BEST PRACTICES FOR STATE FRANCHISE REGISTRATION

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BEST PRACTICES FOR STATE REGISTRATION

I. INTRODUCTION

The Amended Federal Trade Commission Franchise Rule\(^2\) (“Amended FTC Rule”) governs the disclosure requirements of the Franchise Disclosure Document (“FDD”), and requires an FDD to be delivered to all prospective franchisees in every state and territory.\(^3\) However, FDD’s are neither reviewed by nor filed with the Federal Trade Commission. Fourteen (14) states, which are often referred to as the “registration states”, require that the FDD be filed with a state agency, typically, the Attorney General’s office, Securities Division, or Corporations Division.\(^4\) A franchise that is not exempt from registration cannot be offered or sold in a registration state until it is filed and approved by the applicable state agency. Registration with or review by a state agency does not constitute approval of the franchise offering. In fact the cover sheet of the FDD specifically states in bold faced font: “Note, however, that no governmental agency has verified the information contained in this document,” and the State Cover Page includes the following caveat: “REGISTRATION OF A FRANCHISE BY A STATE DOES NOT MEAN THAT THE STATE RECOMMENDS THE FRANCHISE OR HAS VERIFIED THE INFORMATION IN THIS DISCLOSURE DOCUMENT.”

Examiners will generally respond to a registration application within two to six weeks after receiving the application. Applications during March and April can be delayed during those particularly busy times. Applications are reviewed on a first-in first-out basis. Following their review, examiners generally respond with a letter that includes deficiency comments. After the deficiency comments are adequately addressed, the applicant will be sent a registration order or letter indicating that the filing has been approved. In some states, registration becomes effective in a specific number of days following the filing; however, automatic effectiveness is halted when the examiner issues comments on the application or when a stop order is issued. A franchisor can avoid issuance of a stop order by waiving automatic effectiveness. The franchise regulatory authority has the power to deny a registration or summarily suspend or revoke a registration, without a hearing. However, at least one case held that the issuance of an order to stop selling franchises violated due process and fundamental fairness as guaranteed by the U.S. Constitution.\(^5\)

Although most registration states require the FDD to include additional disclosures, either in the body of the FDD or in a separate state addendum, the form of disclosure document must be prepared according to the 2008 Franchise Registration and Disclosure Guidelines

\(^2\) Amended FTC Rule, §436.6 (f), which became mandatory as of July 1, 2008.

\(^3\) Although the Amended FTC Rule changed delivery requirements so that delivery of an FDD is only required 14 business days before signing or payment, some states, including some non-registration states, have not yet adopted this change. Maryland, Rhode Island, and New York still require delivery at the first personal meeting, and Michigan and Washington retained the 10 business day rule, which in some instances can be longer than 14 days if there is an intervening holiday. If the franchisor unilaterally makes changes to the franchise agreement other than clerical changes and filling blanks, the revised agreement must be delivered to the franchisee at least seven days before signing.

\(^4\) Oregon is sometimes considered to be a “registration state”; however, its statute only contains a disclosure requirement and certain record-keeping requirements in connection with the offer and sale of franchises.

("NASAA Guidelines"), adopted by the North American Securities Administrators Association ("NASAA")\(^6\). The NASAA Guidelines incorporate the same disclosure requirements under the Amended FTC Rule for preparing an FDD, with the addition of a specific “state cover page” as well as forms and instructions for filing franchise registration applications in the franchise registration states. The NASAA Guidelines serve to amend and restate the old UFOC Guidelines. Although the state examiners do not undertake a merit review or verification of the offering, their comments can raise issues about some of the substantive terms of the offering. A registration will be denied if the examiner determines that disclosure was inadequate. Examiners generally focus on the financial condition of the franchisor, the franchisor's compliance with the disclosure requirements of the NASAA Guidelines, and inclusion of unique aspects of the registration state's franchise relationship laws.

Franchise sales laws prohibit franchisors from making false or misleading statements of material facts or from omitting a material fact under their general anti-fraud provisions. Although regulators generally do not request verification of the accuracy of disclosures, franchisors should be mindful of the anti-fraud considerations, and should provide additional information which may not be specifically required by the NASAA Guidelines, if additional information is necessary to disclose all material facts about a franchise offering. Strictly following the information required by the NASAA Guidelines may not be sufficient to defeat claims of fraud and misrepresentation.

A. Registration States

Four of the registration states only require that the offer be filed with a state agency, along with a short application form and filing fee, without any review:

Indiana  Michigan  South Dakota  Wisconsin

In all of these states, the registration is effective upon receipt by the state agency. South Dakota regulators can require the franchisor to alter or amend the FDD under certain circumstances. An offer can be made in Wisconsin prior to registration; however, registration is required before the sale can be completed.

Filings in the ten other registration states require the franchisor to file various documents with a state agency and pay a filing fee, which varies among the states and runs between $250 and $750. Review and approval by the state agency is a prerequisite to selling or offering franchises for sale in these states:

California  Hawaii  Illinois  Maryland  Minnesota
New York  North Dakota  Rhode Island  Virginia  Washington

Hawaii requires that state application forms be filed seven (7) days before an offer is made in the state; but the registration is effective seven (7) days after filing in Hawaii. However, Hawaii’s securities examiners have the right to review the franchise application and to issue a stop order at any time.

\(^6\) After July 1, 2008, the Amended FTC Franchise Rule requires that all franchisors use the FDD disclosure format. It is similar in format to the previously used Uniform Franchise Offering Circular ("UFOC") format with certain modifications and enhancements. The Federal Trade Commission Basic Disclosure Document, which had been rarely used in practice, and the UFOC format can no longer be used anywhere.
B. Registration Documents

According to the NASAA Guidelines, the following application documents must be filed by a franchisor, if and as required by the state, in order to obtain a registration.

- Uniform Franchise Registration Application with a Certification:
  (a) One copy of a complete franchise registration application, including the Franchise Disclosure Document, on paper; and
  (b) One copy of the complete franchise registration application, including Franchise Disclosure Document on a CD-ROM, in Portable Document Format (PDF) format. The cover letter submitting the filing must contain a representation that all of the information contained in the electronic file is identical to the paper documents. In addition, the electronic version of the Franchise Disclosure Document should be text searchable. If the examiner requires changes to any documents submitted, the franchisor must file a complete clean copy of the revised FDD and any other revised documents, and a black-lined copy of all revised pages (without margin balloons or color highlights to show changes), unless the examiner directs otherwise.
  (c) The FDD will include an FTC Cover Page and a State Cover Page. The State Cover Page contains specific state law disclaimers, risk factors, disclosure regarding the use of independent brokers and referral fees and the effective date of the offering in the state.

- Franchisor’s Costs and Sources of Funds;
- Uniform Franchise Consent to Service of Process (most states);
- Franchise Seller Disclosure Form;
- Franchise Disclosure Document;
- Application Fee (varies by state);
- Guarantee of Performance (if required)
- Consent of Accountant (or a photocopy of the consent) on the accountant’s letterhead to the use of the latest audit report in the FDD; the accountant must be independent; and
- Advertising and promotional materials (if required by the state).

7 Unlike the old UFOC Guidelines, the Amended FTC Rule does not require the cover sheet to include risk factors; however, the NASAA Guidelines require that the State Cover Page include a caveat regarding renewal rights and certain risk factors regarding dispute resolution, choice of law, and forum selection. Some states may require that additional Risk Factors be included. The NASAA Commentary .03 states: “A franchisor must make its own determination as to whether one state’s requirement is material in other states. A risk factor imposed by one state may well be material to prospective franchisees in other states and may be included in the franchisor’s state cover page in other states. State franchise laws have no extraterritorial effect, however, and the requirements of one state should not automatically be imposed on a franchisor’s offers in another state.”
Of the above documents, only the FDD (with the exhibits to the FDD, including the Franchise Agreement) is delivered to franchise prospects.

C. Jurisdictional Issues

The jurisdictional scope of the state registration laws varies. An offer or sale of a franchise can occur under several circumstances, which are defined in the particular state statute, and may be based upon:

(a) meetings between the franchisor and prospect;
(b) an offer that originates from the state;
(c) an offer that is directed to the state;
(d) acceptance of an offer directed to the state;
(e) an offer to a prospect who resides in the state;
(f) an offer to franchisee who resides in the state;
(g) the state in which the franchise will be located; or
(h) the state in which a franchisee’s territory will be located.8

As a result, in some cases a franchisor may be required to register in more than one state for the same transaction. Some states specifically exempt or do not impose registration requirements on out-of-state sales, thus allowing a franchisor located in a registration state to sell to non-residents of other states who are not otherwise subject to the registration state’s coverage. Note that the Amended FTC Rule applies only to sales that are to be located in the United States or its territories and commonwealths.9

D. Business Opportunity Law Exemptions

Franchisors must also be cognizant of the “business opportunity” or “seller-assisted marketing plan” laws that have been enacted in twenty-six states10. Some of these laws have their own registration and disclosure requirements, as well as financial assurance requirements; however, some do not have a filing requirement. The definition of a “business opportunity” or “seller-assisted marketing plan” is often broad enough to cover franchises. In most cases, however, a franchisor will be exempt from the business opportunity laws if: (1) it complies with

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8 A franchisor does not need to update or renew its registration if it ceases its sales activities in a registration state; however, in some cases a registration will be required if any franchise agreements are renewed.

9 Amended Franchise Rule § 436.2.

10 The following states have varying types of business opportunity laws: Alaska, California, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, Washington, Wisconsin. See the FTC website at http://www.ftc.gov/bcp/franchise/netbusop.shtm for the addresses and websites of state agencies that regulate business opportunities.
the Amended FTC Rule; or (2) the marketing plan is in conjunction with a federal or state registered trademark. In many states, the exemption is automatic, and the franchisor need not take any action if it qualifies for such an exemption. However, franchisors must file an affidavit or notice in order to perfect their exemption in the following states, and in some states, must pay a filing fee:

**Florida** – Franchisors are exempt if they comply with the Amended FTC Rule. They must pay a filing fee and file for exemption annually.

**Kentucky** – Franchisors are exempt if they comply with the Amended FTC Rule. However, they must file for exemption. There is no filing fee and the exemption does not have to be renewed.

**Nebraska** – Franchisors are exempt if they comply with the Amended FTC Rule. However, they must file for exemption and pay a filing fee. The exemption does not have to be renewed.

**Texas** – Franchisors are exempt if they comply with the Amended FTC Rule. However, they must file for an exemption and pay a filing fee. The exemption does not have to be renewed.

**Utah** – Franchisors are exempt if they comply with the Amended FTC Rule. They must pay a filing fee and file for exemption annually.

If the franchisor fails to comply with the relatively simple requirements in order to obtain an exemption, where filings are required, the adverse consequences can be significant. For example, a failure to file the simple one page exemption form in Texas is a false, misleading, or deceptive act or practice, that could give rise to a public or private right or remedy prescribed the Chapter 17 of the Texas Business & Commerce Code.

For those states that do not exempt a franchisor that complies with the Amended FTC Rule, the franchisor can only qualify if it has a registered trademark. As noted below, in some cases a state trademark registration (which is generally very easy to obtain) will suffice; however, a few states require that the franchisor have a federally registered trademark.

**Connecticut** – If the franchisor does not have a *federally* registered trademark, it will be subject to the state’s business opportunity law, which requires substantial revision to the FDD. For that reason, franchisors often wait to sell in Connecticut until after they obtain a federally registered mark, in which case they may simply notify the state in writing without paying a filing fee. Once the franchisor obtains a federally registered trademark in Connecticut, it no longer is required to file for an exemption under the business opportunity law. Connecticut requires that a copy of the federally registered trademark certificate be filed for any trademarks effective after October 1, 1996 to qualify for an exclusion from the registration filing requirements of the Connecticut business opportunity law; however, the statute states that “failure to file such certificate shall not, in and of itself, preclude reliance on this exclusion”.

**Georgia** – Presumably, a *state* registered trademark is sufficient for an exemption, since the statute does not specify that a federal trademark is necessary.

**Maine** – The business opportunity law does not apply to a marketing program that is provided in conjunction with the licensing of a *federally* registered trademark or service mark.
North Carolina – Once the franchisor obtains a federally registered trademark, it no longer is required to file an application under the business opportunity laws.

South Carolina – Presumably, a state registered trademark is sufficient for an exemption, since the statute does not specify that a federal trademark is necessary.

E. Exemptions from Franchise Law

Although the Amended FTC Rule exempts certain franchise sales from disclosure requirements, the registration state franchise laws have not all adopted the federal scheme, so it is important to review each state exemption. In many cases, even if a franchise may be exempt from disclosure under the Amended FTC Rule, it will still be subject to registration and/or disclosure under various state franchise laws. Furthermore, some states have their own sets of exemptions. In some cases, there is an exemption only from registration (while still requiring disclosure), some are self-executing (i.e., by definition the offering is exempt and there is no filing or registration requirement), and some require filing, paying a filing fee, and annual renewal. Some registration states have exemptions for “fractional franchises”, “sophisticated investors”, and “high net worth” franchisor exemptions. So-called “isolated sale” or “single license” are exempt from registration, but not disclosure, and are available in the following registration states, the particular requirements of which should be carefully examined:

Indiana – if only one franchise is sold every 24 months

Minnesota – if only one franchise is sold every 12 months

New York – if only one franchise in total is sold

Washington – if only 3 franchises are sold

Some of the registration states provide for discretionary exemptions that could apply to limited offerings. For example, the regulations under the Illinois Franchise Disclosure Act describe a procedure for obtaining an exemption from registration and disclosure “If the franchisor intends to sell only one or two franchisees in Illinois in the ensuing twelve months.”

Although exemptions are beyond the scope of this paper, a franchisor can save time and expense if it is able to fall within a state exemption.

