the cover page
- Failure to use state specific language.
When an examiner asks you to revise the documents, consider whether the revisions are required by the NASAA Guidelines. If you think they are, or that the disclosures requested are material to a prospective franchisee's purchase decision, you should put them in the body of the offering circular. If, on the other hand, the requested changes relate to state law or to an examiner's idiosyncratic view of the law, add them to the state addendum or, if they are truly inappropriate, prepare an appropriate response to the reviewer. A good franchise lawyer is an advocate for a good set of disclosure documents and can be quite successful in achieving that goal. Sometimes a creative attorney can devise a far more satisfactory way of meeting an examiner's concerns than that the one requested by the examiner. Deciding which modifications should be included in each state's addendum involves evaluating the state's franchise sales law and franchise relationship law, if any, prior experience in registering in that state, knowledge of relevant non-franchise state law, and to a limited extent, comments from the particular state examiner reviewing the disclosure document.

When preparing a response to a comment letter, some franchise practitioners think it best to explain and direct the examiner to all revisions made in the offering circular in response to comments. Others rely upon redlining and colored flags to call the examiner's attention to changes. Be sure to note those comments that did not precipitate revisions and explain why none should be required. If the examiner makes comments to which you object, it is often a good idea to contact him or her to clarify the comments, discuss any difficult or unusual issues and determine how receptive the state examiner may be to your proposed written response. Address issues in your response in the same order in which they were raised in the comment letter. Be clear and concise.

Some states impose a deadline for responding to comments. Respond on a timely basis. For example, Maryland allows six months from the date of the comment letter to respond to comments or the application will be deemed abandoned. Virginia permits three months from the date of the comment letter or the application is denied.

Finally, in all communications with state administrators, be polite and respectful even under circumstances that make this difficult. The administrators must often walk a fine line between interpreting the law, protecting their citizens and fostering the conduct of business in their state. They are your colleagues, people with whom you will be dealing for many years.

VI. BYPASSING THE REGISTRATIONS PROCESS: CLAIMING THE MOST COMMONLY USED EXEMPTIONS FROM FEDERAL AND STATE REGISTRATION AND DISCLOSURE REQUIREMENTS

Registration of a franchise offering is not always necessary. Each registration state provides exemptions, of one sort or another, from the registration process. Some jurisdictions provide exemptions from the disclosure obligation as well. The criteria for qualifying for an exemption vary under the FTC Rule and by state, but usually are designed to exempt franchise offerings that are considered low risk, either by virtue of the operational experience and financial strength of the franchisor or the relative sophistication of the franchisee.

Exemptions have advantages. First, they permit a franchisor to keep the terms and conditions of its franchise offering, and the manner in which it administers its system.
confidential. Second, they permit a franchisor to avoid the considerable time and expense of creating an offering circular and filing an amendment each time a material change occurs. Third, they may allow significant variances from the standard franchise registered by a franchisor without requiring a separate registration. However, exemptions are not risk free.

Whether the offer or sale to a particular prospective franchisee qualifies for an exemption is usually a judgment call, and the burden of proving that it did falls on the franchisor, usually after the fact. There may also be administrative requirements, such as paying a fee and filing forms with a state regulatory authority, often on a deal-by-deal basis. Failure to pay the fee and file the correct form with the state may result in the franchisor being unable to claim the exemption, a fact that often does not become apparent until a franchisee has brought an action for sale of an unregistered franchise. Moreover, many types of exemptions do not eliminate the requirement that the franchisor disclose all material facts regarding the franchise or distribute updated disclosure documents.

An opportune time for a lawyer to learn about a franchisor’s strategic plans and projected future growth is while working with a franchise paralegal or legal administrator who is the point person for a renewal project. For example, if the franchisor is planning to develop in non-traditional environments in particular states, use of a fractional franchise exemption may be feasible.

Following is an examination of the most commonly used exemptions from registration--and possibly disclosure, including exemptions for fractional franchises, experienced franchisors, single license/isolated sales, sales for a franchisee’s own account, sales to sophisticated or experienced franchisees and exemptions by administrative order.

A. Exemptions from Registration and Disclosure: The Federal and State Fractional Franchise Exemption

1. Application of the Federal Fractional Franchise Exemption

The FTC Rule provides an exemption from disclosure for “fractional franchises.” A fractional franchise is a relationship in which: a) the prospective franchisee, or any of its current directors or executive officers, has been in the type of business represented by the franchise for more than two years and b) at the time the agreement establishing the franchise relationship was reached, the parties anticipate that the sales arising from the relationship will represent no more than twenty percent of the franchisee’s sales in dollar volume. A fractional franchise is essentially an extension of or add-on to a product or service the franchisee is already offering to the public. Fractional franchises are common in grocery stores, hotels, universities, airports or in facilities where the product or service offered is “in-line” with another business. The Starbucks licensing system, for example, is entirely based upon licensing with companies that qualify for the fractional franchise exemption on both a federal and state level.

The underlying rationale for the fractional franchise exemption is that a franchisee in a fractional franchise relationship has a certain business acumen that will afford it familiarity with

\[19\] See, e.g., Wash. Rev. Code § 19.100.220(1).

\[20\] See, e.g., Cal. Corp. Code § 31108(f).


\[22\] 16 C.F.R. § 436.2(h).
the costs, profits and potential risks and benefits of the franchise business. Therefore, the franchisee should not be dependent upon the expertise of the franchisor to make the franchised concept work and it is unlikely that the franchisor could mislead the franchisee through an incomplete or inaccurate disclosure. The fact that the exemption is applicable only to businesses that are expected to produce no more than 20 percent of a franchisee’s revenue makes it unlikely that failure of the franchised business will result in failure of the franchisee’s primary business.

While a fractional franchise is usually located within another business, the FTC Rule does not explicitly preclude the establishment of stand-alone units that are part of a larger enterprise. In 1999, an FTC informal staff opinion suggested that a fractional franchise located outside of the franchisee’s primary place of business was not, in itself, disqualified, stating: “It is the nature of the franchisees' business experience, not the location of its business per se, which may bring the business relationship within the fractional franchise exemption. Nonetheless, location is one factor we will consider in determining the similarities and differences between the established business and the new franchised business.”

Note that this opinion does not state that stand-alone units can qualify for use of the exemption, only that they are not inherently outside its scope.

Another area that requires interpretation by franchise counsel when determining whether the fractional franchise exemption applies to a particular sale is whether the franchised concept is sufficiently similar to the business in which the prospective franchisee is engaged. The FTC Interpretive Guides state: “[t]he required experience may be in the same business selling competitive goods, or in a business that would ordinarily be expected to sell the type of goods to be distributed under the franchise.” Starbucks, for example, interprets the exemption as requiring food and beverage experience for based on the nature of its business. Other examples of this principle are a full service hotel adding a coffee shop to the hotel lobby or a university student union adding a pizza parlor next to a fast food restaurant. While not identical businesses, they are representative of the type of retail sales in which the prospective franchisee is already engaged.

Finally, the 20% gross sales limitation is measured at the time the franchise sale is made based on the franchisee’s good faith estimate of what its gross sales will be for the first year of the franchised unit’s operation. Subsequent experience showing a much greater number could cast doubt on the good faith of the estimate. The burden of compliance with the franchise laws rests with the franchisor. For this reason, the franchise agreement should include a clear representation that the franchisor is relying on the franchisee to make an estimate that should be within the franchisee’s particular knowledge and that "but for" this representation, the license would not be granted. The process of qualifying prospective franchisees for this and other exemptions is discussed below.

2. State Fractional Franchise Exemptions

California, Illinois, Indiana, Michigan, Minnesota, Virginia and Wisconsin all have fractional franchise exemptions. The exemptions in Minnesota and Wisconsin mirror the

23 Informal Staff Advisory Opinion 99-5 (July 2, 1999).
25 44 Fed. Reg. at 49,968. See also Statement of Basis and Purpose, 43 Fed. Reg. at 59,707 and at n.84.
federal rule. Virginia’s statute restricts the level of gross revenue derived from the franchised unit but does not provide for an experience component. In Indiana and Illinois, the fractional franchise is excluded from the definition of a franchise.

The California fractional franchise rule is the most restrictive. Under California law, a franchise is fractional, and thus exempt, only if: a) for 24 months before the date of sale of the franchise, the prospective franchisee, or an existing officer, director or managing agent of the prospective franchisee, has been engaged in a business offering products or services substantially similar or related to those to be offered by the franchised business, b) the new product or service is substantially similar or related to the product or service being offered by the prospective franchisee’s existing business, c) the franchised business is to be operated from the same business location as the prospective franchisee’s existing business, d) sales resulting from the franchised business will not represent more than 20% of the franchisee’s total sales; and e) the prospective franchisee is not controlled by the franchisor.

Qualifying for this exemption using an existing officer with the requisite 24 months experience before the date of sale may be more difficult that is immediately apparent. For example, an executive with 25 years of relevant experience will not qualify if the executive has not held that position with the franchisee for the 24 month period immediately preceding the sale. In other words, a franchisee cannot “buy” the experience necessary to fulfill the requirement in California as it may under the Federal and other state statutes (but the executive’s experience may enable the franchisee to qualify for California’s sophisticated franchisee exemption, discussed below). The California statute also expressly prohibits use of the fractional franchise exemption for stand-alone franchise units. CITATION To claim this exemption, the franchisor must file the appropriate notice and pay a fee before the offer or sale of a franchise.

Michigan’s fractional franchise exemption requires that the franchised business become a component of an “established business” in which the franchised concept is not expected to contribute more than 20% of gross sales. It also has a two-year experience requirement. This statute precludes stand-alone units. One notable fact about Michigan’s fractional franchise exemption is that it requires a franchisor to give a prospective franchisee that is a candidate for the exemption an offering circular if the franchisor has as offering circular that is valid in any jurisdiction, not just in the State of Michigan. This may create a conundrum for a franchisor that is offering a franchise program in Michigan that is not similar to the franchise offering described in its offering circular. While there is no legal authority on this issue, a franchisor wishing to use the Michigan fractional franchise exemption under those circumstances might consider drafting a cover letter, a copy of which the franchisee should sign and return to the franchisor, explaining Michigan’s regulatory requirement and clearly stating that the terms of the offering in Michigan vary materially from those described in the offering circular. The procedure described would at least bring the franchisor into technical compliance with the statute and the franchisee can not argue that it should be able to rescind the franchise agreement due to lack of an offering circular.

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28 Ill. Comp. Stat. § 705/3(1); Ind. Code § 23-2-2.5-1(a).
32 Id. at § 445.1506(2).
Exhibit I sets forth the individual requirements for the fractional franchise exemption on a state by state basis.

