STREAMLINING THE FRANCHISE DISCLOSURE PROCESS:
CREATING AND IMPLEMENTING E-DISCLOSURE IN
FRANCHISE SYSTEMS

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I. INTRODUCTION

The key element of the regulation of franchise sales, whether by the Federal Trade Commission (“FTC”), the various states of the United States, or the governments of other countries, is the delivery, prior to the sale of a franchise, of a document that provides certain specified information about the franchise offering and the franchisor. Formerly commonly named the Uniform Franchise Offering Circular (“UFOC”) and now known as a Franchise Disclosure Document (“FDD”), the document must be provided to a prospective franchisee a specified period of time (commonly 14 days) before accepting money from or entering into a franchise agreement with a prospective franchisee. Franchisors are required to track the timing of the receipt of the disclosure document and maintain records confirming timely receipt to assure that the prospective franchisee was afforded the required time to review and consider the information in the disclosure document before buying a franchise. The underlying purpose of these requirements is to prevent unfair and deceptive trade practices in the sale of franchises.

The old UFOC was delivered only one way: paper copies were mailed, sent by delivery service, or handed to prospective franchisees by a franchise seller. This made perfect sense in the context of the technology at the time. The prospective franchisee could easily take the duplicate copy of the Acknowledgment of Receipt (“Receipt”) provided at the back of the UFOC, sign and date it, and drop it in the mail. It would then be received by the franchisor, logged, and placed in the franchisor’s physical file for the prospective franchisee to confirm compliance with delivery and timing requirements.

With advances in technology came questions about using that technology to deliver and track receipt of disclosure documents, now commonly referred to as Electronic Disclosure (“E-Disclosure”). In the absence of any specific prohibition against E-Disclosure, some franchisors experimented with E-Disclosure options early on, commonly delivery of the disclosure document on disk (floppy disks and later compact disks (“CD”)) with the prospective franchisee printing the Receipt, signing and dating it, and returning the signed original hard copy to the franchisor, who kept it in the physical file. With little or no guidance from regulatory authorities, these experiments were not widespread and carried an element of risk.

The FTC first addressed the question of delivering a UFOC in an electronic format in 1997 in Informal Staff Advisory Opinion 97-2 (“Opinion 97-2”). 1 The next significant step in the FTC’s move toward permitting E-Disclosure came in 1999 when the FTC issued its Notice of Proposed Rulemaking (the “NPR”),2 announcing its intention to implement a comprehensive overhaul of the FTC Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (the “Original FTC Rule”). In Section 436.7 of the NPR, the FTC announced that it would address and enable E-Disclosure.3 But the E-Disclosure

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3 Id. at 57,316.
contemplated by the NPR was not pure electronic disclosure and even included requirements not contemplated in Opinion 97-2, as discussed in detail below.

Much changed, both technologically and in the permitted use of E-Disclosure, during the eight years between the issuance of the NPR and the FTC’s issuance of the amended franchise disclosure rule entitled “Disclosure Requirements and Prohibitions Concerning Franchising” (the “Amended Rule”) in 2007. Among the many changes in the Amended Rule were requirements and prohibitions related to delivering the disclosures required by the Amended Rule to prospective franchisees electronically. Moving into the 21st Century, the Amended Rule (which also applies to franchise sales made under state regulatory schemes) allows for E-Disclosure by CD, electronic mail (“email”), or over the internet. It enables franchisors to use only E-Disclosure if they choose. Restrictions on the format and process of E-Disclosure reflect the FTC’s continued concern that E-Disclosure promote actual receipt and review of the disclosure document by the prospective franchisee. Outside the US, most franchise regulations that require disclosure are, like the Original FTC Rule, silent on the subject of E-Disclosure, causing franchisors to face the same decision in those jurisdictions that they did in the US before the Amended Rule: whether to use an E-Disclosure process that is not prohibited, even if it is not specifically permitted.