F. Role of NASAA

NASAA is a voluntary association of state securities administrators, which, through its Franchise and Business Opportunity Project Group, assists in coordinating uniformity among the registration states. At present, the NASAA Franchise Project Group consists of six state administrators, who also receive advice and guidance from franchise attorneys from throughout the country. In the franchise regulation area, it is NASAA’s intention to move forward and

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continue the serious efforts it has undertaken to promote uniformity, provide enhanced training and educational opportunities for state franchise personnel, seek ever more cooperative relationships with the Federal Trade Commission, and solicit the advice and input of franchisors and franchisees. NASAA sponsors regular franchise training programs and educational seminars for state franchise examiners. NASAA also regularly proposes uniform statements of policy on many franchise related issues. These statements of policy are model statutes and regulations that are made available for states to adopt in accordance with their own specific laws.

II. TIPS TO EXPEDITE THE REGISTRATION PROCESS

A. General Tips

It goes without saying that it is critical to the registration process that the FDD be prepared thoroughly and in accordance with the NASAA Guidelines and that all of the forms are complete and the filing fee is included. The level of scrutiny given to the filings and the comments in response from those states that do review them vary widely and can depend on many factors, including the experience of the examiner and time of year that the filing is made. It is not unusual for one state to approve a registration only to have another state point out deficiencies. Some general tips to help expedite the registration process are:

1. Refer to state websites, listed in the Appendix D, which contain useful information on how to expedite the registration and a description of the nuances of the particular state law. Be sure to check the state website and state law before each registration to be sure that there have not been any changes since your prior registration. Some websites contain forms that can be opened and completed on a computer.

2. Draft the FDD in Plain English.

3. Contact the franchisor’s CPA as early as possible and advise him or her of the financial disclosure requirements and the need to file the Consent of Accountant.

4. Number code documents so that you can distinguish each version and different documents used in the different registration states.

5. Address state-specific requirements as completely as possible, even though some may appear to be trivial and inconsequential.

6. Show respect and courtesy to the examiner, even if you disagree with their determination, and choose your battles wisely.

7. When responding to deficiency comments, be sure to respond to each item.

8. Be sure that the Consent of Accountant is signed and placed on the accountant’s letterhead.

9. If you anticipate that financial assurance will be required, consider including it from the outset to avoid delays.

10. Notarize all signatures where necessary.
11. Follow up with the regulatory agency to confirm that the documents you have filed have been received.

12. If a state has regulations, statements of policy, administrative orders, or interpretive opinions, review them as necessary. These are often available on the state’s franchise website or the CCH Business Franchise Guide.

B. Common Deficiencies and Seven Simple Rules to Help Avoid Them

1. **Do not add disclosure information that is not specifically required by the FDD Guidelines unless required under applicable state law or requested by a state examiner.**

   The Amended FTC Rule specifically states “Do not include any materials or information other than those required or permitted by part 436 or by state law not preempted by part 436.” 16 CFR 436.6(d).

   Common deficiencies:

   • Adding introductory paragraphs at the beginning of Item 2 and Item 6.

   • Adding, in Item 2, “puffery” to the business experience disclosure of the franchisor’s personnel. For example, “Mary Smith, our president, is active in her church and community and coaches her daughter’s little league team.”

   • Including a list of franchisor-defined terms in specific Items.

   • Including in Item 3 the franchisor’s opinion about the merits of a specific lawsuit without including a summary opinion of counsel and attaching the full opinion to the FDD.

   • Adding to or “clarifying” the legend required under Item 12 when a franchisor does not grant an exclusive territory, i.e., “You will not receive an exclusive territory. You may face competition from other franchisees, from outlets that we own, or from other channels of distribution or competitive brands that we control.”¹³

2. **Read and Follow NASAA’s 2008 Franchise Registration and Disclosure Guidelines.**

   All states should be following the NASAA Guidelines. Even if a state has not affirmatively promulgated the NASAA Guidelines, the state should be following them, since the 2008 Guidelines amend and restate the UFOC Guidelines, which every franchise registration state enacted in the early 1990s. Some states do not require all of the forms contained in the NASAA Guidelines, and some vary the content of the forms to comply with applicable state law.

¹³ See FAQ 25.
Common deficiencies:

- Using balloon margins or color highlights to show changes in an FDD the franchisor is trying to highlight to show changes. NASAA's Registration Guidelines specifically prohibit balloon margins and color highlights. [See Sections II(B)(4) and II(C)(4)].

- Failing to black line accurately. State examiners have long complained that franchisors submit blacklined documents that do not accurately reflect changes to the form of the franchise disclosure document previously submitted.  

- Failing to use the registration forms outlined in Section V. of NASAA's Registration Guidelines. For example, using the UFOC version of Franchise Seller Disclosure form, which includes social security numbers; or using a form of accountant’s consent limited just to the FDD included in the registration application.

- Failing to include registration materials on CD ROM, in PDF format. [See NASAA Guidelines, Section II(B)(1)(b) and II(C)(1)(b)].

- Failing to include a form general release, when required, or insisting that this document should be relegated to a state addendum. Section IV(A)(17) of the NASAA Guidelines specifically instructs that if a franchisor requires a franchisee to sign a general release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of that general release, and do not argue that it is not required.

3. **Read and Follow the Amended FTC Rule Requirements.**

The form of franchise disclosure document described under the FTC's Amended Franchise Rule is required in all states, including registration states. The instructions for preparing the FDD are not suggestions; they are requirements.

Common deficiencies:

- Failing to follow specific instructions to capitalize and bold certain information. For example, **bold** the introductory paragraph at the top of the Item 9 chart; title Item 7 “Estimated Initial Investment,” but caption the Item 7 chart, in bold and capital letters “YOUR ESTIMATED INITIAL INVESTMENT.”

- Failing to include an “issuance date” for the FDD. An issuance date is specifically required to be included on the FTC cover page and on the receipt page. The FTC defines the issuance date as “a flexible concept, meaning any date upon which the franchisor finalizes that version of the disclosure document for future use.” [FTC Compliance Guide, page 26].

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14 See also, “An Open Forum with the Regulators”, ABA Forum on Franchising (2003) (identifying sloppy or inaccurate redlining as one of the top ten most frequent complaints made in a franchise registration application).
• Confusing the issuance date with the state “effective date,” which is the date (left blank in the FDD submitted for registration) that a state deems an FDD registered for use in that state.

• Attempting in Item 11 to disclose a training instructor’s experience by cross referencing to Item 2, which may not disclose the individual’s experience relevant to the subjects taught, or the length of the instructor’s experience in the field being taught.

• Failing to include in Item 5 all “initial fees” which are all amounts paid to franchisor or its affiliate prior to opening, and stating only the initial franchise fee to be paid to the franchisor.

• Failing to describe the factors, basis, and experience the franchisor uses to formulate the amount for “additional funds,” as required under Item 7.

• Failing to disclose in Item 11 the consequences if the parties cannot agree on a site, which is required under Item 11. Some franchisors simply refuse to state clearly, or at all, that if the parties cannot agree on a site, the franchisor can terminate the agreement and retain the franchise fee.

4. **Read and follow the FTC’s FAQs and FTC Compliance Guide.**

   The FTC regularly posts Frequently Asked Questions in order to assist franchisors interpret the Amended Franchise Rule. The FAQs may be found at: www.ftc.gov/bcp/franchise/amended-rule-faqs.shtml.

   The FTC also published a Compliance Guide in May 2008, which may be found at www.ftc.gov/bcp/edu/pubs/business/franchise/bus70.pdf.\(^\text{15}\)

Common Deficiencies:

• Failing to address whether or not the franchisee will receive an exclusive territory as that term is defined under FAQ 25, meaning “a geographic area granted to a franchisee within which the franchisor promises not to establish either a company-owned or franchised outlet selling the same or similar goods or services under the same or similar trademarks or service marks.”

• Failing to include disclosures about “parents” in the appropriate Items of the FTC, as discussed in FAQ 16.

• Failing to disclose in Item 8 whether an officer has an ownership interest in a supplier. FAQ 18 clarifies that a *de minimis* ownership interest that would not be “material” to an investment decision by a prospective franchisee need not be

\(^{15}\text{The advice in the FTC Compliance Guide is not binding on the FTC. In addition, the original Rule’s Statement of Basis and Purpose and previous informal staff advisory opinions remain valid sources of interpretation, except to the extent of any conflict with the Amended FTC Rule’s requirements.}\)
disclosed in Item 8. Although Item 8 may be read to allow franchisors to omit disclosure if it has no officers with an ownership interest in a suppliers, if the disclosure is not addressed at all, many state examiners will require franchisors to address whether or not the disclosure applies, in order to ensure that the disclosure is not being overlooked.

5. Read and follow the NASAA Commentary.

NASAA adopted a Commentary on the 2008 Franchise Registration and Disclosure Guidelines (the “NASAA Commentary”) on April 26, 2009. The NASAA Commentary, which NASAA produced after consultation with FTC staff, provides practical guidance about the disclosure requirements and instructions for filing a franchise registration in a registration state. A copy of the NASAA Commentary can be found at www.nasaa.org/content/Files/FranchiseCommentary_final.pdf.

Common Deficiencies:

- Failing to use the sample answers in the NASAA Commentaries for Item 3 and Item 4, when no actions need to be disclosed. For example, “No litigation is required to be disclosed in this Item” (NASAA Commentary Item 3.4); “No bankruptcy is required to be disclosed in this Item” (NASAA Commentary Item 4.1).

- Failing to disclose in Item 20, one way or the other, whether the franchisor has had any franchisees sign confidentiality clauses any time during the last three fiscal years. See NASAA Commentary Item 20.10 (sample answer when franchisees have signed confidentiality clauses) and 20.11 (sample answer when franchisees have not signed any confidentiality clauses. The only voluntary part of this disclosure item is that franchisors may also disclose the number and percentage of current and former franchisees who, during each of the last three fiscal years, signed confidentiality clauses and disclose the circumstances under which the clauses were signed.

- Failing to make sure the totals of Items 5 and 7 in the body of the FDD match up with the totals of Item 5 and 7 on the FDD Cover Page. NASAA Commentary Item 0.1 and 0.2 caution that the totals on the cover page should be the same totals from the body of Items 5 and 7 “without alteration, adjustment or explanation.” In addition, in too many cases, the numbers on the totals simply do not add up correctly.

6. Use Plain English.

Like the old UFOC format, the Amended Franchise Rule and NASAA’s Registration Guidelines both specifically requires the FDD to disclose all required information clearly legibly, and concisely in a single document using Plain English.16

16 16 CFR §436.6(b); NASAA Guidelines, Section IV (A)(1).
Common deficiencies:

- Using legal antiques such as “hereto” “set forth in” “hereafter,” “thereunder, “aforesaid.”

- Copying into the Item 17 chart, verbatim and unedited, entire sections from the franchise agreement.

- Lapsing into legalese.

- Using vague terms. For example, “we will give you ‘certain’ assistance,” or you must pay us ‘certain fees.’”

- Using multiple negatives.

- Using long sentences.

- Using passive, rather than active, voice.

- Using highly technical terms.

7. Fix your integration clause.

The Amended FTC Rule prohibits a franchisor from requiring a franchisee to waive reliance on any representation made in the disclosure document or in its exhibits or amendments. This is the only substantive change that the Amended FTC Rule requires to be made to the franchise agreement. The Statement of Basis and Purpose under the Amended Franchise Rule, and the FTC’s Compliance Guide discuss the applicability of this prohibition to integration clauses found in most every franchise agreement. The prohibition includes the use of integration clauses that purport to disclaim liability for statements authorized by franchisors in their disclosure documents. The Amended Franchise Rule does not ban the use of all integration clauses or waivers in a franchise agreement. It simply requires franchisors to ensure that their integration clauses do not purport to disclaim any statements in the franchisor’s FDD.

The FTC’s Compliance Guide contains a sample integration clause the FTC would find acceptable. That sample integration clauses contains the express statement “Nothing in this or in any related agreement, however is intended to disclaim the representations we made in the franchise disclosure document that we furnished to you.” Without a similar limitation referencing representations made in the FDD, most standard integration clauses will violate the Amended Franchise Rule.

Common deficiency:

- Using a standard integration clause without referencing representations included in the franchisor’s FDD. The following is an example of an integration clause in a franchise agreement filed in June 2009 with the Maryland Securities Division: “Entire Agreement. This Franchise Agreement (including all Schedules and Exhibits attached hereto) and the agreement and documents referred to herein

17 FTC Compliance Guide, page 140.
and all agreements executed simultaneously herewith, contain the entire full and complete agreement and understanding among the Franchisee and Franchisor with respect to the subject matter hereof, including without limitation, the Restaurant and Franchise Business, and shall supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written.”

Although more and more franchisors are revising their franchise agreements to state that the integration clauses do not serve to disclaim or waive representations made in the franchisor’s FDD (which, by design represents a prior understanding between the parties), not all do so. Many franchisors neglect to make the required revision, or seek to do so by way of a state specific addendum. Because the source of the prohibition on waivers and disclaimers is the Amended Franchise Rule rather than a state law, an integration clause that seeks to waive a franchisee’s reliance on representations made in the FDD violates the FTC’s Franchise Rule in every state in which the franchise is offered.

C. **Tips for Preparing Financial Performance Representations**

Although an exhaustive discussion of the Item 19 Financial Performance Representations (“FPR”) is beyond the scope of this paper, the following tips will help streamline the registration process. As discussed above, the Amended FTC Rule prohibits a franchisor from disclaiming or requiring a prospective franchisee to waive reliance on any representation made in the FDD or its exhibits or amendments. Nevertheless, franchisors frequently seek to have prospective franchisees waive reliance on representations the franchisor has made or may make in the future, particular with respect to Item 19 disclosures.

**Common Deficiencies:**

- Including an FPR in an addendum to the FDD, contrary to the instruction in FAQ 33.