3. Qualifying Fractional Franchisees

The most important component of a fractional franchise program is discipline. If the franchisor is unwilling to turn down prospective franchisees who do not meet the strict requirements of the FTC rule and state statutes, then fractional franchising is not a suitable method of doing business. The second most important ingredient in administering a fractional franchise system is a committed devotion to process. For example, in the Starbucks licensing system, a license agreement is not drafted until the appropriate process has been followed and documented.

Attached as Exhibit J is a sample “Licensee Qualification Worksheet” that may be used to qualify prospective franchisees for the fractional franchise exemption. The worksheet is designed to confirm that the franchisor has documentation to support its business decision to grant a fractional franchise to a particular franchisee. A best practice is to require the executive named in the worksheet as the qualifying person to submit a statement confirming his or her experience. A franchisor may also want to consider obtaining the executive’s consent to conduct a due diligence investigation to confirm that information. Counsel may encounter resistance to this procedure, because obtaining and conducting such an investigation may take time and delay closing deals. Alternatively, counsel may want to conduct investigations on a case-by-case basis. The sample worksheet also requires each licensee to submit a pro forma business plan for the first two years of operation demonstrating to the franchisor that the revenue derived from the franchised concept will be less than 20% of the franchisee’s gross revenue.

The franchisor should then conduct a further analysis to ensure compliance with state law. The franchisor should examine the laws of the states where the franchisor is based, the franchisee lives, and the franchised business will be operated to determine whether they are applicable to the transaction and, if so, whether granting a franchise based on a fractional franchise exemption in the specific case under examination is clearly permissible. If the results of the analysis are not clearly favorable, the franchisor should not sign a franchise agreement with the prospective franchisee without complying with federal disclosure and state registration and disclosure requirements.

If the franchisor has documented that the prospective franchisee is qualified for the fractional franchise exemption, a best practice is to require that the franchisee represent in the franchise agreement that it is an exempt entity. One form of such a clause for a franchisor domiciled in Washington state is:

“Franchisor expressly disclaims the making of, and Company acknowledges that it has not received or relied upon, any warranty or guaranty, express or implied, as to the potential volume, profits, or success of the business venture contemplated by the License and this Agreement and Company confirms that it has represented to Franchisor and again represents and warrants to Franchisor that (i) Company has been engaged in a food/beverage service business (substantially similar to the Stores to be developed by Company) for substantially in excess of two (2) years, (ii) Company anticipates that the incremental revenue attributable to its operation of the Stores pursuant hereto are likely to represent less than twenty percent (20%) of the aggregate revenues of Company, (iii) the Gross Revenue attributable to its operation of each Store within a Licensed Site pursuant hereto is likely to represent less than twenty percent (20%) of the aggregate revenue of such Licensed Site, and (iv) Company is an “accredited
investor” under Washington state law in that it has assets greater than Five Million Dollars ($5,000,000), and as a result of the representations in clauses (i) through (iii) of this Section, the arrangement provided for herein qualifies as an exempt “fractional franchise” within the meaning of federal and applicable state law. The initial Licensed Sites identified on Exhibit A (as amended from time to time, subject to Section 2.7.3) are within _________________, _______________ and ________________ and the parties hereto acknowledge the need to comply with, or establish a basis for exemption from, any similar laws of any other jurisdiction before Company will be authorized to develop and operate a Store within any other jurisdiction. Company acknowledges and agrees that in offering and selling the licenses that are the subject of this Agreement to Company, Franchisor is relying on the representations made by Company and Franchisor would not grant those licenses if Company could not accurately make those representations.”

Obviously the fourth element of the representation will differ depending on which state’s law applies. Frequently, the attorney for the prospective franchisee will attempt to strike this clause, generally on the ground that it calls for a conclusion of law. That is correct and is the purpose of the clause. The prospective franchisee is in a much better position to know whether it is truly exempt than is the franchisor. The franchisee has already represented that it qualifies for the exemption by providing executive resumes and a pro forma business plan during the qualification process. In the author’s opinion, this representation should not be objectionable and a franchisor should be reluctant to grant a license to an entity that is not willing to make it.

B. Franchisee’s Sale or Transfer to a Third Party

The fractional franchise exemption is particularly useful to franchisors that do not wish to comply with registration and disclosure obligations, but its applicability is somewhat limited. Other exemptions are more likely to be generally useful to a franchisor.

The bona fide sale of a franchise by a franchisee to a third party purchaser is expressly exempted in each registration state except Virginia.33 The FTC Rule does not have an explicit exemption to this effect, but the interpretive guidelines indicate that these transactions are excluded because it is the franchisor, not the franchisee, that is required to make disclosure.34

The purpose of this exemption is to enable a franchisee to sell its business as a going concern to a third party purchaser. Requiring a franchisee to comply with registration and disclosure requirements, or compel its franchisor to comply with those requirements, would hamper the transferability of a franchisee’s business and chill the sale of franchises generally.

To qualify for this exemption, a sale may not be “effected by or through” a franchisor, although the franchisor may retain the right to approve or disapprove any given franchisee candidate. The franchisor’s ability to claim this exemption is contingent on the franchisor restricting itself to approving or disapproving the transfer candidate on terms substantially the same as those contained in the selling franchisee’s franchise agreement. Proactively facilitating a transfer by matching buyers and sellers, advising the parties on the financial terms of the sale


or assisting with financing may constitute a sale “by or through a franchisor.” If the franchisor requires the transferee to sign a new franchise agreement or makes material changes to the franchise agreement, registration and disclosure obligations are triggered.

Other common restrictions on this exemption include limiting its use to isolated sales by a franchisee, and excluding sales by franchisees that are “affiliated” with the franchisor. In the State of New York, the transferor is required to provide the prospective buyer with the franchisor’s offering circular on file with the Department of Law. If the franchisor does not maintain a registration in New York, it appears that this exemption is not available to the franchisee.

This exemption is a fail-safe rather than a daily workhorse. Most franchisors have the contractual right to require a transferee to sign a new franchise agreement as a condition of transfer. Franchisors routinely exercise this right. Although a franchisor may avoid the disclosure obligation by simply permitting an assignment of the original franchise agreement, doing so may have important drawbacks. Franchisors improve and amend their franchise agreements over time to reflect the lessons they have learned from experience and the current operations of the franchise system. The franchisee to whom a franchised business is transferred may want a new agreement to obtain a longer term. The best practice in this case is for the franchisor to maintain its registrations and provide disclosure to buyers of franchised units. In a state where registration is permanently or temporarily not effective, it is nice to know that a transferring franchisee can claim the exemption if the franchisor is willing to permit assignment of the existing franchise agreement.

C. Sophisticated Franchisees

There is a series of exemptions, varying widely by state, for certain types of franchise buyers who may not need the protection of registration and disclosure statutes. These exemptions, found in Rhode Island, Washington, Illinois, Maryland, Wisconsin and California, are typically based on the prospective franchisee’s net worth or business experience.

1. Application under State Statutes

California, Washington and Rhode Island provide exemptions for high net worth franchisees. In California, the franchise candidate must: a) be an entity with a net worth in excess of $5,000,000 or an individual with a net worth of $1,000,000 (excluding primary residence, pension plans, furniture and automobile) or an individual with a gross income in excess of $300,000 ($500,000 with spouse) for the two most recent years with a reasonable expectation that such income level will continue; b) have knowledge and experience in financial and business matters; c) not purchase for the purpose of resale; and d) not be required to make an immediate cash payment that exceeds 10% of the purchaser’s net worth (if an individual,

35 See, e.g., Little Caesar Enterprises, Inc. v. OPPCO, LLC, 219 F.3d 547 (6th Cir. 2000).
excluding the person’s primary residence, pension plans, furniture and automobile). The franchisor must file a notice of exemption and pay a fee to the State. Washington exempts transactions with franchisees with a net worth exceeding $1,000,000 from registration, but not disclosure, requirements.

Rhode Island requires the franchisee to have a minimum net worth of $1,000,000 or have an individual income of $200,000 in each of the two most recent years plus a reasonable expectation of achieving the same income level in the current year. In addition, Rhode Island requires that the franchisee have “the knowledge and experience in financial and business matters that the person is capable of evaluating the merits and risks of the franchise.” Obviously this is a subjective standard; and the franchisor should carefully consider on a case by case basis if determining whether a franchisee has the knowledge and experience necessary to qualify for this exemption is well advised, given that this exemption is from registration only, and still requires delivery of a disclosure document. Again, it is a best practice for the franchisor to document the criteria used and the basis for the determination relating to the operational expertise of the potential franchisee.

Maryland and Wisconsin each has an exemption for franchises that require a substantial investment. Neither provides an exemption from disclosure. “Substantial Investment” is defined as an investment in excess of $750,000 in Maryland, and $100,000 in Wisconsin, provided that the required cash “does not exceed 20% of the franchisee’s net worth, excluding the franchisee’s principal residence, furnishings and automobiles for personal use.” Wisconsin also demands that the franchisee have sufficient knowledge and experience to evaluate the merits and risks of the franchise investment properly. As it is not demanding to register in Wisconsin and the standard by which suitability is determined may be subject to interpretation, it is wiser to register in Wisconsin than to rely on this exemption.

Illinois’ statute is similar, with a $1,000,000 investment threshold. In Illinois, the franchisor must apply for an order of exemption. The application should include: a) a cover letter explaining the basis for the exemption, b) a description and history of the franchisor and a statement setting forth the basis for the claim that the investment exceeds $1,000,000, c) a statement of the number of franchises the franchisor intends to sell in Illinois in the following year, d) a description of any litigation brought by a franchisee or regulatory agency against the franchisor in the last two years and e) an offering circular. The administrator has discretion to decide whether disclosure is necessary to protect the public interest or any particular class of franchisees. As the franchisor must maintain and submit an offering circular to the administrator, even if it is not ultimately required to give a copy to a prospective franchisee, this

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44 Id. at § 19-28.1-8.
45 Md. Code Regs. 02.08.10(E)(1). There is a current proposal to amend the threshold in Maryland to $1,000,000.
46 Wis. Stat. § 553.235(1)(a).
48 Id. at § 200.201(13)(c)(1)-(5).
is another situation in which it may be easier to simply register the offering circular, rather than undertake the considerable effort necessary to obtain an exemption.

California is the only state to base an exemption entirely on a franchisee’s business experience. California exempts from both registration and disclosure offers to franchisees with two years of experience, gained within seven years prior to the sale of the franchise, in managing the financial and operational aspects of a business that is similar to the franchised business. The franchisor must file a notice of exemption and pay a fee to claim this exemption. As with the fractional franchise exemption, the key to perfecting this exemption is obtaining evidence of qualification from the franchisee.