In the years since the Amended Rule was promulgated, franchisors have explored a variety of E-Disclosure techniques and processes in an effort to reduce the cost of creating and distributing FDDs, expedite the entire disclosure process, and reduce the length of required stop-sales periods on annual renewal and for interim amendments. These programs include ones operated entirely in-house as well as those that use third-party providers.

This paper reviews the provisions of the Amended Rule and other laws, rules, and regulations that apply to E-Disclosure, describes different forms of E-Disclosure now used by franchisors, and examines the benefits and challenges of each. It can be a road map for creating an E-Disclosure program and managing it entirely in-house.

What may be next? All FDDs delivered to your “Smart Phone” with the Receipt being a click of the asterisk key? Stay tuned.

II. LAWS, RULES, AND REGULATIONS RELATED TO E-DISCLOSURE

A. The Evolution of E-Disclosure


The FTC Rule has never designated a disclosure medium. That fact did not become important until the advent of electronic communication. As word processing and other means of electronic communication began to pervade business and industry, the FTC began to recognize the need to address the medium of disclosure. The FTC’s first recognition of that need came in Opinion 97-2 in response to an inquiry as to “whether a franchisor may satisfy the Franchise Rule by delivering a computer diskette containing an electronic word processing form of the applicable disclosure materials.”

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The FTC acknowledged that a word processing version of a disclosure document on a computer diskette “may be as clear, concise, and legible as a typical hard-copy disclosure document” and thus would meet the threshold requirements of the Original FTC Rule. It also noted that providing the disclosures in this format “may save franchisors significant duplication and postage expenses” and that “some prospective franchisees may prefer to receive a disclosure document in electronic form.” But it expressed concern about permitting use of a “format that might prevent prospective franchisees from reviewing the disclosures easily and fully.”

Having reviewed the benefits and risks, the FTC concluded that although electronic disclosure was permissible, prospective franchisees must have “the option to decline receiving a disclosure document via computer diskette.” It went on to require that the franchisor disclose the computer system and word processing format used in creating the electronic version and that the franchisee be permitted to obtain a hard-copy version if “within a reasonable time, the prospective franchisee determines that he or she cannot readily review the disclosures contained on the diskette.”

Then, noting the importance of the information and warnings contained on the disclosure document cover page, the FTC indicated that the computer diskette should bear a label that would “similarly draw the prospective franchisee’s attention to the importance of the information in the diskette.” At a minimum, it said, the face of the diskette should contain a notice providing or substantially similar to “INFORMATION FOR PROSPECTIVE FRANCHISEES REQUIRED BY THE FEDERAL TRADE COMMISSION.”

The rationale and requirements articulated by the FTC staff in Opinion 97-2 were a precursor of things to come. In fact, the basic requirements set forth in Opinion 97-2 persist to this day.

2. 1999: The NPR

In Section 436.7 of the NPR, the FTC indicated an intention to address and enable E-Disclosure. The impact of technological innovation during the two years between the issuance of Opinion 97-2 and the issuance of the NPR in 1999 was apparent in the NPR.

\[6\] Id.
\[7\] Id.
\[8\] Id.
\[9\] Id.
\[10\] Id.
\[11\] Id.
\[12\] Id.
However, the E-Disclosure contemplated by the NPR was not pure E-Disclosure and even included requirements not contemplated in Opinion 97-2. Among the requirements proposed in the NPR that were barriers to pure E-Disclosure were requirements that an electronic version of the FDD be accompanied by:

- A paper summary of the disclosure document;
- An expanded cover page and table of contents; and
- Two paper copies of the required acknowledgement of receipt.

The NPR also required that a prospective franchisee expressly consent to receiving electronic disclosures, rather than affirmatively request an alternate means of disclosure. Finally, because the NPR did not indicate whether electronic signatures would be valid, franchisors had to assume that a signed, paper acknowledgement would be necessary to assure compliance with the expected requirements for E-Disclosure.