- Including an FPR from data that does not have a reasonable basis. Although the Amended Franchise Rule relaxed some requirements for making FPRs, it did not relax the requirement that the FPR have a reasonable basis. For examples, some franchisors have attempted to include an FPR based on a few top performers without describing the characteristics that distinguish the subset from the franchise being sold. In addition, a single top performer in a mature outlet does not constitute a “subset” on which a franchisor may reasonably base an FPR.

- Failing to state the total number and percentage of outlets that attained or surpassed the results stated in the FPR.

- Basing an FPR on franchisor owned outlets alone without identifying relevant differences between company owned and franchised outlets.

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18 For a thorough discussion of FPRs under the Amended FTC Rule, see Hershman and Mazero, *Financial Performance and Representations: The New and Updated Earnings Claims* (ABA Forum Committee on Franchising, 2008).
• Basing an FPR on a small number of franchisor owned outlets when the franchisor has numerous franchised outlets operating over a long period.

• Failing to use in an Item 19 FPR the appropriate "conspicuous admonition" that a new franchisee’s individual financial results may differ from the results stated in Item 19. NASAA Commentary Item 19.3. Do not follow the FTC’s Compliance Guide sample, which actually includes something akin to a disclaimer. 19

• Using a prohibited disclaimer similar to the following: “Although we have given you certain historical information about revenue of some of our franchisees, you should not rely on that information, and we cannot be bound as to its accuracy.”

• Failing to recognize inconsistencies between the franchisor’s FPR and franchise agreement. For example, a franchisor filed an FDD response recently with the Maryland Securities Division, and the FDD response included an FPR based on historical information. But the franchisor’s franchise agreement contained the following acknowledgement: “You hereby acknowledge that we have made no claims or representations whatsoever regarding potential earnings you may receive as a [name of franchise] franchisee. While we have offered assistance, you have approval of all decision concerning your franchise purchase, location and operations.”

• Including disclaimer language that is broader than the following specific legend the FTC allowed in FAQ 27, when a franchisor makes an FPR:

  “Other than the preceding financial performance representation, [name of franchisor] does not make any financial performance representations. We also do not authorize our employees or representatives to make any such representations either orally or in writing. If you are purchasing an existing outlet, however, we may provide you with the actual records of that outlet. If you receive any other financial performance information or projections of your future income, you should report it to the franchisor’s management by contacting [name, address, and telephone number], the Federal Trade Commission, and the appropriate state regulatory agencies.”

D. Tracking Filing, Expiration Dates and Deadline Filing Dates

It is essential that a franchisor have a ready means of knowing the status of its registrations, so it can know when it can sell and not sell, what actions need to be taken to secure and maintain its registrations, and the time frames of such actions. There are many

19 NASAA Commentary 19.3, which provides a sample admonition, states that while no specific language is required, franchisors “may not include additional language that serves to disclaim the financial performance representation they have just made or state that a franchisee may not rely on the information presented.” In contrast, the FTC’s Compliance Guide includes a sample Item 19 admonition, but that sample includes the sentence “If you rely upon our figures, you must accept the risk of not doing as well.” FTC Compliance Guide, p. 92. The Compliance Guide sample language is based on a previously required mandatory disclosure provided under the original Franchise Rule, Bus. Franchise Guide (CCH) ¶6258. The FTC Staff has indicated that it would consider revisiting the sample admonition included in the Compliance Guide for consistency with the NASAA Commentary.
ways to track application filings, but one effective approach would be to create a tracking report ("Tracking Report"). The Tracking Report should be designed to provide a snap-shot look at your current franchise registration filings, on a state-by-state basis. The Tracking Report should contain summarized information such as the states in which the franchisor is registered and not registered and which states have imposed escrow or impound requirements. The report should reflect the effective and expiration dates of the registration (or exemption). Additional information, such as renewal deadlines, pending status, response to comment letter deadlines, or special conditions set by the various state examiners may be disclosed. The Tracking Report should be updated in a regular and timely manner to reflect any updates to the registration filing process. Appendix A is a sample Tracking Report. The Tracking Reports inform the marketing and sales departments about where they can direct their efforts and enable the franchise legal and compliance team to remain proactive in meeting current and anticipating future franchise registration needs. Tracking software programs, such as those used for trademark registrations, can sometimes be adapted for use with franchise registrations.

III. STATE LAW DIFFERENCES

The Amended FTC Rule does not preempt the state laws governing franchise registrations; however, if the FTC disclosure requirements are more expansive or demanding, the FTC’s requirements will be applicable. Thus, state laws that are not inconsistent with the Amended FTC Rule remain applicable. State laws that provide greater protection to franchisees trump the Amended FTC Rule20, and compliance with the Amended FTC Rule may not be sufficient to comply with state law. Although Paghman Chicken, Inc. v. Loghar Restaurant Corp.21, involved a failure to register in New York, the Court noted that a disclosure document must comply with the substantive requirements of New York’s franchise law, even if more exacting than those of the federal law. Furthermore, the definition of a franchise under the Amended FTC Rule and all registration states, other than New York, requires three elements: (a) a fee; (b) a trademark; and (c) either “substantial control or assistance”, a “marketing plan”, or a “community of interest”. However, New York’s broad definition of a franchise extends to those relationships where either, rather than both, of the last two elements along with a fee are present. If a registration state’s definition is narrower than the FTC’s definition or if an arrangement is exempt under the state’s law, the franchisor is still be required to comply with the disclosure requirements of the Amended FTC Rule.

Thus, although the FDD is uniform in most respects, certain modifications to the FDD are required in some of the registration states, and the franchisor may be required to register and disclose in some states, even if it would not otherwise be required to do so under the Amended FTC Rule’s definition of the franchise. Some states require that certain provisions in the franchise document be eliminated since they are or may be unenforceable in that state. Franchisors may elect to use one FDD for the non-registration states and a different FDD for each of the registration states. However, franchisors most often address the state-specific disclosure requirements through the use of separate State Law Addendum attached as an exhibit to the FDD (see example at Appendix F), along with a rider or amendment to the franchise agreement signed by the parties to the agreement (see example at Appendix G). Some franchisors use one exhibit that serves as an amendment to both the Franchise Agreement and FDD. Unless a state franchise law requires otherwise, state specific addenda


should be included with the other exhibits, but before the receipt pages, either in the state addenda exhibit or in a separate exhibit. In either case, the location of any state specific addenda and state specific amendments to the franchise agreement or other documents should be identified in the Table of Contents to the FDD.\(^\text{22}\)

IV. FINANCIAL REQUIREMENTS

Financial statements in Item 21, which must be prepared in accordance with generally accepted accounting principles (including notes), are an essential component of the FDD. Financial statements provide prospective franchisees with information to assess financial trends in a franchise system and must be compliant with the Amended FTC Rule. One of the most common delays in approving state applications is caused by financial statements that are improperly prepared or incomplete. Therefore, franchisors should make the timely completion of the audit a priority for both initial registration and renewals. The Amended FTC Rule imposes a 120-day deadline for updating the FDD, and some states have the same or even shorter deadlines.

A. Audited Financial Statements

Except as noted in Section IV.A. below, financial statements must be prepared by an independent certified public accountant using United States generally accepted accounting principles.\(^\text{23}\) The financial statements must contain the franchisor’s:

(i) audited balance sheet for the previous two fiscal years, and

(ii) statement of operations, stockholders equity, and cash flows for the previous three fiscal years.

If a franchisor files a state registration application more than 120 days (in some states, more than 90 days) after its fiscal year-end, the franchisor must also file interim unaudited financial statements.

As an alternative, and in lieu of the franchisor’s financial statements, the franchisor may substitute comparable financial statements of any of its affiliates as long as the affiliate absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement. The affiliate’s guarantee must cover all of the franchisor’s obligations to the franchisee, but need not extend to third parties. If this alternative is used, a copy of the guarantee must be attached to the FDD.

Other considerations affecting financial statement disclosures included:

1. Ownership in Subsidiary. If the franchisor owns a direct or beneficial controlling financial interest in a subsidiary, the financial statements should reflect the financial condition of the franchisor and its subsidiary.

\(^{22}\) NASAA Commentary .04.

\(^{23}\) See 16 C.F.R. § 436.3(u)(1).
2. **Subfranchisor Statements.** If the franchisor is engaged in subfranchising activities, separate financial statements must be included for the franchisor and any subfranchisor.

3. **Parent Financial Statements.**24 Financial statements for any parent that commits to perform post-sale obligations for the franchisor (for the direct benefit of franchisees) or guarantees the franchisor's obligations, must be included. Also, if the franchisor is obligated to provide goods and services and the parent assumes that responsibility, or the franchisor arranges for the parent to provide goods and services directly to franchisees on its behalf, then the parent's financial statements must also be disclosed. If a parent supplies goods or services to franchisees where there is no underlying obligation on the part of the franchisor to supply them, then the parent is no different from any other third-party supplier and its financial statements need not be disclosed. However, FAQ 30 expresses the FTC staff's view “that, even in the absence of an express commitment in the franchise agreement for the franchisor’s parent to provide a good or service that is so essential to the franchise that the franchised business cannot be conducted without it, this obligation is implicit in the contractual obligations of the parties. Accordingly, disclosure of the parent’s financial statements in Item 21 is required in these circumstances.”

Overall, the parent’s financial statements must be disclosed if it commits or guarantees to perform more than an isolated obligation to franchisees on behalf of the franchisor. A copy of the parent guarantee must also be attached to the FDD.

4. **Affiliate Financial Statements.** Disclosure of an affiliate's financials is voluntary, if the affiliate "absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement."25 An affiliate need not disclose financials unless it qualifies as a “parent” and commits to perform or guarantees the franchisor's post-sale obligations.

**B. Phase-in of Audited Financial Statements**

The Amended FTC Rule permits a newly organized franchisor, as well as an existing business that first begins to offer franchises but has never had audited financial statements, to phase-in the use of audited financial statements. If an existing company has prepared audited financials before embarking on a franchise program, it may not phase-in audited financials. Any non-franchise company that has prepared audited financials in the ordinary course of business must include them, and the phase-in does not apply to spin-offs, affiliates, or subsidiaries of a franchisor, where the franchisor has been engaged in franchising or has prepared audited financial statements for any other purpose. The phase-in permits a new franchisor to satisfy the financial statement requirements by providing the following:

1. For the franchisor’s first partial or full fiscal year selling franchises - An unaudited opening balance sheet.

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24 A “parent” is defined as “an entity that controls another entity directly, or indirectly through one or more subsidiaries.” The definition focuses on “control,” not mere ownership. Accordingly, a parent that merely owns, but does not control, a franchise system – for example, the parent does not shape the franchisor’s policies or control franchise sales or operations – is not a “parent” for purposes of any disclosure item. (Sec. 16 C.F.R. §436.1(m)). Also, see FAQs 4, 16, and 30.)

2. For the franchisor's second fiscal year selling franchises - An audited balance sheet opinion as of the end of the first partial or full fiscal year selling franchises.

3. During the third fiscal year and thereafter - All required audited financial statements for the previous fiscal year, plus any previous fiscal year, plus any previously disclosed audited statements required by the Amended FTC Rule.

As of June 2009, all registration states other than Minnesota, New York and Virginia will accept phase-in audited financial statements; however, those states may impose additional financial assurances or other requirements.

If an application for franchise registration is submitted more than 90 days after the fiscal year end, most states require an additional updated unaudited financial statement (current to within 90 days of the application), with a legend such as:

THESE FINANCIAL STATEMENTS HAVE BEEN PREPARED WITHOUT AN AUDIT. PROSPECTIVE FRANCHISEES OR SELLERS OF FRANCHISES SHOULD BE ADVISED THAT NO CERTIFIED PUBLIC ACCOUNTANT HAS AUDITED THESE FIGURES OR EXPRESSED AN OPINION WITH REGARD TO THEIR CONTENT OR FORM.

Start-up franchisors who phase-in the disclosure of audited financial statements must: (a) prepare audited financial statements as soon as practicable; (b) prepare unaudited statements in a format that conforms as closely as possible to audited statements; (c) include one or more years of unaudited financial statements or clearly and conspicuously disclose that the franchisor has not been in business for three years or more, and cannot include all financial statements required by the NASAA Guidelines.

In any event, for other reasons, it may be advisable for franchisors to have audited statements from the start.

C. Capitalization Requirements

All of the registration states that must approve a filing typically condition the approval on the franchisor’s demonstration of financial ability to provide pre-opening obligations and services that are promised (i.e., such as real estate, improvements, equipment, inventory, training, or other items included in the offering). If the state’s analysis of the franchisor’s financial condition concludes that the franchisor lacks the necessary financial strength to do so, the state may issue an impound order for the protection of prospective franchisees. States generally look at three measures of financial strength: (i) a positive net worth; (ii) a ratio of current assets against current liabilities of at least 1:1; and (iii) a profit in the just-concluded fiscal year. Unless the franchisor satisfies all three prerequisites (with some latitude given to start-up franchisors having a strong net worth), it is likely that the state will require one of the following financial assurances as noted below. State administrators will generally be willing to negotiate the specific type of financial assurance.

The franchisor’s FDD (Item 5), as well as the Franchise Agreement must also be revised to reflect these conditions; however, most states will allow these changes to be made in the state-specific disclosure addendum and in the state-specific agreement amendment.
1. **Escrow** – The franchisor may be required to escrow franchise fees and other funds paid by a franchisee until the franchisor’s obligations under the franchise offering have been satisfied (i.e., escrow fees from the date that the franchisee signs until the time when the franchised business opens.) The terms of the escrow agreement vary among the states, and some states will negotiate specific terms of the agreement. California, Maryland, Minnesota, New York, Virginia, and Washington require that the funds collected from the franchisee be placed in a separate trust account with a bank or trust company located in the state; however, other states permit the funds to be deposited into accounts that may be located out of the state. Some franchisors may find it difficult to find an out of state bank to serve as escrow agent. In most cases the franchisor must also file an original signed copy of the escrow agreement in a form required by the state. The escrow agreement must include the name and address of the depository and the account number of the escrow account. All checks collected must be made payable to the depository. When the franchisor has satisfied its pre-opening obligations, and the franchisee is able to open for business, the franchisor may apply to the state for authority to direct the escrow agent to release the escrowed funds. In some states the franchisee must sign a statement authorizing the release of funds.