Considering the foregoing, when can a franchisor conclude that a business is “similar” to the franchised business? In the authors’ opinions, this determination should be made conservatively. If you are the franchisor of a restaurant concept, then “similar” in our view is a prospective franchisee with food and beverage experience. We believe that experience in operating a franchised quick service restaurant is sufficiently similar to that needed for another franchised quick service restaurant to make the transaction eligible for exemption. It is not, however, sufficiently similar to running oil change franchise, hair cutting salon or tax service. The analysis must be driven by common sense and by asking if how the franchisor will going to explain its conclusion to a judge if the franchisee at issue fails.

Obtaining the financial information to support the net worth requirement in California, Rhode Island and Washington and resumes to support the experience requirement in Illinois and California should be a condition of drafting franchise agreements for transactions in which the exemptions will be claimed. It is also necessary to track the notice and fee requirements in the states. A chart listing the requirements of this exemption is in Exhibit K.

2. Application under the Proposed Revised FTC Rule

Although not in effect at this writing, the proposed Revised FTC Rule is expected to offer a “sophisticated investor” exemption. This exemption will broaden the scope of exempt transactions franchisors currently using the fractional franchise exemption could undertake because it will eliminate the 20% cap on revenue requirement for qualified franchise candidates. Under the proposed revisions to the Rule, the sophisticated investor exemption will be available in three situations: a) when the franchisee’s initial investment, excluding financing received from the franchisor and real estate costs, totals more than $1,000,000; b) when the franchisee itself has a net worth of over $5,000,000 and has been in business for more than five years; and c) for officers, owners and managers who own more than 50% of the franchisor. While it is unlikely that the third prong of the exemption will be useful to franchisors on a recurring basis, the proposed exemptions for sophisticated and large franchisees will be.

Under the sophisticated investor exemption, the investment required to meet the $1,000,000 threshold is limited to the initial investment, not the investment required over the life

51 Id. at § 31106(b).
53 Id.
54 Id.
of the franchise agreement, whether through a single unit purchase or a multi-unit transaction. In addition, the proposed Rule will require that the threshold investment come from a single investor, rather than a pool of investors. To qualify for this exemption the prospective franchisee must sign an acknowledgement indicating that it is not receiving disclosure because its investment satisfies the investment threshold. The Commission proposes the following language: “The franchise sale is for more than one million dollars, excluding real estate costs, and thus is exempted from the Commission’s Franchise Rule disclosure requirements pursuant to 16 C.F.R. § 436.8(a)(5)(i).” Regardless of whether this particular recommendation is adopted, it is a good idea to include in the particular franchise agreement a provision conspicuously setting forth the basis for any given exemption on a state and federal level.

The Commission’s Staff Report recommends that the large franchisee exemption apply to all business entities and indicates that the exemption will apply to individuals as well. The primary shortcoming of the large franchisee exemption requirement is that entities with less than five years of business experience cannot take advantage of it. This is a particular problem in the hotel industry, where it is commonplace for hotel owners to create special purpose entities to own individual hotels, normally for limitation of liability and tax reasons. In response to negative comments on this particular issue, the Staff Report recommends that subsidiaries of larger corporations aggregate the business experience of parent or affiliated corporations.

D. Renewal of an Existing Franchise Agreement

Each registration state, with the exception of South Dakota, Minnesota, Virginia and Washington, exempts renewal of an existing franchisee if there is no interruption in the operation of the franchised business. California, Hawaii, Indiana, Michigan and Rhode Island also require that there be no material change to the franchise agreement. Once again, given that it is unlikely that a franchisor will not make any material change to a franchise agreement over any extended period of time, the utility of this exemption is questionable. It may, however, come in handy for a small franchisor that does not wish to maintain registrations for a handful of long-time, franchisees.

E. Single Licenses/Isolated Sales Exemption

1. Application under the FTC Rule

Under the FTC Rule, an agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where the license is the only one of its general nature and type to be granted by the licensor with respect to the

55 Id. at 242.
56 Id. at 243.
57 Id. at 245.
58 Id. at 246, n. 792.
59 Id. at 246.
mark is not a franchise. Single licenses that qualify for this exclusion differ from business format franchises in that the licensor does not exercise any control over the licensee’s method of operation, but simply the quality of the product produced by the licensee. Other types of single trademark licenses that are excluded from the definition of franchise include “one-on-one” licensing agreements, trademark licenses for “collateral” products, and license agreements entered into as a consequence of settlement negotiations in a trademark infringement action.

To take advantage of this exclusion, the license must be exclusive. In a staff advisory opinion the Commission concluded, “Where the licensor reserves the right to offer additional licenses in the future, then the Commission will conclude that the franchisor did not intend to grant a single, exclusive license to the licensee. For this reason, we would also expect the grant of an exclusive right to use the licensor’s mark to be on a national basis. Where a licensor establishes regional or state-wide exclusive licenses, the Commission can reasonably conclude that the licensor is reserving the right to offer multiple licenses in the future.” Although the license must be exclusive, the licensee need not be restricted to operation of one unit.

2. Application under State Statutes

Indiana, Minnesota, New York and Washington all have similar exemptions. Indiana provides for an exemption if the franchisor does not sell more than one franchise every 24 months. Minnesota exempts one sale every 12 months, provided that the franchisor has not advertised the franchise for sale within the state, all franchisee’s fees are escrowed until the franchisor’s pre-opening obligations are met and the franchisor files written notice of its intent to utilize this exemption. New York exempts a solitary sale that is directed to “not more than two persons” if the offer is exclusive, no commission is paid for soliciting the franchisee and the franchisor is either domiciled in the state or consents to service of process. Washington’s statute is somewhat different, providing for an exemption for isolated sales if the franchisor provides disclosure documents to the prospective franchisee, has no franchises located outside the state; grants no more than three franchises within Washington, does not advertise the franchise offering and the franchisee is represented by an attorney or certified public accountant. Clearly this is a fact intensive process. A checklist setting forth requirements by state is in Exhibit L.

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64 Id.
65 Informal Staff Advisory Opinion 00-03 (March 20, 2000).
66 Informal Staff Advisory Opinion 02-01 (January 10, 2002).
68 Ind. Code § 23.3-2.5-3.
69 Minn. Stat. § 80C.03(e).
F. Exemptions from Registration Only: Experienced/High Net Worth Franchisor

Franchisors able to meet certain threshold requirements relating to minimum net worth and franchising experience are exempt from registration, but not disclosure, in California, Illinois, Indiana, Maryland, New York, North Dakota, Rhode Island, South Dakota and Washington. As with the fractional franchise exemption, the theory behind this exemption is that it is unnecessary to use government resources to protect the investing public from a seasoned franchisor, in part because experienced franchisors are more likely to be capable of responding to franchisee complaints by paying monetary damages. Partly for this reason, California recently announced that it was moving to a "risk based" review process. Filings deemed to be low risk receive a short form review to determine whether the basic filing requirements have been met, while filings with a greater level of risk receive a more thorough review. The fact that a franchise has been previously registered is one of the numerous factors pointing to diminished risk.

Under the current law, California, Illinois, Indiana, New York and Washington require a franchisor to have either a minimum net worth of $5,000,000 or a net worth of $1,000,000 and a parent company with a net worth of $5,000,000. Maryland, North Dakota, Rhode Island and South Dakota each require a minimum net worth of $10,000,000 or $1,000,000 with a parent company’s net worth of $10,000,000. Usually, the parent must own 80% of the franchisor.

New York has a second large franchisor exemption that does not require disclosure. Under this exemption, if the franchisor has a net worth of more than $15,000,000 dollars or has a net worth of $3,000,000 and a parent with a net worth of $15,000,000, the sale is exempt from the registration and disclosure laws provided that the franchisor provides the prospective franchisee with its principal place of business and agent for service of process in the state.

Except in New York, which has no experience requirement, and South Dakota, which requires at least 25 years of operational or franchising experience, to qualify for the exemption in each of the states offering it a franchisor or its parent company must have five years of operational or franchising experience. In addition, each state requires that a qualifying franchisor have a minimum of 25 units in operation throughout the five-year qualifying period. Rhode Island and South Dakota require that all of these be franchised locations. California and Illinois permit company-owned units to count toward the total. In some states, changes in the ownership or organization of a franchisor or its parent company could result in loss of the requisite operational experience and thus of this exemption. A table comparing the requirements in various states is attached as Exhibit M

G. Exemptions by Order

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74 Illinois requires a guaranty by the parent. California requires a guaranty if the franchisor’s net worth is established through unaudited financial statements.

75 Rhode Island and South Dakota also require a guaranty by the parent.

Several states permit the regulatory authority to exempt certain franchise sales by administrative order. The Federal Trade Commission is similarly empowered to grant franchisors an exemption from the provisions of the franchise Rule, if the Commission finds that the application of the Rule is not necessary to prevent unfair or deceptive acts or practices.\textsuperscript{77}

Indiana, Maryland, Minnesota, New York, Rhode Island and Wisconsin permit the administrator to grant exemptions if he or she finds that registration of the franchise offering is not: a) within the purposes of the law; or b) appropriate in the public interest or for the protection of investors.\textsuperscript{78} Hawaii’s statute is slightly different, requiring the authorized official to decide whether “information which would be required to be disclosed would be material in determining whether the prospective franchise has a reasonable chance of success” and whether the exemption is in the public interest.\textsuperscript{79} Illinois allows an exemption by order from both registration and disclosure if the director finds that the enforcement of the Act is not necessary: a) in the public interest, b) for the protection of any class of prospective franchisees, c) by reason of the investment involved or d) because of the limited character of the offering.\textsuperscript{80}

To obtain these discretionary exemptions, states typically require the franchisor to submit a written request to the state regulator describing the class of franchises for which an exemption by order is sought and the reasons why an exemption is appropriate. In Indiana, “any interested party” may apply for a ruling by the Commissioner as to whether “any proposed offer or sale is entitled to an exemption with the submission of “a verified statement of all material facts relating to the proposed offer or sale, which verified statement shall be accompanied by a request for a ruling as to the particular exemption claimed, together with a filing fee of fifty dollars ($50.00).”\textsuperscript{77}

In Indiana, “any interested party” may apply for a ruling by the Commissioner as to whether the proposed offering or sale is entitled to an exemption. The application must include\textsuperscript{81}

In Maryland, the franchisor must file a request for an order of exemption describing the transaction or class of franchisees for which an exemption is sought. The franchisor must also demonstrate that registration is not necessary to protect the public interest and represent that the franchisor making the request will provide additional information as requested by the Commissioner. An exemption may not be claimed unless the franchisor files with the Commissioner Form F-1 consent to service of process, and an undertaking to provide additional information, pays a fee and files one copy of its offering circular.\textsuperscript{82} Maryland is in the process of amending its registration and disclosure statute. Under the amendment, in addition to the requirements set forth above, the franchisor would be required to file a copy of its franchise offering circular.\textsuperscript{83}

\textsuperscript{77} 57 U.S.C. § 57(a)(g).
\textsuperscript{78} Ind. Code § 23-2-2.5-5; Md. Code Regs. 02-08-10(g); Minn. Stat. § 80C.03(g); N. Y. Gen. Bus. Law § 684.1; R.I. Gen. Laws § 19-28.1-6(j); Wis. Stat. § 553.25.
\textsuperscript{79} Haw. Rev. Stat. § 482E-4(b).
\textsuperscript{80} 815 Ill. Comp. Stat. § 705(9).
\textsuperscript{81} Ind. Code § 23-2-2.5-8.
\textsuperscript{82} Md. Code Regs. 02.02.08.10(G), et seq.
\textsuperscript{83} Id.
Illinois has a particularly demanding submission requirement which requires that the franchisor replicate much of the information contained in its offering circular (in addition to giving the state a copy of the offering circular) as well as supply copies of all promotional material, listing all sales and advertisements in Illinois since 1974, all certified by the franchisor.\footnote{Ill. Admin. Code tit. 14, § 200.201.} Hawaii, Minnesota, New York and Rhode Island do not prescribe the form the request for an exemption from registration and disclosure must take.