2. **Fee Deferral** – The franchisor may be required to defer the collection of franchise fees and other initial payments owed by franchisees until the franchisor has completed its initial obligations under the franchise agreement and the franchise is open for business.

3. **Surety Bond** – The franchisor may be required to post a surety bond. Typically a state will require that the bond amount be equal to the initial franchise fee multiplied by the number of franchises to be opened in the state. Some states require that the bonds be issued by a corporate surety authorized to transact business in the state. Because of the expense associated with obtaining surety bonds, this alternative is rarely used.

4. **Guarantee of Performance** – The franchisor may be required to make arrangements with a guarantor (either from a parent or other affiliate) whose financial statements demonstrate an ability to perform the franchisor’s obligations in the Franchise Agreement (a few states may permit a non-affiliated party to guarantee the franchisor’s obligations). A signed guarantee of performance will be required from the guarantor and the guarantor’s audited financial statements must appear in the FDD. Guarantors are required to furnish additional documents such as a secretary’s certification, consent to service of process and corporate acknowledgement.

5. **Informal Undertaking** – If a state believes that the franchisor’s financial condition is borderline acceptable, it might agree to defer the impound but closely monitor the franchisor’s general condition. To do so, the franchisor must submit an undertaking letter certifying that it will file, once a quarter, its unaudited financial statements to the state through the end of its fiscal year.

6. **Capital Infusion** – A franchisor may be given the opportunity to infuse more capital into the company to provide increased equity. If so, the franchisor must submit an updated unaudited financial statement to demonstrate the change. The state also may require other documents to substantiate the change.
The following table summarizes the states which have statutes that allow for the various impound condition options. Franchisor’s should make sure that they comply with any escrow or impound requirements and flag their files accordingly, since the failure to comply with such requirements can result in fines or penalties.

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<th>State*</th>
<th>Escrow</th>
<th>Fee Deferral</th>
<th>Surety Bond</th>
<th>Guarantee of Performance</th>
<th>Informal Undertaking</th>
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*Escrow must be in a bank located in the state.

**Certain state statutes do not provide for deferral of fees, informal undertaking, or capital infusion, but it has been the practice of state regulators to allow the use of such options.

### D. Auditor’s Consent

The following states require the franchisor to obtain an "Auditor’s Consent" and file it as part of its initial or renewal registration application filing: California, Hawaii, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode Island, Virginia, and Washington. The Auditor’s Consent form is a short statement by the accounting firm that it consents to the inclusion of the audited financial statements it prepared for the last fiscal year in the franchisor’s FDD. Before issuing a Consent, most auditors will insist on reviewing the entire FDD and, in some instances, have required franchisors to make certain changes to the FDD. Franchisors should ensure that they have set aside sufficient time for their auditors to conduct such reviews. The Consent of Accountant form is located in Appendix B. The Auditor’s Consent form must be prepared on the accountant’s letterhead and must include the following: (1) the accounting firm’s name, address, and telephone number; (2) complete name of the franchisor; (3) issuance date of the FDD; (4) date of the audit report for the audited financial statements; and (5) unless the filing state requires otherwise, copies of the signed consents may be filed.

### V. AMENDMENTS

In the event a “material” change to any information in the FDD occurs prior to renewal, franchisors must amend the FDD and file the amendment in the registration states.\(^{26}\) The

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Amended FTC Rule does not define “material change”; however, generally it has the meaning ascribed to it in the 1979 FTC Rule, to-wit: “Any fact, circumstance, or set of conditions which has a substantial likelihood of influencing 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.” Some state franchise laws, such as Hawaii, Illinois, Maryland, Minnesota, New York, Virginia, and Wisconsin define the term “material” through examples. Franchisees who do not receive an amended FDD after a modification should have been made have a right to recover damages and attorneys’ fees for damages resulting from a material omission. In addition, such failure may subject the franchisor and its officers personally to civil fines, and possibly, criminal liabilities.

Although some state laws differ, the Amended FTC Rule requires that the FDD be updated quarterly, within 30 days after the close of the quarter, for any material changes. As a practical matter, the areas that most frequently require updating are increased costs in establishing or operating the franchise, franchisee turnover through termination and nonrenewals, mergers and acquisitions involving the franchisor, new litigation or arbitration or significant developments in existing cases, changes in the franchise program, changes in fees, changes in franchisor’s obligations, changes in franchise personnel involved in franchise activities, and adverse changes in the franchisor’s financial status or competitiveness.

A. Post-Effective Amendments for Material Changes

If a material change in the information in the FDD occurs, the franchisor must file an amendment application with the registration state and suspend any sales activity until the amended FDD is reviewed and approved by the state examiner. All registration states require that franchisors update and file their amended FDD after the occurrence of a “material change,” except for Indiana, Michigan and South Dakota. Amendments are effective immediately upon filing in Illinois, Virginia and Wisconsin. Illinois, for example, may impose a fine for failure to amend for a material change, even if no sales in that state were made under the mandated FDD.

The amendment application requires the filing of a copy of the amended FDD, blacklined copy of the FDD reflecting the changes, application forms, and a filing fee. Appendix D includes the various amendment filing requirements and fees for each of these states. In practice, some of the practices for which authority exists may not be followed. The time within which a franchisor must file an amendment to reflect a material change in the FDD is not uniform; however, the safest course is to file an amendment promptly and to be sure that a prospective franchisee obtains the new information. The Amended FTC Rule allows the franchisor to notify a prospective franchisee of a material change to the Item 19 Financial Performance Representations, orally or outside of the FDD; however, it is obviously risky to do so orally. In any event, the registration states treat an Item 19 amendment like any other amendment and require changes in Item 19 to be provided through amendment and delivery of a new FDD.

There are a few states that allow for the continued offer or sale of franchises while the amendment application is pending approval (such as Illinois and New York) and the franchisor must comply with the requirements under these state regulations.

27 16 C.F.R. § 436.2(n).
28 16 C.F.R. § 436.2.
B. Pre-Sale Negotiated Changes

Franchisors and franchisees have the right to negotiate changes to the franchise agreement prior to sale. Indeed, one of the main objectives of the FDD is to inform prospective franchisees about the proposed relationship so that franchisees can negotiate changes that are important to them. From a practical standpoint, other than in California, franchisors are free to negotiate the terms of the franchise agreement without the need to register the amendment with the state regulatory agency, unless the changes are repeated and rise to the level of amendment for franchises offered in the state. Virginia is the only state which permits a prospective franchisee to void a franchise agreement within 30 days after signing it if it “was not afforded the opportunity to negotiate with the franchisor on all provisions within the franchise, except that such negotiations shall not result in the impairment of the uniform image and quality standards of the franchise.”

California’s law regarding pre-sale negotiations is unique, and imposes a general duty to register material changes of negotiated sales; however, such negotiations are exempt from that duty as long as the negotiated sale satisfies all of the following requirements:

1. The initial offer is the offer registered;
2. The prospective franchisee receives all of the following in a separate written appendix to the offering circular: (a) summary description of each material negotiated term that was negotiated by the franchisor for a California franchise during the 12-month period ending in the calendar month immediately preceding the month in which the negotiated offer or sale is made under this section; (b) a statement indicating that copies of the negotiated terms are available upon written request; and (c) the name, telephone number, and address of the representative of the franchisor to whom requests for a copy of the negotiated terms may be obtained.
3. The franchisor certifies or declares in an appendix to its application for renewal that it has complied with all of these requirements;
4. The negotiated terms, on the whole, confer additional benefits on the franchisee.

The franchisor is required to provide a copy of the negotiated terms to the prospective franchisee within five business days following the request of the franchisee, and must maintain copies of all material negotiated terms for five years from the effective date of the first agreement containing the relevant negotiated term.

C. Post-Sale Modifications

Once the franchise is granted, all states except California and North Dakota permit the franchisor and franchisee to amend their franchise agreement at any time and in any manner.

In California, some material modifications will satisfy one of the prerequisites for exemption from registration. These prerequisites include transactions where the modification is

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offered on a voluntary basis and does not substantially and adversely impact the franchisee’s rights, benefits, privileges, duties, obligations, or responsibilities under the franchise agreement.

If the above exemption is not available, then the following alternative exemption requirements must be met:

1. The franchisee receives the complete written modification at least five business days prior to the execution of a binding agreement, or providing that the franchisee may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor, receind the agreement to the material modification, provided (a) the agreement is not executed within 12 months after the date of the franchise agreement, and (b) the modification does not waive any right of the franchisee under the California Franchise Regulations Act (Chapter 5.5 (commencing with Section 20000) of Division 8 of the Business and Professions Code), but the modification may include a general release of all known and unknown claims by a party to the modification; and the modification meets one of the following:

   (i) The proposed modification is in connection with the resolution of a bona fide dispute between the franchisor and the franchisee or the resolution of a claimed or actual franchisee or franchisor default, and the modification is not applied on a franchise system wide basis at or about the time the modification is executed. A modification shall not be deemed to be made on a franchise system wide basis if it is offered on a voluntary basis to fewer than 25 percent of the franchisor’s California franchisees within any 12-month period.

   (ii) The proposed modification is offered on a voluntary basis to fewer than 25 percent of the franchisor’s California franchises within any 12-month period, provided each franchisee is given a right to rescind the modification agreement if the modification is not made in compliance with paragraph C.1 above which discusses alternative exemption requirements.

For those transactions which do not meet the exemption requirements, the franchisor must (a) file an application for registration of a material modification of an existing franchise or of existing franchises and (b) deliver to the franchisee a written disclosure, in a form and containing information as the commissioner may by rule or order require, identifying the proposed modification, either five business days prior to the execution of any binding agreement by the franchisee to the modification or containing a statement that the franchisee may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor, rescind the agreement to the material modification.

In North Dakota, a franchisor must disclose in writing, to each franchisee, information concerning the specific sections of the franchise agreement proposed to be modified. The franchisee has the right to rescind its franchise agreement to the material modification within 10 days after the receipt of the writing describing the material modification. North Dakota law exempts all franchisors from this requirement except those franchisors who sold their original

31 Bus. Franchise Guide (CCH) ¶¶ 3,050.25; 3,050.44.

franchise based upon a net worth exemption. The material modification does not require any filing or registration with the state. It appears that the only obligation that a franchisor would have, would be to provide existing franchisees, in addition to the actual proposed franchise agreement amendment/modification, with a separate written description of the proposed franchise agreement change.

VI. RENEWALS AND ANNUAL REPORTS

The Amended FTC Rule requires a franchisor to update its FDD within 120 days after its fiscal year end; however, as noted below, some states have different renewal requirements. The FDD must include updated litigation disclosures, audited financial statements, outlets and franchisee information, and any other current information about the franchise system. In addition, the following items are most likely to change as of the end of the franchisor’s previous fiscal year: Item 1 (company history); Item 2 (officers and directors); Item 4 (bankruptcy); Items 5 (initial fees); 6 (other fees); 7 (investment costs), Item 10 (financing); Item 11 (advertising/computer costs); Item 12 (territory); Item 13 (trademarks); Item 19 (financial performance representations); and any updates to the franchisor’s contracts. Once the FDD has been updated, it may be used for franchise sales in the states that do not require registration, filing, or additional disclosure prior to the offer or sale of franchises – the “non-registration” states.

State franchise registrations expire at the end of a fixed registration, unless a renewal (or in some cases an annual report) application is filed and approved. Some registration states tie the registration period to the franchisor’s fiscal year end, but most use the anniversary date of the current registration. The franchisor must file its updated FDD together with all required forms and fees, including an updated consent to service of process, prior to the state’s registration expiration date. Appendix D includes the registration state expiration and deadline filing dates for each of the registration states. The process is basically the same as for filing the initial registration.

In some registration states, if the franchisor does renew its registration (some states refer to it as an annual report and amendment of registration) prior to the expiration date but the renewal is not yet approved by the state, the franchisor will go “dark” in that state. This means that the franchisor cannot offer to sell franchises in that state until its renewal is declared effective by the state regulator. If the franchisor does not renew in a timely manner or if the prior registration has expired, the franchisor will need to file its application as an initial application, a reinstatement application or some other variation.

In addition to updating the FDD and renewal filings, Hawaii and New York require certain information to be filed annually as part of the registration application. Hawaii requires franchisors to report any new franchise sales within 90 days after its fiscal year end\(^3\). The report must include the number of franchises sold and the amount of the proceeds derived from the franchises sold. New York requires franchisors to report any new franchise sales within 120 days after its fiscal year end\(^4\). The report must include information such as the date of the franchise sale; the prices paid and credit terms upon the sale of each franchise; name, address and telephone number of the franchisee; and address of the franchise location. Although a

\(^3\) Bus. Franchise Guide (CCH) ¶ 5,110.08.

\(^4\) Bus. Franchise Guide (CCH) ¶ 5,320.08.
franchise registration in Minnesota and New York does not expire, filings will nevertheless be required in order to keep the information on file current, and would include such things as new financial information, statistical information on outlets, initial investment costs, financial performance representations, and other material changes.

A franchisor that does not intend to continue offering franchises for sale is generally not required to renew; however, if renewals to existing franchisees are offered on terms that are materially different from the original franchise, there would be an obligation to renew, unless the renewal offer is otherwise exempt.