This exemption might be useful to franchisors that have been merged into or acquired by other companies and have lost the large franchisor exemption. It appears to be woefully underutilized, but in the author's personal experience, well reasoned requests for exemptions have been well received by state regulators. The purpose of the franchise registration and disclosure statutes is to protect the average investor from fly-by-night franchisors or huge conglomerates that may take advantage of an inexperienced investor, not to protect Fortune 500 companies from one another.

\section*{H. Penalties for Violating Exemption Requirements}

Failure to provide required disclosures in the absence of an exemption under the FTC Rule or state law exposes the franchisor, its owners, employees and franchise brokers to significant civil and criminal liability.\footnote{L. Vines, G. Bishop and R. Barkoff, \textit{Damage Control for Violations of Registration and Disclosure Obligations}, 24 Franchise L.J., (Winter 2005) [hereinafter \textit{Damage Control}].} Although there is no private right of action under the FTC Rule, the Commission is empowered to grant injunctive relief, freeze assets or assess civil fines of up to $11,000 per violation in addition to awarding monetary damages and requiring rescission or reformation of the franchise agreement.\footnote{Section 13(b) (15 U.S.C. § 53(b)). Section 5(m)(1)(A) (15 U.S.C. § 5(m)(1)(A)). Section 19(b) (15 U.S.C. § 5).}

There are similar penalties for violating state franchise registration and disclosure statutes. Virtually all states provide for the recovery of actual damages (including royalty payments and initial fees, attorney’s fees and costs) and punitive damages, grants of injunctive relief, enjoining sales activity, rescission of the franchise agreement including restoration of the franchisee to the economic position it was in before the execution of the franchise agreement and imposition of criminal penalties.\footnote{See, \textit{e.g.}, Cal. Corp. Code § 31410; Haw. Rev. Stat. § 11482E-10.6; Ill. Comp. Stat. § 705/25; Ind. Code § 23-2-2.5-37; R.I. Gen. Laws § 19-28.1-20; Wis. Stat. § 553.61(1).}

There should be no doubt in the franchise professional’s mind that the FTC and state examiners take violation of these laws very seriously and will use their enforcement powers. A review of cases set forth on the FTC’s website, www.ftc.gov, demonstrates the agency’s willingness to punish errant franchisors. For example, a California franchisor of an air conditioning and heating equipment franchise was assessed a fine of $3,000,000 for repeatedly failing to provide disclosure documents to franchisees and an Internet franchisor was assessed a fine of $4,000,000 and its principal officers were barred from selling franchises for a ten-year period for making false earnings claims. The FTC has also, provided for “avalanche clauses” in consent decrees by which the franchisor and/or its principals agree to a much larger consent judgment in the event the defendants misrepresented their financial condition. Finally, in one particular case, the violation of the FTC Rule and the subsequent violation of a court order enjoining the principals of a franchise company from selling franchises led to the imprisonment of one of the principals for a six-year term.

In this regulatory scheme, how should a franchisor proceed if it has mistakenly assessed the eligibility of a transaction for exemption or has inadvertently committed another violation of the franchise sales laws?

First, rescission of the franchise agreement is a remedy that is available to the franchisee involved, under some circumstances, in every registration state. In some states, rejection of an offer of rescission bars the later recovery of damages on this theory. Considering that rescission requires placing a franchisee in the same economic position it was in prior to the sale, the monetary damage award against the franchisor could run into hundreds of thousands of dollars or more. However, at the inception of the relationship, the only sum that would have to be paid to the franchisee to put the parties back in their pre-agreement positions is the initial franchise fee. Often, a franchisee against whom a violation has been committed will not wish to complain during the “honeymoon phase” of the franchise relationship. In New York, Illinois, North Dakota and Washington, a franchisee may not maintain suit against its franchisor if the franchisor has made a written offer to refund the consideration paid together with interest, less the amount of income earned by the franchisee from the franchise. Further, evidence that the franchisor has attempted to make an affected franchisee whole will be favorably received by the regulators in the state in question if the situation comes to their attention. Taking these factors into account, a prudent franchisor that becomes aware early on that it has run afoul of the franchise sales laws in these states should seriously consider offering rescission to affected franchisees to preclude at least one avenue for collecting damages.

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90 For a discussion on the individual statutes of limitations in the registration states, see Cynthia Gartman, Shelly Harris-Horn and Karen Satterlee, Registration Basics, International Franchise Association’s 37th Annual Legal Symposium (2004).


Practitioners may advise their clients to self-report to federal and state regulators. In the Franchise Law Journal article, *Damage Control for Violations of Registration and Disclosure Obligation*, the authors asked the regulators what the most important factors were in determining the appropriate penalty for registration and disclosure violations. Those factors included: “(a) franchisor’s voluntary report of the violation, (b) litigation and violation history of the company and its principals, (c) franchisor’s proposal of a plan to correct its wrongdoing, (d) number of franchises sold in the state, (e) actions taken by other state regulators, (f) how long ago the franchises were sold, (g) the franchisor’s good faith belief that it was not subject to the franchise law, (h) amount of franchise fees received by the franchisor, (i) size of investment of franchisees, (j) franchisor’s reliance on bad advice of counsel, and (k) number of franchises sold in other states.” Additional factors included the relative sophistication of the franchisee, whether any effort was made to comply with the law, whether fraud was involved and the franchisor’s candor in providing to the regulator material relevant to the violation as requested.

Another wise practice is to add a limitation of actions to the franchise agreement, shortening the limitations period to one year. Remember, however, that contractual limitations periods relating to common law claims have been upheld by several jurisdictions in franchise cases, they are less likely to be upheld for statutory claims. Many states, registration and otherwise, have enacted “anti-waiver” provisions that may invalidate these provisions for any claims relating to compliance with state statutes. A franchisor should consider whether carving out an exception from the provision for royalties and other fees due under the franchise agreement is worth the risk that a court or arbitrator will find that the one-sided nature of the clause makes it unconscionable.

VII. CONCLUSION: PROVIDING EASY TO USE DISCLOSURE INSTRUCTIONS AND PACKAGES

A crucial function of a transactional franchise practice is to provide franchisor clients with easy to use disclosure instructions and packages. Too often, however, we discover that our clients have misused or failed to use or preserve the materials we have prepared for their protection. There are a number of reasons why this can occur:

- If we are relying solely on written disclosure instructions, we have not taken into account that many bright, creative business people do not read.
- Often small, new franchisors delegate franchise administration functions, including distribution of disclosure documents and franchise compliance record-keeping, to the least experienced, lowest paid clerical personnel on their staff.

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94 *Supra* footnote 84

95 *Damage Control* at p. 192.

96 Id. at 193.


• Members of franchisor management may have a confused perception of the legal relationships described in their own franchise documents.

• Franchisors that have started as small companies and grown in size may have outgrown record-keeping procedures and facilities that were previously adequate.

Our excellent franchise documents are of no use to our clients or their franchisees if they are misused, misunderstood or misplaced. The conduct of an excellent transactional franchise practice requires a constant effort to error-proof the manner in which our clients use the legal work product we deliver. There is no single solution to the myriad ways in which the system can break down, but here are a few ideas that can help:

• Make instructions readable. Keep them short and simple. Separate ideas into separate paragraphs. Some people never read paragraphs that are more than two sentences long. Make liberal use of underlining and boldface to emphasize key points, such as the fact that in Illinois the disclosure period is 14 calendar days instead of 10 business days.

• Use email messages, telephone calls and monthly status reports to repeat, explain and reinforce your disclosure instructions (sample monthly client status reports are attached at Exhibit N).

• Prepare fully assembled, ready-to-use disclosure packages. Providing a client with package components and assembly instructions is a recipe for disaster. How many of us have seen an offering circular with a page stating, “INSERT FINANCIAL STATEMENTS HERE” and no financial statements?

• Use leave-outs (blanks followed by bracketed, italicized instructions as to what goes in the blanks) for any variables that client personnel must insert in agreements, such as the date of the agreement of the name and address of the franchisee. Give a signing checklist (See Exhibit O) to your clients' franchise administrator to make it more likely that all blanks will be completed.

• Provide separate copies of agreements, in addition to those attached as exhibits to the offering circular, for use in preparing signature copies of agreements.

• Travel to the franchisor’s headquarters and conduct refresher training for franchise sales and administration personnel periodically. Remember, most people do not remember anything that has not been repeated by a speaker at least three times.

• Conduct periodic audits of franchisor compliance records. What the franchisor's management believes is taking place and actual disclosure and record-keeping practices may differ remarkably. Document your findings in a written memorandum. Make specific recommendations based upon the client's needs and capabilities.

• Prepare administrative form documents and checklists for your client’s internal use as needed. Assist franchisors to design workable record-keeping systems. Remember, in many cases, if you do not do it, no one will.
### EXHIBIT A
**CONTACT LIST – STATE EXAMINERS**

<table>
<thead>
<tr>
<th>STATE</th>
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Toll Free: (866) 275-2677  
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<td>Mary Wells, David Cohen</td>
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## EXHIBIT B
### INITIAL FRANCHISE REGISTRATION FILING COMPONENTS

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<th>State Specific Material</th>
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Provided by Franchise Law Team

1: State franchisor’s fiscal year end in cover letter.

3: Include state specific addendum to offering circular.

4: Include state specific addenda to franchise agreement if your agreement conflicts with state law.

5: Include “Guaranty of Performance,” if applicable.

6: File “Notice of Intention” to grant franchises with Attorney General. Place “Special Notice to Franchisees” directly after cover page of UFOC.

7: Several states have exemptions from the advertising review requirement for certain categories of advertisements.