VII. OTHER REGISTRATION DUTIES

A. Salespersons and Brokers

All of the registration states except Virginia require franchise sales agents and other brokers to file a sales agent disclosure form (or franchise seller disclosure form), which is part of the uniform application. If the franchisor uses independent brokers – independent agents who solicit franchisees on behalf of the franchisor, but who are not employees of the franchisee -- forms must be filed for each broker; however, Illinois, New York and Washington use a separate, more comprehensive broker registration form and application and impose a filing fee.

The requirement under the old UFOC Guidelines that information about brokers be included in Item 2 has been eliminated under the Amended FTC Rule. Brokers, however, are still considered to be a “franchise seller” and are still liable for any false claims they make to prospective franchisees, even though they are no longer responsible for preparation and distribution of the FDD. NASAA’s Guidelines require the state cover page to state when a franchise broker is paid a fee for selling or referring a prospect. In addition, a Franchise Seller Disclosure Form is required to be filed in most of the registration states for any third party who provides sales services on behalf of the franchisor.35

A broker must be registered in Illinois, New York or Washington prior to being allowed to offer a franchise for sale in those states. All salespersons employed by a franchisor do not need to register as brokers in these states. However, in California, for each salesperson employed by a franchisor, the franchisor must file a Sales Agent Form with the California Department of Corporations prior to that individual offering the sale of a franchise. Typically this is done and updated at the same time the franchisor applies for registration of the franchise or renewal the franchise. If a new salesperson starts in the middle of the registration period, an amendment to the registration consisting of the person’s Sales Agent Form, must be filed.

“Franchise sellers” who are instrumental in effecting a franchise sale must also be named on the Acknowledgment of Receipt page of the FDD. FAQ No. 12 suggests ways to comply with foregoing: “A franchisor need not create an individualized disclosure document for each franchise sale. It is the FTC staff's view that if, at the time of furnishing the disclosure document, a franchisor does not know the particular seller, such as a broker, the franchisor has several options. First, a franchisor could include an instruction in the receipt page that the prospective franchisee write in the name of the franchise seller before signing and returning the receipt page to the franchisor. Second, the franchisor could: (1) attach to the previously signed receipt a statement, business card, or other document showing the name of the seller; and (2)

35 Bus. Franchise Guide (CCH) § 5705.
send a copy of the attachment to the prospective franchisee so that the prospective franchisee has a copy of the completed receipt. At that point, both the franchisor and prospective franchisee will each have a copy of the same receipt. In short, in the FTC staff's view, the absence of an identifiable seller at the time of disclosure should not force a delay in the prospective franchisee’s ability to sign the receipt page, provided that the receipt page is updated once the identity of the seller is known.

B. Subfranchisor Registration

In a subfranchise relationship, the franchisor grants a third party (often referred to as "subfranchisor") the right to sell and grant franchises to others. It is frequently used as a method for a franchisor to expand more rapidly with the opening of multiple units. The franchisor has the same registration and disclosure obligations to its subfranchisor that it would have to a regular franchisee. Further, the subfranchisor is obligated to comply with registration and disclosure obligations in connection with the sale of subfranchises to third parties. A subfranchisor is considered to be a “franchise seller” under the Amended FTC Rule. The franchisor and subfranchisor are each responsible for the accuracy of the disclosures contained in the FDD that apply to the other, and they can be held jointly and severally liable for each other’s conduct.

Although some states have laws that have a broader definition of a “subfranchisor”, for purposes of the Amended FTC Rule, a "subfranchisor" means a person who functions as a franchisor by engaging in both pre-sale activities and post-sale performance.³⁶ A "subfranchisor" is a person "who functions as a franchisor," by use of the qualifying phrases "grants a franchise" and "participates in the franchise relationship." In order to be considered a subfranchisor, it must have (1) the authority to enter into a franchise agreement (or another agreement relating to the franchise), and (2) as a result of entering into such an agreement, it is obligated to perform after the purchase of the franchise is consummated. The role of a subfranchisor is materially different from that of a broker, for example, because a broker typically is not a party to the franchise agreement and does not have post-sale contractual obligations to franchisees. The term 'subfranchisor' is limited in to circumstances where the subfranchisor steps into the shoes of the franchisor by selling franchises and performing post-sale obligations. It does not reach those individuals who may be called 'subfranchisors,' but who act like brokers, having no post-sale commitments to franchisees."³⁷

Some state laws may treat “area representatives” as subfranchises and in those states, disclosure may be required. Under Item 20, however, such arrangements do not constitute a subfranchise. Accordingly, while such programs should be described in the franchise disclosure document, separate charts and lists of these third parties are not required to be included in Item 20.³⁸

FAQ 9 notes that "development agents", “area developers” or “regional developers” are not treated as subfranchisors even if they provide post-sale services to franchisees, unless that

³⁶ See FAQ #9.


³⁸ NASAA Commentary 20.3.
person is a party to the franchise agreement or another agreement involved in the franchise. Therefore, financial and other information for such agents need not be included in the FDD.

"Area developers" are franchisees who receive the right to open multiple outlets. Item 20 does not permit separate charts or lists of outlets of area developers. However, disclosure regarding the area development arrangements must be included, as appropriate, in other Items of the FDD.39

C. Agents for Service of Process

State registrations require franchisors that are operating in the state to designate a registered agent. A registered agent is someone the franchisor designates to receive "service of process" should the franchisor be sued. Most state applications include a "uniform consent to service of process" form which designates the appropriate state authority to receive service of process on behalf of the franchisor. Some states will allow private agents to be substituted for those who administer the franchise laws to serve the agent. This form is not delivered to a franchisee; however, the NASAA Guidelines require the franchisor to disclose the name of the registered agent(s) in Item 1 (or list the registered agent(s) in an Exhibit to the FDD) and on the Item 23 receipt pages.

VIII. ADVERTISING AND PROMOTIONAL MATERIALS

The following seven registration states require that all advertising and marketing materials relating to the sale of franchises be filed with the regulatory body before distributed to a prospective franchisee:

California Maryland Minnesota Washington
North Dakota Rhode Island New York

This covers not only print media, but, as noted in the New York law, "any pamphlet, circular, form letter, advertisement, sales literature or advertising communication addressed to or intended for distribution or communication to prospective franchisees." Advertising in a national newspaper or magazine is exempt from these state requirements if the publication does not originate from the registration state and more than 2/3 of the publication’s circulation is outside the registration state. Generally, the filing is deemed approved unless the regulatory authority objects to it within a specific period of time.

Most states also prohibit franchisors from making certain types of claims, such as those touting the franchise as a “safe investment” or those that imply that the filing constitutes approval by the state. For example, Minnesota does not permit an advertisement make reference to (a) the acquiring of a franchise as an assurance of earnings or profits, as a safe investment, or as free from loss, default, or failure or that such is impossible or unlikely; (b) projections or statements of operations of or income from the operation of any franchise; or (c) any opinion of counsel without stating the name and address of such counsel. In addition, all advertisements must contain the name and address of the person using the advertisement or

39 NASAA Commentary 20.3.
making the offer, including the name or the primary commercial symbol of the franchisor, and the registration number assigned to the offering by the commissioner. 40

Under NASAA’s policy statement, offers to sell franchises on the internet are exempt from state registration if (1) the web content indicates that franchisor will not sell franchises in the registration states until registered; (2) the franchisor does not direct the offer to any particular person in the state, such as by e-mail, and (3) the franchisor does not sell any franchises in the state as a result of the offer until the offering is registered. 41 California has a specific rule and a form which must be submitted regarding an exemption for offers made through the internet. Franchisors’ websites should conspicuously identify those states where the franchisor is not registered to sell franchises.

IX. CONCLUSION

The registration states have broad powers to address violations of state registration laws. Since the Amended FTC Rule only preempts applicable state laws that are inconsistent with it, differences in registration and disclosure requirements remain. Most differences affecting registration can be handled through the use of a State Law Addendum; however, many factors affect the level of scrutiny given to a filing as well as the substance of comment letters from state to state and regulator to regulator. Some documents that appear to be deficient on their face, will pass muster, while others that are well drafted and complete but for trivial deficiencies will not. The risks of non-compliance can be substantial and can result in private remedies for damages, equitable relief, and rescission, and the potential for criminal liability. Liability can also extend to controlling persons, partners, officers, directors, and employees who materially aid the violation. Filing dates should be carefully monitored and internal systems should be employed to streamline the registration and renewal process. Franchisors must avoid sales activity in a registration state until their franchise filing has been approved and must keep track of activities that require reporting to the state. Clients are often frustrated by the lengthy delays encountered during the registration process, and those who fail to carefully prepare the registration documents will likely face a lengthy list of deficiencies, or worse, an outright denial of registration. In any event, the registration process will be much quicker and smoother if the franchisor carefully follows the NASAA Guidelines, other resources described in these materials, and the state-specific requirements.

40 MN Regulations 2860.4800.

APPENDIX A
SAMPLE STATE REGISTRATION TRACKING REPORT

Franchisor: XYZ, Inc.  Current as of __________, 2009

<table>
<thead>
<tr>
<th>State</th>
<th>Status</th>
<th>Note</th>
<th>Effective Date</th>
<th>Expires Date</th>
<th>Deadline Date</th>
<th>Amended Date</th>
<th>Escrow/Impound Requirements</th>
<th>Type of Filing</th>
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</thead>
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<tr>
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<td>Expired/</td>
<td>3</td>
<td>04/15/08</td>
<td>04/20/09</td>
<td>03/30/09</td>
<td>Escrow Wachovia Bank</td>
<td>Registration</td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td>01/20/09</td>
<td>01/20/10</td>
<td>01/20/10</td>
<td>Business Opportunity Exemption</td>
<td>Registration</td>
<td></td>
</tr>
<tr>
<td>FTC States</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td>Escrow U.S. Bank</td>
<td>Registration</td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
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<td></td>
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<td></td>
<td>Business Opportunity Exemption</td>
<td>Registration</td>
<td></td>
</tr>
<tr>
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<td>10/08/08</td>
<td>10/08/09</td>
<td>09/17/09</td>
<td>Registration</td>
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<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td>Registration</td>
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</tr>
<tr>
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<td></td>
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<tr>
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<td>04/30/10</td>
<td>04/30/10</td>
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<td></td>
</tr>
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<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
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<td>04/30/10</td>
<td>03/31/10</td>
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<td></td>
</tr>
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<td></td>
<td>Registration</td>
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<td></td>
</tr>
<tr>
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<td>12/29/03</td>
<td>Indefinite</td>
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<td>Business Opportunity Exemption</td>
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<td></td>
</tr>
<tr>
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<td></td>
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<td>Business Opportunity Exemption</td>
<td>Registration</td>
<td></td>
</tr>
<tr>
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<td>3</td>
<td>04/24/08</td>
<td>04/24/09</td>
<td>03/24/09</td>
<td>Registration</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Pending</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Registration</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Washington | Not Requested | Registration
Wisconsin | Not Requested | Registration

Notes:
1. These exemptions apply as long as the company remains in compliance with the Amended FTC Rule.
2. On 3-27-09 we filed a renewal application with the state and we are waiting for a reply from the state administrator.
3. We have received comments from the state administrator and we are in the process of preparing a reply.
APPENDIX B
SAMPLE AUDITOR'S CONSENT

[prepare on auditors’ letterhead stationary]

(Name of Accountant) consents to the use in the Franchise Disclosure Document issued by (name of Franchisor) (“Franchisor”) on (issuance date of Franchise Disclosure Document), as it may be amended, of our report dated (date of accountant's report), relating to the financial statements of Franchisor for the period ending (__________________).

(Name of Accountants)________

(Manual or Digital Signature)______
[Date]

[Name of Franchise Examiner]  
[State Agency Address]  

Re:  [Name of Franchisor]  
 Application for Initial Franchise Registration  

Dear [Examiner]:

Enclosed please find an application for initial franchise registration submitted for [Franchisor] to offer and sell franchises in the State of [__________].  [Franchisor’s] fiscal year [ends] [ended] on ____________.

The application consists of a check for [$_____] made payable to the “____________________” for the requisite filing fee and the following items:

1. Uniform Franchise Registration with Certification.  
2. Uniform Consent to Service of Process Form.  
[3. Corporate Acknowledgment.]  
5. Franchisor’s Costs and Source of Funds Form.  
7. One copy of a signed Consent of Accountant.  

Please contact me if you have any questions or comments regarding the enclosed application. Otherwise, we would appreciate receiving notification of initial franchise registration.

Sincerely,

[Attorney/Paralegal/Administrator for Franchisor]  

Enclosures
NOTE: State laws are subject to change
CALIFORNIA

Website: http://www.corp.ca.gov/SRD/franchise.asp
Initial Fee: $675
Renewal Fee: $450
Amendment Fee: $50
Fees Payable to: California Department of Corporations
Filing Method: Paper (but state will permit CD-ROM)
Address:
Corporation Counsel
California Department of Corporations
320 West Fourth Street, Suite 750
Los Angeles, California 90013-2344
(213) 876-7500
Toll free: (866) 275-2677

OR
Corporation Counsel
California Department of Corporations
71 Stevenson Street, Suite 2100
San Francisco, California 94105-2980
(415) 972-8559

OR
Corporation Counsel
California Department of Corporations
1515 K Street, Suite 200
Sacramento, California 95814-4052
(916) 445-7205
(866) 275-2677

OR
Corporation Counsel
California Department of Corporations
1350 Front Street
San Diego, California 92101
(619) 525-4044
(866) 275-2677

Forms:
Cover Letter
Check
Application forms
Franchisor's Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD

State Filing Differences:

Notary acknowledgment for California must be used if notarized in California, but signatures acknowledged in another state can use that state’s notary acknowledgment
Renewal Forms:
- Cover Letter
- Check
- Application forms
- Franchisor's Costs and Source of Funds
- Franchise Seller Disclosure Forms
- Consent of Accountant
- One copy of FDD
- One copy of Blacklined FDD
- Certification that franchisor has complied with all requirements of Section 31109.1 regarding negotiated changes

Post Amendment Forms:
- Cover Letter
- Check
- Application forms
- One copy of FDD
- One copy of Blacklined FDD

Expiration Date: 110 days after fiscal year end
Deadline Filing Date: 15 business days prior to expiration date
Financial Assurance: Escrow, Surety Bond, Fee Deferral, Guarantee of Performance, Capital Infusion
Annual Reports: Not Applicable
Broker Registration: No
Advertising: 3 business days prior to use

Any advertisement which refers to the registration of the franchises under the Franchise Investment Law shall contain in capital letters of not less than 10-point type the following legend:

"THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF CALIFORNIA. SUCH REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF CORPORATIONS NOR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING."

Send one (1) copy of the advertisement.

NOTE: File Internet Advertising Exemption Request for website and include supplemental sheet advising franchisees that website has not been approved by California.
State FDD Differences:

Disclose each item that may be negotiated or has been negotiated within the 12 months immediately preceding the FDD’s effective date.

Certain disclosures may be required with respect to Master Franchisors and Subfranchisors.

The California Franchise Investment Law requires that a copy of all proposed agreements relating to the sale of the franchise be delivered together with the disclosure document.

Item 3 – include currently effective order of any national securities association or national securities exchange, suspending or expelling such persons from membership in such association or exchange.

California Corporations Code, Section 31125 requires the franchisor to give the franchisee a disclosure document, approved by the Department of Corporations prior to a solicitation of a proposed material modification of an existing franchise.

Item 17 – California law provides franchisees with additional rights concerning termination and non-renewal. If the Franchise Agreement is inconsistent with the law, the law will control.

Provisions requiring waiver of compliance with the franchise law is void.

Forum selection and choice of law provisions may not be enforceable.

Termination upon the bankruptcy of the franchisee may not be enforceable.

Liquidated damage provisions may be restricted or prohibited.

Section 31125 of the California Corporations Code requires us to give you a disclosure document approved by the Commissioner of Corporations before we ask you to consider a material modification of your franchise agreement.

The Franchise Agreement contains a waiver of punitive damages and jury trial provision.

Prospective franchisees are encouraged to consult private legal counsel to determine the applicability of California and federal laws (such as Business and Professions Code Section 20040.5, Code of Civil Procedures Section 1281, and the Federal Arbitration Act) to any provisions of a franchise agreement restricting venue to a forum outside the State of California.

FRANCHISOR’S WEBSITE HAS NOT BEEN REVIEWED OR APPROVED BY THE CALIFORNIA DEPARTMENT OF CORPORATIONS. ANY COMPLAINTS CONCERNING THE CONTENTS OF THIS WEBSITE MAY BE DIRECTED TO THE CALIFORNIA DEPARTMENT OF CORPORATIONS AT WWW.CORP.CA.GOV.

Other:

Notice of Negotiated Sale of Franchise must be filed if the negotiated sale is consummated. Certain types of negotiated changes are exempt from registration requirements. (See Section 31109.1)
HAWAII

Website: http://hawaii.gov/dcca/areas/sec/registration_forms/franchise_filings/
Initial Fee: $125 (fee has been reduced until November 1, 2009)
Renewal Fee: $125 (fee has been reduced until November 1, 2009)
Amendment Fee: $125 (fee has been reduced until November 1, 2009)
Fees Payable to: Hawaii Department of Commerce and Consumer Affairs
Filing Method: Paper
Address: Commissioner of Securities of the State of Hawaii
Department of Commerce & Consumer Affairs
Business Registration Division
Securities Compliance Branch
335 Merchant Street, Room 203
Honolulu, Hawaii 96813
(808) 586-2722

Forms: Cover Letter
Check
Application forms
Franchisor’s Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD

State Filing

Differences: Include listing of states in which the franchise registration is effective, has been filed, will be filed shortly, or has been refused, revoked, suspended or withdrawn

Renewal Forms: Cover Letter
Check
Application forms
Franchisor’s Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD
One copy of Blacklined FDD
List of franchises sold in Hawaii

Post Amendment Forms: Cover Letter
Check
Application forms
One copy of FDD
One copy of Blacklined FDD

Expiration Date: 90 days after fiscal year end
Deadline Filing Date: 90 days after fiscal year end
Financial Assurance: Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion

Annual Reports: Yes. File a report within 90 days of the close of franchisor’s fiscal year to include the number of franchises sold in Hawaii during the previous fiscal year and the dollar amount of the proceeds derived from those sales.

Broker Registration: No
Advertising: Not Applicable
State FDD Differences: List states where FDD is registered, where on file, and where it will be registered shortly, and states that have refused, revoked or suspended registration, or where franchisor has withdrawn registration.

THESE FRANCHISES WILL BE/HAVE BEEN FILED UNDER THE FRANCHISE INVESTMENT LAW OF THE STATE OF HAWAII. FILING DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS OR A FINDING
BY THE DIRECTOR OF COMMERCE AND CONSUMER AFFAIRS THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.

THE FRANCHISE INVESTMENT LAW MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, OR SUBFRANCHISOR, AT LEAST SEVEN DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE, OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST SEVEN DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION BY THE FRANCHISEE, OR SUBFRANCHISOR, WHICHEVER OCCURS FIRST, A COPY OF THE DISCLOSURE DOCUMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE SALE OF THE FRANCHISE.

THIS DISCLOSURE DOCUMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR A STATEMENT OF ALL RIGHTS, CONDITIONS, RESTRICTIONS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

Other:
Not Applicable
NOTE: At the time this paper was submitted, legislation was awaiting the Governor’s signature to amend the Illinois Franchise Disclosure Act in several respects, so that it more closely conforms to the Amended FTC Rule by, among other things: (a) establishing a renewal period at 120 days after the franchisor’s fiscal year-end; (b) requiring material changes to be filed quarterly, within 30 days after the close of the quarter; (c) eliminating franchise broker registration; (d) requiring disclosure documents to be prepared in accordance with the Amended FTC Rule and NASAA Guidelines. (If signed into law, it was expected to be effective on October 1, 2009.)

Website: [http://illinoisattorneygeneral.gov/consumers/franchise.html](http://illinoisattorneygeneral.gov/consumers/franchise.html)

<table>
<thead>
<tr>
<th>Fee Type</th>
<th>Amount</th>
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<tr>
<td>Initial Fee</td>
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<tr>
<td>Renewal Fee</td>
<td>$100</td>
</tr>
<tr>
<td>Amendment Fee</td>
<td>$100</td>
</tr>
</tbody>
</table>

| Fee Payable to   | State of Illinois |

| Filing Method    | Paper |

| Address          | Illinois Office of the Attorney General Franchise Division 500 South Second Street Springfield, Illinois 62706 (217) 782-4465 |

| Forms            | Cover Letter, Check, Application Forms, Franchisor’s Cost and Source of Funds, Franchise Seller Disclosure Forms, Consent of Accountant, One copy of FDD, One copy of Blacklined FDD |

| State Filing Differences | May be required to submit an extra copy of the registered disclosure document within one month after registration [Bus. Franchise Guide (CCH) ¶5130.47] |

| Renewal Forms    | Cover Letter, Check, Application Forms, Franchisor’s Cost and Source of Funds, Franchise Seller Disclosure Forms, Consent of Accountant, One copy of FDD, One copy of Blacklined FDD |

| Post Amendment Forms | Cover Letter, Check, Application forms, One copy of FDD, One copy of Blacklined FDD |

| Expiration Date   | One year from effective date |

| Deadline Filing Date | One day prior to expiration date |

| Financial Assurance | Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion |

| Annual Reports     | Not Applicable |

| Broker Registration | Yes (But expected to be eliminated) |

| Advertising        | Not Applicable |

| State FDD Differences | Item 17: Governing law, venue, and jurisdictional requirements are subject to the Illinois act, and waiver of same are ineffective, except that arbitration outside Illinois is allowed. |
In addition, Illinois law will govern the Franchise Agreement to the extent required by the Illinois Franchise Disclosure Laws.

(If Applicable) include information about financial assurances (i.e., escrow, bond, parent company guaranty).

Each provision of this addendum to the Disclosure Document shall be effective only to the extent that with respect to such provision, the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this addendum.

Conditions under which franchise can be terminated and rights upon non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.

Renewal effective immediately upon filing if filed no later than day before anniversary date; however, state may not respond for weeks or months after filing.

See “Note” at beginning of this chart.
INDIANA

Website: http://www.in.gov/sos/securities/faq_franchise.html
Initial Fee: $500
Renewal Fee: $250
Amendment Fee: Not required ($50 voluntary)
Fees Payable to: Indiana Securities Division
Filing Method: FDD and forms must be submitted on CD-ROM
Address: Secretary of State
Franchise Section
302 West Washington, Room E-111
Indianapolis, Indiana 46204
(317) 232-6681
Forms:
- Cover Letter
- Check
- Application Forms
- Franchise Seller Disclosure Forms
- One copy of FDD
State Filing Differences:
- Indiana Notification Form (with FDD)
Renewal Forms:
- Cover Letter
- Check
- Application Forms
- Franchise Seller Disclosure Forms
- One copy of FDD
Post Amendment Form:
- Not Applicable
Expiration Date: One year from effective date
Deadline Filing Date: One year from effective date
Financial Assurance: Not Applicable
Annual Reports: Not Applicable
Broker Registration: No
Advertising: Not Applicable
State FDD Differences:
Item 8: Franchisor will not obtain money, goods, services or any other benefit from any other person with whom the Franchisee does business, on account of, or in relation to, the transaction between the Franchisee and the other person, other than for compensation for services rendered by Franchisor, unless the benefit is promptly accounted for, and transmitted to the franchisee.

Item 17: Indiana Deceptive Franchise Practices Act contains provisions regarding: controls provisions regarding termination and non-renewal; requiring a franchisee to execute a release; covenants not to compete; substantial modifications to franchise agreement; forum selection; choice of law.

Other: Not Applicable
MARYLAND

Website: http://www.oag.state.md.us/Securities/about.htm#franch
Initial Fee: $500
Renewal Fee: $250
Amendment Fee: $100
Fees Payable to: Maryland Office of the Attorney General
Filing Method: Paper and CD-ROM
Address: Office of the Attorney General
Securities Division
200 St. Paul Place
Baltimore, Maryland 21202-2020
(410) 576-6360

Forms:
Cover Letter
Check
Application Forms
Franchisor's Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
Two copies of FDD

State Filing Differences:
List Maryland Securities Commissioner and its address as agent for service of process

Renewal Forms:
Cover Letter
Check
Application Forms
Franchisor's Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD
One copy of Blacklined FDD

Post Amendment Forms:
Cover Letter
Check
Application forms
One copy of FDD
One copy of Blacklined FDD

Expiration Date:
One year from effective date

Deadline Filing Date:
15 business days prior to expiration date

Financial Assurance:
Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Informal Undertaking, Capital Infusion

Annual Reports:
Not Applicable

Broker Registration:
No

Advertising:
5 business days prior to use.
Advertisement must include name, address, and telephone number of franchisor.
Send two (2) copies of the advertisement.

For videotape and audiotape, send transcript only.

State FDD Differences:
Include legend if unaudited statements are used.

Item 17: Termination for bankruptcy filing may not be enforceable; general release required as a condition to renewal, sale or consent to assignment/transfer shall not apply to any liability under the Maryland Law; franchisee may sue in Maryland for claims under the Maryland Law; claims
under Maryland must be brought within three years after grant of franchise.

Other: Franchisor must file a quarterly sales report with the Commissioner no later than 90 days after the effective date of the franchisor's registration.
MICHIGAN

Website:  
http://www.michigan.gov/statelicenseseach/0,1607,7-180-24786-81124--
.00.html

Initial Fee:  
$250

Renewal Fee:  
$250

Amendment Fee:  
Not Applicable

Fees Payable to:  
State of Michigan

Filing Method:  
Paper

Address:  
Department of Attorney General – Consumer Protection Division
G. Mennen Williams Building
525 W. Ottawa St.
Lansing, Michigan 48933
(517) 373-7117

Forms:  
Cover Letter
Check
Application Form (Notice)

State Filing Differences:  
Notice Form

Renewal Forms:  
Cover Letter
Check
Application Form (Notice)

Post Amendment Forms:

Expiration Date:  
One year from effective date

Deadline Filing Date:  
One year from effective date

Financial Assurance:  
Not Applicable

Annual Reports:  
Not Applicable

Broker Registration:  
Not Applicable

Advertising:  
Not Applicable

State FDD Differences:  
Include specific “Notice Mandated by Section 8 of Michigan Franchise Investment Act”, regarding right to join associations; restriction on releases, etc.; restrictions on termination without good cause and opportunity to cure; failure to renew without fairly compensating franchisee under certain circumstances; discrimination on renewal; arbitration or litigation outside Michigan; restrictions on transfer rights without good cause; restrictions on requirements to resell items not uniquely identified with franchisor; restrictions on franchisor’s transfer of its contractual obligations.

Other:  
Not Applicable
MINNESOTA

Website:  http://www.state.mn.us/portal/mn/jsp/content.do?subchannel=-536881761&id=-536881351&agency=Commerce/

Initial Fee:  $400  
Renewal Fee: $300  
Amendment Fee: $100  
Fees Payable to:  Minnesota Department of Commerce  
Filing Method:  Paper  
Address:  Commissioner of Commerce  
Department of Commerce  
85 7th Place East, Suite 500  
St. Paul, Minnesota 55101  
(651) 296-4026

Forms:  
Cover Letter  
Check  
Application Forms  
Franchisor’s Costs and Source of Funds  
Franchise Seller Disclosure Forms  
Consent of Accountant  
One copy of FDD

State Filing Differences:  Not Applicable

Renewal Forms:  
Cover Letter  
Check  
Application Forms  
Franchisor’s Costs and Source of Funds  
Franchise Seller Disclosure Forms  
Consent of Accountant  
One copy of FDD  
One copy of Blacklined FDD

Post Amendment Forms:  
Cover Letter  
Check  
Application forms  
One copy of FDD  
One copy of Blacklined FDD

Expiration Date:  120 days after fiscal year end  
Deadline Filing Date:  120 days after fiscal year end  
Financial Assurance:  Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion  
Annual Reports:  Not Applicable  
Broker Registration:  No  
Advertising:  5 business days prior to use.  
Advertisement must include name, address and registration number of franchisor.