8: Include Form E for immediate effectiveness.
<table>
<thead>
<tr>
<th>State</th>
<th>Business Opportunity Exemption Filing Components</th>
<th>Filing Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>CT</td>
<td>File a copy of the federally registered trademark or servicemark registration certificate (issued by U.S. Patent and Trademark Office) with the Securities &amp; Business Investment Division, 260 Constitution Plaza, Hartford, CT 06103-1800; Telephone No: 1-800-831-7225.</td>
<td>--</td>
</tr>
<tr>
<td>FL</td>
<td>File &quot;Franchise Exemption Application&quot; with Florida Department of Agriculture &amp; Consumer Services, Attn: Finance and Accounting, May Building, Rm 121, 407 South Calhoun St., Tallahassee, FL 32399-0800 (If application is sent by delivery service). The mailing address for standard mail is: Florida Department of Agriculture and Consumer Services, Post Office Box 6700, Tallahassee, FL 32314-6700; Telephone No: 1-800-435-7352 (within Florida), 1-850-488-2221 (outside Florida). Form available at <a href="http://www.doacs.state.fl.us/onestop/forms/10500.pdf">http://www.doacs.state.fl.us/onestop/forms/10500.pdf</a></td>
<td>$100</td>
</tr>
<tr>
<td>NE</td>
<td>File &quot;Seller Assisted Marketing Plan Exemption Notice&quot; and UFOC with the Nebraska Department of Banking &amp; Finance, Commerce Court1230 'O' Street, Suite 400, Lincoln, NE 68508-1402. (For a notice of your effective date, include a self-addressed stamped envelope and a copy of the Exemption Notice). Form available at <a href="http://www.ndbf.org/busopp/index.html">http://www.ndbf.org/busopp/index.html</a></td>
<td>$100</td>
</tr>
<tr>
<td>TX</td>
<td>File a notice containing (i) the name of the franchisor, (ii) the name under which the franchisor intends to do business, and (iii) the franchisor's principal business address. Mail to Secretary of State, Statutory Documents Sections, 1019 Brazos, Austin, TX 78701. (For a stamped copy of your notice with the effective date, include a self-addressed stamped envelope and a copy of the notice).</td>
<td>$25</td>
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<tr>
<td>UT</td>
<td>File a notice stating that the franchisor is in substantial compliance with the requirements of the FTC Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures. The notice must state: (i) the name of the applicant; (ii) the name of the franchise; (iii) the name under which the applicant intends to or does transact business, if different than the name of the franchise; (iv) the applicant's principal business address; and (v) the applicant's federal employer identification number. Mail notice to Department of Commerce, Division of Consumer Protection, 160 East 300 South, Salt Lake City, UT 84114-6704. (For a stamped copy of your notice with the effective date, include a self-addressed stamped envelope and a copy of the notice).</td>
<td>$100</td>
</tr>
</tbody>
</table>

1. Assumes franchisor meets particular qualifications for exemption from registration under the business opportunity law of the specified state.

2. In Connecticut, North Carolina and South Carolina, you have to register under each state's Business Opportunity Law if you do not have a registered trademark or service mark.
REFERENCES

California:  www.corp.ca.gov/pub/listdocfr.htm
CA Corporations Code '31500 (fees), 31156 & 31157 (advertising)

Hawaii:  http://www.hawaii.gov/dc.ca/areas/sec/main/hr/
Rules under the Franchise Investment Law: '16-37, Franchise Investment Law 482E

Illinois:
http://www.ag.state.il.us/consumers/franchise_forms.html
Franchise Disclosure Act of 1987: 815 ILCS 705/1-44

Indiana:
www.in.gov/securities/faq_franchise.html
Telephone: 1-317-232-6681 Securities
Illinois Franchise Disclosure Act: IC 23-2-2.5-10.5

Maryland:
http://www.oag.state.md.us/Securities/info_for_franchisors3.pdf
Telephone: 1-410-576-6360
Maryland Franchise Regulations: 02.02.08.+

Michigan:  http://www.michigan.gov/statelicensesearch/0,1607,7-180-24786_24812-81124--,00.html

Minnesota:
http://www.revisor.leg.state.mn.us/arule/2860
Minnesota Franchise Law, Minnesota Statute Chapter 80C

New York:
http://www.oag.state.ny.us/franchise/FranchiseInfoSheet.pdf
NY State Franchise Regulations Title 13, NY Codes, Rules & Regulations, Part 200

North Dakota Franchise Investment Law (N.D.F.I.L) Chapter 51-19

Rhode Island:
Franchise Investment Act: Chapter 19-28.1
http://www.rilin.state.ri.us/statutes/title19/19-28.1/

South Dakota:
Franchise Law SDCL
http://www.state.sd.us/drr2/reg/securities/franchise.htm

Virginia:
http://www.scc.virginia.gov/division/srf/webpages/regfranchising.htm
Chapter 110: Retail Franchising Act Rules
http://leg1.state.va.us/000/reg/TOC21005.HTM#C0110

Washington:
WA Franchise Rules: WAC 460-80
http://www.dfe.wa.gov/sd/franchisefaq.htm

Wisconsin:
Chapter 553 of the Wisconsin Statutes
## EXHIBIT C
### RENEWAL FILING REQUIREMENTS

<table>
<thead>
<tr>
<th>State</th>
<th>Cover Letter</th>
<th>Facing Page</th>
<th>Supp Info Page</th>
<th>Sales Agent Forms</th>
<th>Cert Page</th>
<th>Consent To Service Of Process</th>
<th>Clean UFOC</th>
<th>Redlined UFOC</th>
<th>Auditor's Consent</th>
<th>Advertising</th>
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Provided by Franchise Law Team

1: State franchisor's fiscal year end in cover letter.


3: Include state specific addendum to offering circular.

4: Include state specific addenda to franchise agreement if your agreement conflicts with state law.

5: Include "Guaranty of Performance," if applicable.
6: File "Notice of Intention" to grant franchises with Attorney General. Place "Special Notice to Franchisees" directly after cover page of UFOC.

7: Assumes material change. If none, fee is $200 (MN) or $100 (ND).

8: Several states have exemptions from the advertising review requirement for certain categories of advertisements.

9: Include Form E for immediate effectiveness.
## RENEWAL BUSINESS OPPORTUNITY EXEMPTION FILINGS FOR FRANCHISORS

<table>
<thead>
<tr>
<th>State</th>
<th>Business Opportunity Exemption Filing Requirements</th>
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<tbody>
<tr>
<td>CT</td>
<td>No renewal required until federal trademark or servicemark expires (10 years)</td>
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<tr>
<td>FL</td>
<td>Florida sends annual renewal letter along with individualized updated renewal notice, including a specific bar code for current year. Complete renewal notice and mail to Florida Department of Agriculture &amp; Consumer Services, Attn: Finance and Accounting, May Building, Rm 121, 407 South Calhoun St., Tallahassee, FL 32399-0800 (If mailing by delivery service). The mailing address for standard mail is: Florida Department of Agriculture and Consumer Services, Post Office Box 6700, Tallahassee, FL 32314-6700.</td>
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<td>KY</td>
<td>No renewal required</td>
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<tr>
<td>NE</td>
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<tr>
<td>UT</td>
<td>File annual renewal notice with current information with Department of Commerce, Division of Consumer Protections, 160 East 300 South, Salt Lake City, UT 84114-6704.</td>
<td>$100</td>
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1: Assumes franchisor meets particular qualifications for exemption from registration under the business opportunity law of the specified state.
EXHIBIT D-1
REQUIREMENTS FOR AMENDMENT FILING COMPONENTS

A. California - “Promptly” after a material change in the information contained in the registered application, by application to amend. Section 31123. Application to amend must contain specified disclosure. Section 31125. Certain negotiated sales are exempt from registration. Cal. Corp. Code § 31123 (¶5050.071).

B. Hawaii - If any material change occurs in the information contained in the offering circular, the offering circular must be amended before further sales of the franchise are made. Haw. Rev. Stat. § 482E-3(b).

C. Illinois - Within 90 days of the occurrence of any material change in the facts that must be disclosed. Redisclosure required if material change relates to or affects franchisor or the franchisee. Amendment not required if changes merely reflect negotiated changes. 815 Ill. Comp. Stat. § 705/11.

D. Indiana - Does not require the filing of amendments, unless requested by the commissioner. Ind. Code § 23-2-2.5-10.5(e).


G. Minnesota - Within 30 days after the occurrence of any material change in the information on file with the Commissioner, by application to amend. Minn. Stat. § 80C.07.


I. North Dakota - “Promptly” after any material change, by an application to amend. N.D. Cent. Code § 51-19-07.6(a).


K. South Dakota - Within 30 days after the occurrence of any material change in the information on file, by application to amend. S.D. Cod. Laws § 37-5A-40.

L. Virginia - “Upon the occurrence” of any material change, by application to amend. 21 VA Code § 5-110-40 (¶5460.04).

M. Washington - “As soon as reasonably possible” after a material change in the condition of the franchisor or subfranchisor and after a material change in the information contained in the offering circular and in any case, before the further sale of any franchise, by application to amend. Wash. Rev. Code § 19.100.070(3).
N. **Wisconsin** - Within 30 days after the happening of any material event affecting a registered franchise, by application to amend. Section 553.31(1). If the franchisor and prospective franchisee negotiate changes in the offer or sale of the franchise, no amendment for that offer/sale is required. If the changes are material with respect to other prospective franchisees, the franchisor must amend. Wis. Stat. § 553.31(3).
## EXHIBIT D-2
### AMENDMENT FILING REQUIREMENTS

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<tr>
<td>WA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>$100</td>
<td>Note 2 and 4</td>
</tr>
<tr>
<td>WI</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>$200</td>
<td>No</td>
</tr>
</tbody>
</table>