If advertising is not disallowed by the examiner in 3 business days, it is deemed approved.

For videotape and audiotape, send transcript only.

State FDD Differences:  
Item 13: Provisions pertaining to protection of franchisee’s rights to use trademarks.
Item 17: Restrictions of choice of law and forum selection or abrogation of rights under Minnesota franchise law; given 90 days notice of termination (with 60 days to cure) and 180 days notice for non-renewal of the Agreement; restrictions on requirement release of claims as condition of renewal or assignment, or release or waiver of rights under Minnesota franchise law.

Item 21 – Start-up franchisor must have audited financials
Other: Not Applicable
NEW YORK

Website: http://www.oag.state.ny.us/bureaus/investor_protection/franchise/franchise.html
Initial Fee: $750
Renewal Fee: $150
Amendment Fee: $150
Fees Payable to: New York State Department of Law
Filing Method: Paper (but state will permit CD-Rom)
Address: New York State Department of Law
Office of the Attorney General
Investor Protection Bureau
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-2896

Forms:
Cover Letter
Check
Application form
Franchisor’s Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
Two copies of FDD
Separate page before Acknowledgment of Receipt that FDD does not omit any material fact of contain any untrue statement of material fact (may be acceptable to state in State Law Addenda)

State Filing Differences:
Consent to Service of Process filed with Secretary of State and Department of Law (with additional filing fee)
Include statement that FDD does not omit any material fact or contain any untrue statement of a material fact (may be done via an addendum).

Renewal Forms:
Cover Letter
Check
Application form
Franchisor’s Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD
One copy of Blacklined FDD
(a) The name and address of each franchise sold, the date of the sale and the name, address and telephone number of the person purchasing the franchise;
(b) the price paid and credit terms upon the sale of each franchise listed above and
(c) a copy of the annual audited financial statements of the franchisor as prepared by an independent public accountant

Post Amendment Forms:
Cover Letter
Check
Application forms
One copy of FDD
One copy of Blacklined FDD

Expiration Date: 120 days after fiscal year end
Deadline Filing Date: 120 days after fiscal year end
Financial Assurance: Escrow, Surety Bond, Fee Deferral, Guarantee of Performance, Capital Infusion
Annual Reports: Yes. File a report within 120 days of the close of franchisor’s fiscal year to include the name, address and telephone number of all purchasers of franchises during the last fiscal year, the price paid for each franchise and the credit terms of each sale. [Bus. Franchise Guide (CCH) ¶5320.08]
Broker Registration: Yes
Advertising: 7 days prior to use
Include in no less than 10-point type:

THIS ADVERTISEMENT IS NOT AN OFFERING, AN OFFERING CAN ONLY BE MADE BY A PROSPECTUS FILED FIRST WITH THE DEPARTMENT OF LAW OF THE STATE OF NEW YORK. SUCH FILING DOES NOT CONSTITUTE APPROVAL BY THE DEPARTMENT OF LAW.

Send two (2) copies of advertisement.

Send Verification (Signed letter stating that advertisement is consistent with the FDD.)

State FDD Differences:
Item 3: No time limitation on disclosure of felony or nolo contendere plea; disclosure of misdemeanor or nolo contendere plea for last 10 years
Item 9: Disclose restrictions or conditions on purchase, leasing or rental of goods or services by franchisee
Item 12: Disclose franchisee rights to rescind or amend the franchise agreement if franchisor exercise a right to establish another franchise that will be allowed to use the franchisor’s trade name or trademark within an exclusive territory of the franchisee
Item 17: Permits franchisee to terminate on ground available by law; no assignment by franchisor unless assignee is willing and able to assume obligations of franchisor; choice of law other than New York does not limit franchisee’s or franchisor’s rights under New York franchise law.
Item 18: Disclose terms and conditions of agreements granting compensation or other benefits to a public figure
Item 20: Disclose names, addresses and phone number of all franchisees within the franchisor or subfranchisor which located in New York and states adjacent to New York
Item 21: Start-up franchisor must have audited financials

Cover page: Add provisions indicating that registration does not constitute recommendation of approval; that franchisor is permitted to negotiate the terms of the agreement.

Table of Contents of Franchise Agreement – Add risk factor regarding forum selection clause.
Receipt Pages – Add franchisor’s representation that FDD does not knowingly omit any material fact or contain any untrue statement of a material fact.
New legislation requires franchisors to submit annual transaction information pertaining to their franchisees directly to the New York State Department of Taxation and Finance in an electronic format.

Definition of a “franchise” is extremely broad. Fee with either (a) trademark OR (b) marketing plan, rather than all three elements.
NORTH DAKOTA

Website: http://www.ndsecurities.com/registrations/details.asp?catID=3&ID=3
Initial Fee: $250
Renewal Fee: $100
Amendment Fee: $50
Fees Payable to: North Dakota Securities Department
Filing Method: Paper (but state will permit CD-ROM)
Address: North Dakota Securities Department
600 Boulevard Avenue, State Capitol
Fifth Floor, Dept. 414
Bismarck, North Dakota 58505-0510
(701) 328-4712
Forms: Cover Letter
Check
Application Forms
Franchisor's Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD
State Filing Differences: Not Applicable
Renewal Forms:
Cover Letter
Check
Application Forms
Franchisor's Costs and Source of Funds
Franchise Seller Disclosure Forms
Consent of Accountant
One copy of FDD
One copy of Blacklined FDD
Post Amendment Forms:
Cover Letter
Check
Application forms
One copy of FDD
One copy of Blacklined FDD
Expiration Date: One year from effective date
Deadline Filing Date: 15 business days prior to expiration date (examiner notes that regardless of the expiration date, an amendment or renewal filing must be submitted within 120 days after the franchisor's fiscal year end to include updated audited financial statements)
Financial Assurance: Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion
Annual Reports: No
Broker Registration: No
Advertising: 5 business days prior to use.
State FDD Differences:
Item 17: Forum selection outside North Dakota; waiver of punitive damages; jury trial waiver; North Dakota law governs claims arising out of franchise law; liquidated damages, limitation of claims and contractual statute of limitations; requirement to sign release not enforceable; prevailing party entitled to attorney's fees.
Other: Not Applicable
RHODE ISLAND

Website:  http://www.dbr.state.ri.us/divisions/securities/securities.php
Initial Fee:  $600
Renewal Fee:  $300
Amendment Fee:  $120
Fees Payable to:  General Treasurer of Rhode Island
Filing Method:  CD-ROM only, including ALL application pages (except cover letter and filing fee check)
Address:  Department of Business Regulation
          Securities Division
          Bldg. 69, First Floor
          John O. Pastore Center
          1511 Pontiac Avenue
          Cranston, Rhode Island  02920
          (401) 462-9527
Forms:  Cover Letter
        Check
        Application Forms
        Franchisor's Costs and Source of Funds
        Franchise Seller Disclosure Forms
        Consent of Accountant
        One copy of FDD
State Filing Differences:  Not Applicable
Renewal Forms:  Cover Letter
                Check
                Application Forms
                Franchisor's Costs and Source of Funds
                Franchise Seller Disclosure Forms
                Consent of Accountant
                One copy of FDD
                One copy of Blacklined FDD
Post Amendment Forms:  Cover Letter
                        Application forms
                        Check
                        One copy of FDD
                        One copy of Blacklined FDD
Expiration Date:  120 days after fiscal year end
Deadline Filing Date:  30 days prior to expiration date
Financial Assurance:  Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion
Annual Reports:  Not Applicable
Broker Registration:  No
Advertising:  5 business days prior to use.

Send two copies of the advertisement.

$10 filing fee per advertisement.

State FDD Differences:  Item 17: Claims enforceable under the Rhode Island Franchise Act are not subject to forum selection and choice of law
Other:  Not applicable
**SOUTH DAKOTA**

<table>
<thead>
<tr>
<th>Website</th>
<th><a href="http://www.state.sd.us/drr2/reg/securities/franchise.htm">http://www.state.sd.us/drr2/reg/securities/franchise.htm</a></th>
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<tr>
<td>Initial Fee</td>
<td>$250</td>
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<tr>
<td>Renewal Fee</td>
<td>$150</td>
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<tr>
<td>Amendment Fee</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Fees Payable to</td>
<td>South Dakota Securities Division</td>
</tr>
<tr>
<td>Filing Method</td>
<td>FDD and forms on CD-ROM is preferred</td>
</tr>
</tbody>
</table>
| Address | Director of Division of Securities  
445 E. Capitol  
Pierre, South Dakota 57501  
(605) 773-4823 |
| Forms | Cover Letter  
Check  
A notice filing application, (may use the South Dakota franchisor application or the NASSA uniform franchise registration application  
One copy of FDD on a CD-ROM |
| State Filing | South Dakota Franchise Notice Filing application (includes Application Facing Page with Certification Page signature lines and Consent to Service of Process form) |
| Differences | Not Applicable |
| Renewal Forms | Cover Letter  
Check  
Application  
One copy of FDD on a CD-ROM |
| Post Amendment | Not Applicable |
| Forms | Not Applicable |
| Expiration Date | One year from effective date |
| Deadline Filing Date | One year from effective date |
| Financial Assurance | Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion |
| Annual Reports | Not Applicable |
| Broker Registration | Not Applicable |
| Advertising | Not Applicable |
| State FDD Differences | Not Applicable |
| Other | Not Applicable |
VIRGINIA

Website:  

Initial Fee:  
$500
Renewal Fee:  
$250
Amendment Fee:  
$100
Fees Payable to:  
Treasurer of Virginia
Filing Method:  
Paper (state will permit FDD to be submitted on a CD-ROM, but cover letter must contain a representation that all of the information contained in the electronic file is identical to the paper document(s))

Address:  
Director, Securities and Retail Franchising Division
State Corporation Commission
1300 East Main Street, 9th Floor
Richmond, Virginia 23219
(804) 371-9051

Forms:  
Cover Letter
Check
Application Forms
Franchisor’s Costs and Source of Funds
Consent of Accountant
One copy of FDD

State Filing Differences:  
Consent to Service of Process – include date of Board Resolution authorizing appointment of Clerk of State Corporation Commission of Virginia to serve as agent for service of process.

Renewal Forms:  
Cover Letter
Check
Application Forms
Franchisor’s Costs and Source of Funds
Consent of Accountant
One copy of FDD
One copy of Blacklined FDD
Affidavit of Compliance Form E - Optional (Renewal is effective upon receipt if Affidavit of Compliance is filed; however, since there is no assurance that a regulator will consider the FDD to be in compliance with Virginia law, it is wise to wait until Commission grants effectiveness.)

Post Amendment Forms:  
Cover Letter
Check
Application forms
One copy of FDD
One copy of Blacklined FDD
Affidavit of Compliance Form E - Optional (Amendment is effective upon receipt if Affidavit of Compliance is filed; however, since there is no assurance that a regulator will consider the FDD to be in compliance with Virginia law, it is wise to wait until Commission grants effectiveness.)

Expiration Date:  
One year from effective date
Deadline Filing Date:  
30 days prior to expiration date
Financial Assurance:  
Escrow, Fee Deferral, Guarantee of Performance, Capital Infusion
Revocation of or Refusal to Renewal Registration:  The Commission may, by order entered after a hearing on notice revoke the effectiveness of a franchise registration (or refuse to renew a registration) if it finds that such an order is in the public interest or that the franchisor or any controlling person of the franchisor is, inter alia, insolvent, or in danger of becoming insolvent. (Va. Code Ann. 1.1-562.A(2)
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<th>Note</th>
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<tr>
<td>Annual Reports:</td>
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</tr>
<tr>
<td>Broker Registration:</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Advertising:</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>State FDD Differences:</td>
<td>Item 17: Unlawful for a franchisor to cancel a franchise without reasonable cause. Provisions to the contrary in franchise agreement may not be enforceable.</td>
</tr>
<tr>
<td></td>
<td>Item 21: Start-up franchisor must have audited financials</td>
</tr>
<tr>
<td></td>
<td>If unaudited financial statements are used, include clear and conspicuous disclosure that they are unaudited.</td>
</tr>
<tr>
<td>Other:</td>
<td>Not Applicable</td>
</tr>
</tbody>
</table>
## WASHINGTON

**Website:**
http://www.dfi.wa.gov/sd/franchise.htm

**Initial Fee:**
$600

**Renewal Fee:**
$100

**Amendment Fee:**
$100

**Fees Payable to:**
Washington State Treasurer

**Filing Method:**
Paper

**Address:**
Securities Administrator
Department of Financial Institutions of Washington
General Administration Building
150 Israel Road, S.W., 3rd Floor
Tumwater, Washington 98501
(360) 902-8760

**Forms:**
- Cover Letter
- Check
- Application Forms
- Franchisor’s Costs and Source of Funds
- Franchise Seller Disclosure Forms
- Consent of Accountant
- One copy of FDD

**State Filing Differences:**
Not Applicable

**Renewal Forms:**
- Cover Letter
- Check
- Application Forms
- Franchisor’s Costs and Source of Funds
- Franchise Seller Disclosure Forms
- Consent of Accountant
- One copy of FDD
- One copy of Blacklined FDD

**Post Amendment Forms:**
- Cover Letter
- Check
- Application forms
- One copy of FDD
- One copy of Blacklined FDD

**Expiration Date:**
One year from effective date

**Deadline Filing Date:**
15 business days prior to expiration date

**Financial Assurance:**
Escrow, Fee Deferral, Surety Bond, Guarantee of Performance, Capital Infusion

**Annual Reports:**
Not Applicable

**Broker Registration:**
Yes

**Advertising:**
7 days prior to use.

Send two copies of the advertisement.