1: Redlined changed pages only unless there are many changes.
2: Include state specific addendum to offering circular.
3: Include state specific addendum to franchise agreement if your agreement conflicts with state law.
4: Include "Guaranty of Performance," if applicable.
5: $100 for material change amendment. $25 for non-material change amendment.
6: No filing required unless Commissioner requests supplemental information.
7: File amended "Notice of Intention" to grant franchises with Attorney General. Place "Special Notice to Franchisees" directly after cover page of UFOC for MI prospects.
8: Include Form E (optional), if applicable.
9: Several states have exemptions from the advertising review requirement for certain categories of advertisements.
<table>
<thead>
<tr>
<th>TARGET DATE</th>
<th>ACTION ITEM</th>
<th>DATE ASSIGNED</th>
<th>DATE RECEIVED</th>
<th>DATE COMPLETED</th>
<th>DATE SUBMITTED TO COUNCIL</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/08</td>
<td>Initiate process</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review logbook</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review files</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Contact Project Managers/Directors</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1/4/08</td>
<td>(Team UFOC) Introduce project, establish due date</td>
<td></td>
<td></td>
<td>1/4/08</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Finance</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Marketing</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Training</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Development</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IT/Data</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Company President</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>E-mail excerpts from UFOC and/or Agreement specific to team members area of expertise</td>
<td></td>
<td></td>
<td>2/7/08</td>
<td></td>
</tr>
<tr>
<td>1/6/08</td>
<td>Check on progress with team, meet as needed</td>
<td></td>
<td></td>
<td>1/14/08</td>
<td></td>
</tr>
<tr>
<td>2/7/08</td>
<td>Receive updates, review, clarify, integrate</td>
<td></td>
<td></td>
<td>2/9/08</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Finance</td>
<td>2/7/08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Marketing</td>
<td>2/8/08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Training</td>
<td>2/7/08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Development</td>
<td>2/7/08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>IT/Data</td>
<td>2/8/08</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Input details, update charts, prepare red-line with proposed changes</td>
<td></td>
<td></td>
<td>2/11/08</td>
<td></td>
</tr>
<tr>
<td>2/10/08</td>
<td>Send revisions to legal dept or outside council</td>
<td></td>
<td></td>
<td>2/14/08</td>
<td>2/15/08</td>
</tr>
<tr>
<td>2/14/08</td>
<td>Confirm audit is in progress and on target for due date</td>
<td></td>
<td></td>
<td>2/16/08</td>
<td></td>
</tr>
<tr>
<td>2/16/08</td>
<td>Discuss with council necessary clarifications</td>
<td></td>
<td></td>
<td>2/19/08</td>
<td></td>
</tr>
<tr>
<td>2/18/08</td>
<td>Receive revised documents, review, discuss with team any modifications</td>
<td></td>
<td></td>
<td>2/21/08</td>
<td></td>
</tr>
<tr>
<td>2/21/08</td>
<td>Return documents to council with comments</td>
<td></td>
<td></td>
<td>2/21/08</td>
<td></td>
</tr>
<tr>
<td>2/28/08</td>
<td>Receive final documents, review</td>
<td></td>
<td></td>
<td>3/8/08</td>
<td></td>
</tr>
<tr>
<td>3/7/08</td>
<td>Provide auditors final red line of UFOC</td>
<td></td>
<td></td>
<td>3/10/08</td>
<td></td>
</tr>
<tr>
<td>3/9/08</td>
<td>Request checks to submit to registration states</td>
<td></td>
<td></td>
<td>3/10/08</td>
<td></td>
</tr>
<tr>
<td>3/10/08</td>
<td>Provide signature pages to President</td>
<td></td>
<td></td>
<td>3/10/08</td>
<td></td>
</tr>
<tr>
<td>3/14/08</td>
<td>Receive final audit with auditors consent. Wrap into</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date</td>
<td>Task Description</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>------</td>
<td>------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/15/08</td>
<td>Compile signature pages, checks, audit, and consent. Send to council or retain if filing in house.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/17/08</td>
<td>Prepare registration forms, revised and updated documents, signature pages, checks and consent to registration states. Send forms, updated documents, signature pages, checks for fees, auditors consent.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3/20/08</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Maintain a log book throughout the year with notes for recommended changes, challenges under current agreement, new processes.

2. Finance: Obtain total sales figures, income generated, percentages needed, prepare earnings claim as needed (Item 8, 19).

- Marketing: Reconcile marketing fund, identify allocations, and discuss revisions for marketing in future or changes to program including fee increases (Item 11).
- Training: Review training program content and requirements, modify, and confirm training provided in field, frequency and opening support (Item 11).
- Development: Review market development, identify growth plans (numbers and states), review and update opening costs, time lines established for site selection and opening. Review challenges and modify default/termination if needed. Review sales personnel status, complete forms if needed (Item 7, 11).
- IT-Data: Reconcile store openings, closings, transfers etc. Prepare list of operators, review computer requirements for franchisees, (Item 20, Item 11).
- President: Review any litigation which may be required to be included in Item 3.
- Please note that this checklist assumes a December 31 fiscal year end.

**EXHIBIT F**
FLOWCHART FOR GATHERING CLIENT INFORMATION
EXHIBIT G
GRAPHIC REPRESENTATION OF SOFTWARE TICKLERS
EXHIBIT H

UFOC RENEWAL CHECKLIST AND RENEWAL FILING COMPONENTS
(Not a substitute for reviewing everything in your documents)

ITEM 1
☐ Description of affiliate relationships correct?
☐ Addresses correct?
☐ Number of company stores correct?

ITEM 2
☐ Are all corporate directors or people in similar roles listed?
☐ Are all franchise salespeople who are not employees listed as brokers?

ITEMS 3 AND 4
☐ Any new litigation?
We need this year’s Disclosure Certification forms from everyone listed in Item 2.

ITEM 7
☐ Are the figures based on current information?
☐ Is everything in the footnotes true?

ITEM 8
If you or an affiliate sell anything to franchisees or receive any revenue because of franchisee purchases:
☐ Total revenue for the year (what you told the auditor)
☐ Total revenue from franchisee purchases

ITEM 11
☐ Training table still accurate?

If you have an advertising fund (fund, not program):
☐ What percentage of this year's fund money was spent on: media space and time, production of advertisements, administration (reimbursements for your out-of-pocket overhead), other (describe)?
☐ Are the specifications for computer hardware and software up-to-date?

ITEM 13
☐ Has the status of your federal trademark registration application changed?
☐ Have you filed any affidavits about existing registrations this year?
ITEM 19
If you have an earnings claim:
 □ All figures must be updated by at least 12 months

ITEM 20
□ Write directly onto the Franchisee table the correct figures for your most recently ended fiscal year.
□ Write directly into the Company-Owned or Company-Related table the correct figures for your most recently ended fiscal year.
□ Mark up your three rosters by CROSSING OFF every unit that has closed or left the system from the beginning of your last fiscal year until the present and put the (best guess as to month and year) date in the margin. Put an asterisk next to every unit that has been transferred.
□ Check to make certain that you have listed the correct names of your Depositors and Franchisees on last year’s rosters. The correct names are what they actually signed on their agreements. Correct any mistakes.
□ If you use a Deposit Agreement, prepare a typed or printed list of new Depositors added during your most recently ended fiscal year, including the accurate name (what they signed on the agreement), complete address and telephone number of each one. Add the signing date to each listing.
□ Prepare a typed or printed list of new Franchisees added during your most recently ended fiscal year, including the accurate name, complete address and telephone number of each one. Add the signing date and, for each listing for a unit that is open, the opening date.
□ Prepare a typed or printed list of new Company-owned or Company-Related units added during your most recently ended fiscal year, including the complete address of each one. Add the opening date.

NOTE: Every year we spend countless miserable hours attempting to reconstruct and extract roster information from client printouts, spreadsheets, etc., that include all franchisees or that include company stores or that are missing data. Please do not expect us to determine your new franchisees by process of elimination or comparison.
□ Prepare a typed or printed list of all franchisees who have closed or transferred their units or otherwise left the system during the most recently ended fiscal year or whom you have not heard from during the last ten weeks. For individuals, list their last known home address and telephone numbers. Add the month and year they left the system.
□ Total the number of listings on each list and subtotal them by state if appropriate. Compare your totals to the numbers you wrote in on the tables in Item 20. If they are not the same, please explain any differences (for example, if your roster of franchisees includes new franchisees from after the end of your last fiscal year and Item 20 does not).
### EXHIBIT I
FRACTIONAL FRANCHISE EXEMPTION REQUIREMENTS BY STATE

<table>
<thead>
<tr>
<th>State</th>
<th>Experience Requirement</th>
<th>Gross Sales Restriction</th>
<th>Other</th>
<th>Statute Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td>N/A</td>
<td>16 C.F.R. 436.2(h).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1) the franchised business is to be operated from the same business location as the prospective franchisee's existing business</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td></td>
<td></td>
<td>2) the prospective franchisee is not controlled by the franchisor</td>
<td>Cal. Corp. Code § 31108.</td>
</tr>
<tr>
<td>Illinois</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td>Excluded from the definition of franchise</td>
<td>Ill. Comp. Stat. § 705/3(1).</td>
</tr>
<tr>
<td>Indiana</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td>Excluded from the definition of franchise.</td>
<td>1 IN Code § 23-2-2.5-1(a).</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>1) Must be current franchisee within last 18 months.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2) Can not purchase franchise for the purpose of resale.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3) Requires the delivery of a UFOC if the franchisor has one for any state.</td>
<td>Mich. Comp. Laws § 445.1506(h).</td>
</tr>
<tr>
<td>Michigan</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td>N/A</td>
<td>Minn. Stat. § 80(c)03(f).</td>
</tr>
<tr>
<td>Minnesota</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td>N/A</td>
<td>VA Code § 13.1-559(B).</td>
</tr>
<tr>
<td>Virginia</td>
<td>N/A</td>
<td>Capped at 20% of gross sales</td>
<td></td>
<td>Wis. Stat. § 553.22.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>No less than 2 years</td>
<td>Capped at 20% of gross sales</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
EXHIBIT J
SAMPLE LICENSEE QUALIFICATION WORKSHEET (FFFE)

GENERAL INFORMATION
Please identify the appropriate brand for this deal:

☐ ☐

Please check appropriate market segment:
☐ C&U ☐ Gaming: Non-tribal ☐ OS&R ☐ Grocery
☐ Lodging ☐ Gaming: Tribal ☐ Military ☐ Other:

Please identify if licensed sites will be in:
☐ Continental United States ☐ Canada ☐ Both US and Canada

COMPANY INFORMATION:
Legal Corporate Name of Property OWNER: (This will be the entity that will be signing the Licensing Agreement).
Legal Corporate Name of Property OPERATOR (if different) (This will be the entity that will be signing the Licensing Agreement/Joinder):
If OWNER & OPERATOR ARE DIFFERENT:
Joinder Needed: ☐ Yes OR ☐ No
If “No”, please explain why:

________________________________________________________________________

CNDA Coordination Agreement ("CACNDA") Required by Owner: Yes / NO

DEVELOPMENT AND ECONOMIC TERMS FOR DEAL:
Number of locations:
☐ 1 to 4 Stores ☐ 5-9 Stores ☐ 10-49 Stores ☐ 50+ Stores
Name of Locations:

License Fee per store (US $) ☐ ☐ ☐ ☐ ☐
Royalty: ☐ ☐ ☐ ☐ ☐
Advertising Fee ☐
Marketing Self-Spend
Explain Exception NONE
Fees (if any):

<table>
<thead>
<tr>
<th>CREDIT APPROVAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Credit Check</td>
</tr>
<tr>
<td>Approval:</td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

Reviewed and Approved by _______________________

(Enter Financial Services Contact)

☐ NO- Licensee does not pass FINANCIAL Services approval.
If no, was approval received to move forward: ☐ YES  or  ☐ NO

<table>
<thead>
<tr>
<th>FEDERAL, STATE AND BUSINESS REQUIREMENTS/ APPROVALS</th>
</tr>
</thead>
<tbody>
<tr>
<td>FFF&amp;E Approval:</td>
</tr>
<tr>
<td>☐ YES, Meets WA Safe Harbor Rule</td>
</tr>
<tr>
<td>☐ YES, BUT does not meet WA Safe Harbor Rule.</td>
</tr>
<tr>
<td>☐ NO- CAN NOT PROCEED</td>
</tr>
</tbody>
</table>

If no, please explain why:

A. Federal requirements:

<table>
<thead>
<tr>
<th>Notes:</th>
<th>Meets or exceeds: (Y/N)</th>
<th>Explanation/support:</th>
</tr>
</thead>
</table>

1. Company (or any of its directors or executive officers) has been engaged in a food/beverage service business (substantially similar to the Starbucks/franchisor Stores to be developed by Company) for [substantially in excess of] 99 two (2) years

99 Legal requirement is “2 years;” we require “substantially in excess of 2 years” as a business decision.
2. Company anticipates that the incremental revenue attributable to its operation of the Starbucks/franchisor Stores pursuant hereto are likely to represent less than twenty percent (20%) of the aggregate revenues of Company. This should be pro-forma for the first 2 years of deal – base computation on expected revenue from all stores expected to be built out in this period, divided by most recent actual total revenue for Company.

B. State Requirements:

<table>
<thead>
<tr>
<th>State’s requirement(s):</th>
<th>Meets or exceeds: (Y/N)</th>
<th>Explanation/support:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Washington State 100</td>
<td>Company assets greater than $5mm</td>
<td></td>
</tr>
</tbody>
</table>

Requirements of other states (check list of unusual state regulations, next page) – this includes Company’s principal place of business (state), state of incorporation, and state(s) where Stores will be located.

State of incorporation:
State where headquarters is domiciled.
State where the Starbucks Store will be located:

C. Starbucks corporate business requirements:

Meets or exceeds:
(Y/N) Explanation/support:

Company has net worth101 greater than $5mm

---

100 Even if the licensee has no nexus to Washington (i.e., is not domiciled, headquartered, incorporated and does no business in Washington), Washington law may apply.

101 Net worth equals Assets minus Liabilities and is also called “Shareholders' Equity.”
### EXHIBIT K
### SOPHISTICATED FRANCHISEE EXEMPTIONS*

<table>
<thead>
<tr>
<th>State</th>
<th>High Net Worth Franchisee</th>
<th>Large Investments</th>
<th>Prior Business Experience</th>
<th>Franchisor Insider</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under proposed Federal Rule</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>Cal. Corp. Code § 31106 (a) and (b); Cal. Corp. Code § 31109, et seq.</td>
</tr>
<tr>
<td>California</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td>California Code § 31106 (a) and (b); Cal. Corp. Code § 31109, et seq.</td>
</tr>
<tr>
<td>Maryland</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td>Md. Regs. Code Tit. § 02.08.10(E)(1).</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>Yes</td>
<td></td>
<td></td>
<td></td>
<td>Wis. Stat. § 553.235(1)(a).</td>
</tr>
</tbody>
</table>
## EXHIBIT L
### ISOLATED SALES/SINGLE LICENSE EXEMPTION

<table>
<thead>
<tr>
<th>State</th>
<th>Number of Franchises Permitted</th>
<th>Time Frame Restriction</th>
<th>Other Requirements</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Rule</td>
<td>1</td>
<td>None – one offering only</td>
<td>License granted must be exclusive</td>
<td>16 C.F.R. § 436.2(a)(4)(iv).</td>
</tr>
<tr>
<td>Indiana</td>
<td>1</td>
<td>Every 24 months</td>
<td>1) No advertising franchises within the state</td>
<td>Ind. Code § 23.3-2.5-3.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>2) Franchise fees are escrowed until franchisor pre-opening obligations are met</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3) Advance notice of exemption filed</td>
<td></td>
</tr>
<tr>
<td>Minnesota</td>
<td>1</td>
<td>Every 12 months</td>
<td></td>
<td>Minn. Stat. § 80C.03(e).</td>
</tr>
<tr>
<td>New York</td>
<td>1</td>
<td>None – one offering only</td>
<td>1) The offer is exclusive</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>3) Franchisor consents to service of process</td>
<td></td>
</tr>
</tbody>
</table>
# EXHIBIT M
## EXPERIENCED/HIGH NET WORTH FRANCHISOR EXEMPTION

<table>
<thead>
<tr>
<th>State</th>
<th>Net Worth Requirement</th>
<th>Experience Requirement</th>
<th>Other</th>
<th>Citation</th>
</tr>
</thead>
<tbody>
<tr>
<td>California*</td>
<td>The franchisor must either have a minimum net worth of $5 Million dollars or a net worth of $1 Million dollars and a parent company with a net worth of $5 Million dollars. The parent must sign a guaranty if financials are unaudited.</td>
<td>5 years of operational franchise experience.</td>
<td>The franchisor or parent must have a minimum of 25 franchisees during this period or conducted a similar business that is the subject of the franchise.</td>
<td>Cal. Corp. Code § 31101.</td>
</tr>
<tr>
<td>Illinois*</td>
<td>The franchisor must either have a minimum net worth of $5 Million dollars or a net worth of $1 Million dollars and a parent company with a net worth of $5 Million dollars. The parent must sign a guaranty if financials are unaudited.</td>
<td>5 years of operational franchise experience.</td>
<td>The franchisor or parent must have a minimum of 25 franchisees during this period. Three years of experience may be substituted for conducting a business substantially like the franchise.</td>
<td>Ill. Admin Code Tit. 14 § 200.202(e).</td>
</tr>
<tr>
<td>Indiana</td>
<td>The franchisor must either have a minimum net worth of $5 Million dollars or a net worth of $1 Million dollars and a parent company with a net worth of $5 Million dollars. Financials must be audited.</td>
<td>5 years of operational franchise experience.</td>
<td>The franchisor or parent must have a minimum of 25 franchisees during this period or conducted a similar business that is the subject of the franchise.</td>
<td>Ind. Code § 23-2-2.5-3(a).</td>
</tr>
<tr>
<td>Maryland*</td>
<td>The franchisor must have a minimum net worth of $10 Million dollars or $1 Million dollars with a parent company’s net worth of $10 Million dollars. Financials must be audited.</td>
<td>5 years of operational franchise experience.</td>
<td>Must have a minimum of 25 franchisees during this period.</td>
<td>Md. Regs. Code Tit. 02 §02-08-10(d).</td>
</tr>
<tr>
<td>New York</td>
<td>The franchisor must either have a minimum net worth of $5 Million dollars or a net worth of $1 Million dollars and a parent company with a net worth of $5 Million dollars. Financials must be audited.</td>
<td>None</td>
<td></td>
<td>N. Y. Gen. Bus. L. § 684(2).</td>
</tr>
<tr>
<td></td>
<td>In the alternative, the franchisor may have $3 Million dollars per audited statement with a parent net worth of $15 million per audited statement.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota*</td>
<td>The franchisor must have a minimum net worth of $10 Million dollars or $1 Million dollars with a parent company’s net worth of $10 Million dollars. Financials</td>
<td>5 years of operational franchise experience.</td>
<td>The franchisor or parent must have a minimum of 25 franchisees during this period or conducted a similar business that is the subject of the franchise.</td>
<td>N. D. Cent. Code § 51-19-04(1).</td>
</tr>
<tr>
<td>State</td>
<td>Net Worth Requirement</td>
<td>Experience Requirement</td>
<td>Other</td>
<td>Citation</td>
</tr>
<tr>
<td>--------------</td>
<td>---------------------------------------------------------------------------------------</td>
<td>------------------------</td>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------</td>
</tr>
<tr>
<td>Rhode Island*</td>
<td>The franchisor must have a minimum net worth of $10 Million dollars or $1 Million</td>
<td>5 years of</td>
<td>The franchisor or parent must have an minimum of 25 franchisees at 25</td>
<td>R.I. Gen. Laws § 19-28.1-6(a)(1).</td>
</tr>
<tr>
<td></td>
<td>dollars with a parent company's net worth of $10 Million dollars. The parent must</td>
<td>operational</td>
<td>franchised locations during this period.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>sign a guaranty and financials must be audited.</td>
<td>franchise experience.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota*</td>
<td>The franchisor must have a minimum net worth of $10 Million dollars or $1 Million</td>
<td>25 years of</td>
<td>The franchisor or parent must have an minimum of 25 franchisees at 25</td>
<td>S.D. Cod. Laws § 37-5A-12(1).</td>
</tr>
<tr>
<td></td>
<td>dollars with a parent company's net worth of $10 Million dollars. The parent must</td>
<td>operational</td>
<td>franchised locations during this period.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>sign a guaranty and financials must be audited.</td>
<td>franchise experience.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Washington*</td>
<td>The franchisor must either have a minimum net worth of $5 Million dollars or a net</td>
<td>5 years of</td>
<td>The franchisor or parent must have a minimum of 25 franchisees during</td>
<td>Wash. Rev. Code § 19.100.030(4)(b)</td>
</tr>
<tr>
<td></td>
<td>worth of $1 Million dollars and a parent company with a net worth of $5 Million</td>
<td>operational</td>
<td>this period or conducted a similar business that is the subject of the</td>
<td>(i).</td>
</tr>
<tr>
<td></td>
<td>dollars. Financials must be audited</td>
<td>franchise experience.</td>
<td>franchise.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>The franchisee’s initial investment mush exceed $100,000.</td>
<td></td>
</tr>
</tbody>
</table>
**EXHIBIT N**
**SAMPLE MONTHLY CLIENT STATUS REPORT**

[FRANCHISOR NAME]  REGISTRATION SCHEDULE SUMMARY SHEET
Fiscal Year End: [FYE]  [DATE]