For Videotape and Audiotape include a copy of the transcript.

**State FDD Differences:**
Item 17: Washington Law may supersede the Franchise Agreement, including the areas of termination and renewal; Washington Law applies in event of conflict of laws; release or waiver of rights shall not include rights under Washington Franchise Protection Act, unless part of a negotiated settlement with counsel; provisions such as those which unreasonably restrict or limit the statute of limitation period for claims under the Act, rights or remedies under the Act, such as rights to jury trial might not be enforceable
Item 17: Transfer fee collectible only to the extent they reflect our reasonable estimated or actual costs in effecting a transfer.

Other: Not Applicable
Website: [http://www.wdfi.org/fi/securities/franchise/bdgerreg.htm](http://www.wdfi.org/fi/securities/franchise/bdgerreg.htm)  

Initial Fee: $400  
Renewal Fee: $400  
Amendment Fee: $200  
Fees Payable to: State of Wisconsin  
Filing Method: Paper  
Address: Department of Financial Institutions of Wisconsin  
Division of Securities  
345 West Washington Avenue, Fifth Floor  
Madison, Wisconsin 53703  
(608) 261-9555  

Forms:  
- Cover Letter  
- Check  
- Application Forms  
- One copy of FDD  

State Filing Differences: Notification Page  
Renewal Forms: No renewal procedure provided by statute. A new registration filing must be made prior to the 1-year expiration date of an existing franchise registration in order for a franchisor to continue to offer its franchises in Wisconsin.  

Post Amendment Forms:  
- Cover Letter  
- Check  
- Application forms  
- One copy of FDD  
- One copy of Blacklined FDD  

Expiration Date: One year from effective date  
Deadline Filing Date: One year from effective date  
Financial Assurance: Not Applicable  
Annual Reports: Not Applicable  
Broker Registration: Not Applicable  
Advertising: Not Applicable  
State FDD Differences: The Wisconsin Fair Dealership Law (Chapter 135, Wis. Stats.), contains provisions that may supersede those contracted to between franchisor and franchisee. It prohibits termination, cancellation, non-renewal or substantial change in competitive circumstances of a dealership agreement without good cause, and provides that 90 days prior written notice of the proposed termination, etc, must be given to the dealer. The dealer has 60 days to cure the deficiency and if the deficiency is so cured the notice is void.  

Other: In the process of working on online registration capability.
APPENDIX E

BUSINESS OPPORTUNITY EXEMPTION STATES
**FLORIDA**  
*(Exemption from Business Opportunity Law)*

<table>
<thead>
<tr>
<th><strong>Website:</strong></th>
<th><a href="http://www.doacs.state.fl.us/onestop/forms/10500.pdf">http://www.doacs.state.fl.us/onestop/forms/10500.pdf</a></th>
</tr>
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<tbody>
<tr>
<td><strong>Initial Fee:</strong></td>
<td>$100</td>
</tr>
<tr>
<td><strong>Renewal Fee:</strong></td>
<td>$100</td>
</tr>
<tr>
<td><strong>Fees Payable to:</strong></td>
<td>Florida Department of Agriculture and Consumer Services</td>
</tr>
<tr>
<td><strong>Filing Method:</strong></td>
<td>Paper</td>
</tr>
</tbody>
</table>
| **Address:** | Florida Department of Agriculture & Consumer Services  
Attn: Finance & Accounting  
Post Office Box 6700  
Tallahassee, Florida 32314-6700  
(850) 488-2221 |
| **Forms:** | Cover Letter  
Check  
Notice of Exemption Form |
| **Renewal Forms:** | Cover Letter  
Check  
Notice of Exemption Form |
| **Expiration Date:** | One year from effective date |
| **Deadline Filing Date:** | One year from effective date |
KENTUCKY
(Exemption from Business Opportunity Law)

Website: [http://ag.ky.gov/civil/consumerprotection/business/forms.htm#opportunities](http://ag.ky.gov/civil/consumerprotection/business/forms.htm#opportunities)
Initial Fee: No fee required
Filing Method: Paper
Address: Kentucky Attorney General’s Office
         1024 Capital Center Drive
         Frankfort, Kentucky 40602
         (502) 696-5393
Forms: Cover Letter
       Notice of Exemption Form
       One copy of FDD
Expiration Date: None
NEBRASKA
(Exemption from Business Opportunity Law)

Website: http://www.ndbf.ne.gov/busopp/index.shtml
Initial Fee: $100
Fees Payable to: Nebraska Bureau of Securities
Filing Method: Paper
Address: Nebraska Department of Banking and Finance, Commerce Court
         1230 “O” Street, Suite 400
         Lincoln, Nebraska 68509-5006
         (402) 471-3445
Forms: Cover Letter
        Check
        Notice of Exemption Form
        One copy of FDD
Expiration Date: None
TEXAS
(Exemption form Business Opportunity Law)

Website: http://www.sos.state.tx.us/statdoc/faqs2700.shtml
         http://www.sos.state.tx.us/statdoc/forms/2703.doc

Initial Fee: $25
Fees Payable to: Texas Secretary of State
Filing Method: Paper
Address: Secretary of State
         Business Opportunity Section
         1019 Brazos
         Austin, Texas 78711
         (512) 475-1769

Forms: Cover Letter
        Check
        Exemption Statement Form

Expiration Date: None
| **Initial Fee:** | $100 |
| **Renewal Fee:** | $100 |
| **Amendment Fee:** | Not Applicable |
| **Fees Payable to:** | State of Utah Division of Consumer Protection |
| **Filing Method:** | Paper |
| **Address:** | State of Utah, Division of Consumer Protection  
160 East Three Hundred South  
Salt Lake City, Utah 84145-0804  
(801) 530-6601 |
| **Forms:** | Cover Letter  
Check  
Exemption Form |
| **Renewal Forms:** | Cover Letter  
Check  
Exemption Form |
| **Expiration Date:** | One year from effective date |
| **Deadline Filing Date:** | One year from effective date |
APPENDIX F

STATE SPECIFIC ADDENDUM
AS REQUIRED BY
THE ILLINOIS FRANCHISE AND DISCLOSURE ACT OF 1987

Notwithstanding anything to the contrary set forth in the Franchise Disclosure Document, the following provisions shall supersede and apply to all ____________ franchises offered and sold in the state of Illinois:

The Illinois Addendum is only applicable if you are a resident of Illinois and your business will be located in Illinois.

1. The following language is added to the Risk Factors on the state cover page of the Disclosure Document:

THE GOVERNING LAW, VENUE AND JURISDICTIONAL REQUIREMENTS IN THE DISCLOSURE DOCUMENT AND THE FRANCHISE AGREEMENT ARE SUBJECT TO THE PROVISIONS OF THE ILLINOIS FRANCHISE DISCLOSURE ACT, AND NOTHING IN THESE DOCUMENTS SHALL BE CONSIDERED A WAIVER OF ANY RIGHT DEFERRED UPON YOU BY THE ILLINOIS FRANCHISE DISCLOSURE ACT.

2. Item 17 of the Disclosure Document is amended to include the following:

Any provision in the Franchise Agreement that designates jurisdiction or venue in a forum outside Illinois is void with respect to any action which is otherwise enforceable in Illinois, except that the Franchise Agreement may provide for arbitration outside Illinois. In addition, Illinois law will govern the Franchise Agreement to the extent required by the Illinois Franchise Disclosure Laws.

3. (If Applicable) Our parent company, _________________, has signed a Guaranty of Performance that is on file with the Office of the Attorney General, guaranteeing our obligations to you. That is why we have included in the FDD copies of our parent’s financial statements, as more fully described in Item 21.

4. (If Applicable)

5. Each provision of this addendum to the Disclosure Document shall be effective only to the extent that with respect to such provision, the jurisdictional requirements of the Illinois Franchise Disclosure Act are met independently without reference to this addendum.

6. The conditions under which your franchise can be terminated and your rights upon non-renewal may be affected by Illinois law, 815 ILCS 705/19 and 705/20.
APPENDIX G

SAMPLE AMENDMENT TO FRANCHISE AGREEMENT BASED ON STATE LAW - ILLINOIS

ILLINOIS AMENDMENT TO FRANCHISE AGREEMENT

Notwithstanding anything contained in the foregoing Franchise Agreement and Franchise Disclosure Document to the contrary, the following provisions of the Illinois Franchise Disclosure Act ("Act") shall apply to any franchise located in the State of Illinois, which shall control to the extent of any inconsistency:

1. Section [___] of the Franchise Agreement: Choice of Law and Choice of Forum shall be Illinois.

2. Termination or Nonrenewal Franchise: The Illinois Franchise Disclosure Act provides rights concerning nonrenewal and termination of the Franchise Agreement. If the Franchise Agreement contains a provision that is inconsistent with the Act, the Act will control.

3. Participation in Trade Associations: Franchisor will not in any way restrict any Franchisee from joining or participating in any trade association.

4. Release. Any release of claims or acknowledgements of fact contained in the Agreement that would negate or remove from judicial review any statement, misrepresentation or action that would violate the Act or any other law of the State of Illinois shall be void and hereby deleted with respect to claims under the Act or any other law of the State of Illinois.

5. Other Provisions Unaffected: All other terms and provisions contained in the Franchise Agreement shall remain in full force and effect, except to the extent specifically modified herein.

[NAME OF FRANCHISOR]  [NAME OF FRANCHISEE]

By:__________________________  By:________________________
Office Held___________________  Office Held__________________
Date:_________________________  Date:_______________________
Guarantors:

____________________________  ________________________
APPENDIX H

OTHER RESOURCES

WEBSITES

Amended FTC Rule (16 C.F.R. pt. 436): http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=a4d5f9fd8a3223b1a1af177ce1fac18&rgn=div5&view=text&node=16:1.0.4.50&id no=16.


NASAA Commentary on 2008 Franchise Registration and Disclosure Guidelines: www.nasaa.org/content/Files/FranchiseCommentary_final.pdf.

WRITTEN RESOURCES

Asbill, Fern, Costello, and Scott, STP: Franchising Law: Practice and Forms


Barkoff and Selden, Editors, Fundamentals of Franchising, Chapter 4, “Franchise Registration” by Rochelle B. Spandorf and Mark B. Forseth


Commerce Clearing House, Business Franchise Guide


Grueneberg and Hurwitz, The FTC Franchise Rule: Analysis and Commentary (ABA Forum Committee on Franchising, 2008)

Hershman and Mazero, Financial Performance and Representations: The New and Updated Earnings Claims (ABA Forum Committee on Franchising, 2008)

LEONARD D. VINES

Leonard Vines is a shareholder and officer in the Corporate Practice Group of the St. Louis law firm of Greensfelder, Hemker & Gale, P.C. He has extensive experience in representing clients engaged in franchising and distribution, and has counseled clients on a wide range of corporate and business matters. He has represented national, regional and local franchisors and provides advice on alternatives to franchising, structuring franchise and distribution programs, complying with applicable state and federal laws and regulations, drafting legal documentation, handling franchise terminations and transfers, resolving franchisor-franchisee disputes, defending state enforcement actions. He has assisted start-up and established franchisors, as well as franchisees and franchisee associations and has served as an expert witness in franchise cases.

Mr. Vines is a frequent lecturer on franchise topics for various organizations, including the American Bar Association Forum Committee on Franchising, the International Franchise Association, the Missouri Bar, and the Bar Association of Metropolitan St. Louis. He has written for numerous publications on franchise and related issues, including The Franchise Law Journal, the ABA Journal, Rabkin Johnson’s Current Legal Forms and co-authored a chapter for the ABA publication on the amended franchise rule, The FTC Franchise Rule. He served as editor for the ABA monograph, Mergers and Acquisitions of Franchise Companies. He was a member of the Governing Committee of the American Bar Association Forum Committee on Franchising and is currently a member of the franchise Industry Advisory Committee to the Franchise and Business Opportunity Project Group of the North American Securities Administrators Association (NASAA). He is a certified mediator and former municipal judge, and has been recognized in Missouri and Kansas Super Lawyers, Best Lawyer’s in America, Franchise Times Legal Eagles, and International Who’s Who of Franchise Lawyers.
HALIMA M. MADJID

Halima Madjid is the senior franchise paralegal at Plave Koch PLC, where she oversees the Firm's franchise registration and filing efforts for its clients. Ms. Madjid has been a paralegal specializing in franchise registration and compliance activities since 2000.
DALE E. CANTONE

Dale Cantone is an Assistant Attorney General for the State of Maryland and the Deputy Securities Commissioner for the Maryland Securities Division. Dale is the chief of the franchise and business opportunity unit of the Maryland Securities Division. In addition, since 1996, Dale has served as Chair of the Franchise and Business Opportunity Committee/Project Group of the North American Securities Administrators Association, Inc. ("NASAA").

Dale has spoken at programs sponsored by the American Bar Association Forum on Franchising, the International Franchise Association, the American Franchisee Association, the Direct Sellers Association, the United States Department of Commerce, the Maryland State Bar Association, the Maryland Institute for the Continuing Professional Education of Lawyers, the New York Attorney General’s Office, the University of Maryland Law School, the U.S. Hispanic Chamber of Commerce, and the Better Business Bureau. He also has addressed foreign delegations from Russia, Japan and China on franchise related issues.

In 2001, NASAA presented Dale with its Outstanding Service Award for his work in franchising at the state level. In 2002, Dale testified about state franchise issues before the Commerce, Trade and Consumer Protection Subcommittee of the Energy and Commerce Committee of the U.S. House of Representatives. In 2005, the American Association of Franchisees and Dealer awarded Dale its Total Quality Franchising Chairman’s Award for Distinguished Contributions and Service to the Franchising Community.