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>FTC</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
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<td>Update w/in 90 days of FYE</td>
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<tr>
<td>CA</td>
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<td></td>
<td></td>
<td>15 business days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>FL</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
<td></td>
<td>Notice of Intent</td>
<td>Annual Filing</td>
</tr>
<tr>
<td>HI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>W/in 60 days of FYE</td>
<td></td>
<td>Annual Report</td>
<td></td>
</tr>
<tr>
<td>IL</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1 day before anniversary date</td>
<td></td>
<td>Annual Report</td>
<td></td>
</tr>
<tr>
<td>IN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>30 days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>KY</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>Exemption; One-Time Filing</td>
<td></td>
</tr>
<tr>
<td>MD**</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15 business days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>MI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>None</td>
<td></td>
<td>Notice of Intent</td>
<td>Annual Filing</td>
</tr>
<tr>
<td>MN</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>W/in 120 days of FYE</td>
<td></td>
<td>Annual Report</td>
<td></td>
</tr>
<tr>
<td>NE</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>Notice Filing (One-Time). Seller Assisted Marketing Plan Act § 59-1722</td>
<td></td>
</tr>
<tr>
<td>NY</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>W/in 120 days of FYE</td>
<td></td>
<td>Annual Report</td>
<td></td>
</tr>
<tr>
<td>ND</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15 business days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>Or</td>
<td>N/A</td>
<td></td>
<td></td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>Disclosure only</td>
<td></td>
</tr>
<tr>
<td>RI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>30 days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>SD</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>W/in 120 days of FYE</td>
<td></td>
<td>Annual Report</td>
<td></td>
</tr>
<tr>
<td>TX</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
<td></td>
<td>Exemption; One-Time Filing</td>
<td></td>
</tr>
<tr>
<td>UT</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>None</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>VA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>30 days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>WA</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>15 business days</td>
<td></td>
<td>Annual Filing</td>
<td></td>
</tr>
<tr>
<td>WI</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>No renewal provision</td>
<td></td>
<td>Notice Filing (Before sale) 1 year registration</td>
<td></td>
</tr>
</tbody>
</table>

**Maryland Quarterly Sales Reports:**
### EXHIBIT O

#### SIGNING CHECKLIST - COMPANY FRANCHISEE

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Page</th>
<th>Section</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise Agreement</td>
<td>1</td>
<td>1. Parties</td>
<td>Fill in the company's legal name.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td>3</td>
<td>3.14. Start Date</td>
<td>Obtain from ____ the outside deadline for the franchisee to open its unit and fill in this date.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td>28</td>
<td>Signature block</td>
<td>Fill in the company's name on the 1st line of the company signature block in all caps. If a married couple, fill in JANE M. DOE AND JOHN M. DOE, HUSBAND AND WIFE on the company line. Fill in the company's authorized officer's name, title and franchisee's address beneath the signature line. If a married couple, fill in the name of one of the spouses. Have the other sign the personal guaranty.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td></td>
<td>1st line</td>
<td>Fill in the street address of the unit.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td></td>
<td>2nd line</td>
<td>Fill in the name of the shopping center or mall where the unit is to be located.</td>
</tr>
<tr>
<td>Nondisclosure and Noncompetition Agreement</td>
<td>i</td>
<td>1st paragraph</td>
<td>Prepare a separate copy of the agreement for each spouse, member, partner or shareholder (the &quot;Confidant&quot;). Fill in the Confidant’s name.</td>
</tr>
<tr>
<td>Nondisclosure and Noncompetition Agreement</td>
<td>iii</td>
<td>Signature line</td>
<td>Fill in the Confidant’s name under the signature line. Alternatively, write in additional signature lines for each spouse, member, partner or shareholder.</td>
</tr>
<tr>
<td>Conditional Assignment of URL's, Identifiers, Email Addresses and Telephone Numbers</td>
<td>i</td>
<td>1</td>
<td>Fill in the company's legal name.</td>
</tr>
<tr>
<td>Conditional Assignment of URL's, Identifiers, Email Addresses and Telephone Numbers</td>
<td>iii</td>
<td>Signature block</td>
<td>Print the company's name in all caps on the 1st line of the company signature block. If a married couple, fill in JANE M. DOE AND JOHN M. DOE, HUSBAND AND WIFE on the company line. Fill in the company's authorized officer's name, title and franchisee's address beneath the signature line.</td>
</tr>
<tr>
<td>Personal Guaranty and Subordination Agreement</td>
<td>i</td>
<td>First paragraph</td>
<td>Prepare a separate copy of the personal guaranty for each spouse, member, partner or shareholder (&quot;Guarantor&quot;). Fill in the name of the Franchisee.</td>
</tr>
<tr>
<td>Personal Guaranty and Subordination Agreement</td>
<td>ii</td>
<td>Signature lines</td>
<td>Fill in the name of a different Guarantor under the signature line of each copy. Alternatively, use one copy and write in additional signature lines for each spouse, member, partner or shareholder. Print required names under signature lines.</td>
</tr>
</tbody>
</table>
1: The Personal Guaranty (Attachment 5) is not signed by the franchisee (the company), but by each one of the franchisee's owners (spouses, members, partners or shareholders), either on separate copies or on one copy of the guaranty, as individuals.

2: Fill in the blanks on the Cart Addendum to the Franchise Agreement (Attachment 6) only if the franchisee is buying rights to operate a satellite cart within the territory granted by the franchise agreement.

3: Do not complete the Release of Claims (Attachment 8). This is only a sample of what the franchisee will sign upon renewal or transfer.

4: You can only allow ONE franchisee. If the franchisee is a company, do not allow individuals to sign as franchisees, too.

5: Only an authorized officer of the franchisee may sign the franchise agreement. You may assume that the CEO or President of a corporation or LLC, the general partner of a partnership and the managing member or manager of an LLC is authorized to sign. If the signer has a different title, the applicant must provide a corporate, partnership or LLC resolution authorizing the signer to sign the franchise agreement.

6: Have ______ date the franchise agreement
## SIGNING CHECKLIST - INDIVIDUAL FRANCHISEE

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Page</th>
<th>Section</th>
<th>Instructions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Franchise Agreement</td>
<td>1</td>
<td>1. Parties</td>
<td>Fill in the franchisee's full legal name.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td>3</td>
<td>3.14. Start Date</td>
<td>Obtain from __________ the outside deadline for the franchisee to open its unit and fill in this</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td>28</td>
<td>Signature block</td>
<td>Fill in individual franchisee's name and address.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td></td>
<td>Approved Location and Protected Area (Attachment 1)</td>
<td>Fill in the street address of the unit.</td>
</tr>
<tr>
<td>Franchise Agreement</td>
<td></td>
<td>Approved Location and Protected Area (Attachment 1)</td>
<td>Fill in the name of the shopping center or mall where the unit is to be located.</td>
</tr>
<tr>
<td>Nondisclosure and Noncompetition Agreement</td>
<td>i</td>
<td>1st paragraph</td>
<td>Fill in the franchisee's full legal name.</td>
</tr>
<tr>
<td>Conditional Assignment of URL's, Identifiers, Email Addresses and Telephone Numbers (Attachment 4)</td>
<td></td>
<td>Signature block</td>
<td>Fill in franchisee's full legal name under signature line for Confidant.</td>
</tr>
<tr>
<td>Conditional Assignment of URL's, Identifiers, Email Addresses and Telephone Numbers (Attachment 4)</td>
<td></td>
<td></td>
<td>Fill in franchisee's name and address.</td>
</tr>
</tbody>
</table>

1: The Personal Guaranty (Attachment 5) is not applicable to an individual franchisee.

2: Fill in the blanks on the Cart Addendum to the Franchise Agreement (Attachment 6) only if the franchisee is buying rights to operate a satellite cart within the territory granted by the franchise agreement.

3: Do not complete the Release of Claims (Attachment 8). This is only a sample of what the franchisee will sign upon renewal or transfer.

4: You can only allow ONE individual franchisee. If there is more than one person (including a married couple), please use the instructions for a company franchisee.

5: Have ____________ date the franchise agreement when he signs it.
JAN S. GILBERT

Mr. Jan Gilbert has over fifteen years experience counseling franchisors and franchisees on all facets of domestic and international franchising, including structuring franchise programs, counseling with respect to federal and state regulatory issues associated with franchising activities and franchise relationship matters (e.g., transfers, terminations, renewals), drafting franchise- and distribution-related agreements (e.g., master franchise, franchise, development and area representative agreements, sales and service contracts, confidentiality and non-competition agreements, and distribution agreements), negotiating domestic and international agreements and disputes, franchisee compliance issues, franchise system mergers and acquisitions, drafting franchise offering circulars, responding to state and federal administrative inquiries and investigations, obtaining exemptions and interpretive opinions from regulatory agencies, and establishing franchise advisory councils and cooperatives. He has worked with both start-up and mature franchisors. Mr. Gilbert has written and lectured extensively on the subject of domestic and international franchising, licensing and product distribution, including: *Earnings Claims – A Practitioner’s Approach*, International Franchise Association’s Annual Legal Symposium, Washington, DC, May 8-10, 2005; *Touchstones of Successful Acquisitions Involving Franchise Systems*, American Bar Association Forum on Franchising, San Francisco, CA October 2001; *How To Successfully Franchise In the Restaurant Industry*, National Restaurant Association Annual Trade Show, Chicago, IL, May 21, 2001 (Moderator); *The FTC Rule and the PMPA: An Uncertain Alliance*, Franchise Law Journal, Fall 1999; and *Negotiations and Agreements Between a Franchisor and its Franchisees*, International Franchise Association’s Annual Legal Symposium, Washington, DC, May 23-25, 1999. In 2005 and 2006, he was named a “legal eagle” among franchise attorneys (one of the top franchise attorneys in the U.S.) by Franchise Times. Mr. Gilbert is a member of the ABA Forum on Franchising, Antitrust Section, and the Legal/Legislative Committee of the International Franchise Association.
ROBIN DAY GLENN

Robin Day Glenn is the senior attorney of the Franchise Law Team in Rancho Santa Margarita, California, where she has specialized in domestic and international franchise law for the past 21 years. She obtained her B.A. at New College in Sarasota, Florida, her J.D. at the University of California at Davis and her LL.M. in International and Comparative Law at Georgetown University, where she was a Research Fellow of the International Law Center. She is a past chair of the State Bar of California's Franchise Law Committee and has served on the Governing Committees of its International Law Section and Business Law Section. She has been the Contributing Editor for Franchises of CEB's California Business Law Reporter since 1991 and wrote the "Franchises" chapter of Bancroft Whitney's California Transactions Forms. She serves on the Franchise Advisory Panel of the American Arbitration Association. She has been an active member of the American Bar Association's Forum on Franchising since 1984, contributing articles to the Forum's Franchise Law Journal as well as to many other publications.
JOAN M. PAINTER, CFE

Joan Painter is the Founder of Franchise Ventures, a consulting company advising start up franchisors, new franchisors and franchise administration. She is also Director of Franchising for Fresh City in Needham, MA. Prior to this, she held a variety of positions with Ben & Jerry’s in the franchise division including operations, licensing, sales and development, and managing franchise legal services. Ms. Painter holds a BS in Social Work and Counseling has completed her CFE, and a variety of courses related to business law and franchising.
Karen Satterlee is Director, Franchise Licensing for Starbucks Coffee Company and Seattle’s Best Coffee, LLC. Her practice concentrates on advising clients on business issues related to franchising and licensing including sales, administration and organizational matters. Prior to that she was Vice-President and General Counsel of easyGroup USA, Inc., an internet café franchise company, in New York City. Ms. Satterlee has also held a variety of positions with other franchisors, including Cendant Corporation and Exxon Corporation. Ms. Satterlee received her Bachelor’s degree and JD from the University of Tennessee.