The requirements proposed in the NPR in part reflected the state of technology in 1999, when the state of the art would be delivery by disk at a time when a multiplicity of incompatible available word processing formats made it difficult to ensure that everyone who received a diskette could read it. By the time the Amended Rule was promulgated in 2007, numerous electronic delivery options were available and common document software formats (MS Word and Adobe™ pdf) made it more likely that prospective franchisees could easily receive and access the FDD.

Among the requirements of the NPR that survived to the Amended Rule, and harken back to the concerns the FTC staff expressed in Opinion 92-7, are that prospective franchisees be able to download, print, or save the E-Disclosure document in some other way. Also ultimately included in the Amended Rule are the NPR’s prohibitions on the use of audio, video, pop-up screens, and links to external sites or material, and permissive inclusion of navigational tools, including internal links, scroll bars, and search features.

3. **2000: The Electronic Signatures in Global and National Commerce Act**

The event that had the most significant impact on the use of E-Disclosures in franchise offerings occurred during the more than eight years between the issuance of the NPR and the final Amended Rule: enactment of the Electronic Signatures in Global and National Commerce Act (“E-Sign”). E-Sign was significant in the context of the revision of the FTC Rule to allow for E-Disclosure because it made electronic transactions and electronic signatures legally effective so long as its requirements are met. But equally significant is the fact that although some of the restrictions on electronic transactions that are prohibited by E-Sign do not apply in consumer transactions, “consumer” is defined in a way that makes it quite clear that sales of franchises are not consumer transactions. The net effect of E-Sign was that use of electronic signatures in franchise sales transactions was validated. Perhaps more significantly, the FTC had to eliminate some of the requirements for E-Disclosure proposed by the FTC in the NPR because those requirements were prohibited by E-Sign.

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14 Id. at 57,317.
4. **2007: The Amended Rule**

Nearly 10 years after the NPR, the FTC’s Statement of Basis and Purpose (the “SBP”) issued in conjunction with the Amended Rule acknowledged the need to clarify how to use E-Disclosure in light of the enactment of E-Sign and the technological changes that had occurred since the Original FTC Rule was first enacted, particularly during the near decade between the issuance of the NPR and the Amended Rule.\(^1\) The SBP, the Amended Rule, and the way the Amended Rule differs from some of the provisions for E-Disclosure in the NPR are the product of both technological innovation and federal regulation of electronic commerce through E-Sign, resulting in preservation of some of the FTC’s original proposals, implementation of changes necessitated by E-Sign, and the recognition of new methods of electronic communication. The net result is the advent and endorsement of pure E-Disclosure but preservation of the right to use any method or methods of disclosure the franchisor selects.

Some of the original NPR requirements that survive in the Amended Rule include that:

- the franchisor advise the prospective franchisee of the specific media in which the FDD can be provided and the computer applications necessary to access E-Disclosure,
- the disclosures be in a single, self-contained document, though limited use of navigational tools is permitted, and
- a cover page notice advising the prospective franchisee to download or print the FDD for future reference.

Among the requirements proposed in the NPR that are not included in the Amended Rule are the requirement for a paper summary, availability of a paper copy if requested, and advising the prospective franchisee how to obtain a paper copy.

Thus, when the FTC adopted the Amended Rule, it brought franchise disclosure into the 21\(^{st}\) Century by for the first time allowing franchise disclosure documents to be delivered solely electronically and providing for the delivery of an electronic Receipt.

**B. How the FTC Enabled Electronic Disclosure**

The Amended Rule contains half a dozen provisions that, taken together, enable the use of pure E-Disclosure. These are:

1. Addition of the definition of “signature” in Section 436.1(u):

   “Signature means a person’s affirmative step to authenticate his or her identity. It includes a person’s handwritten signature, as well as a person’s use of security codes, passwords, electronic signatures, and similar devices to authenticate his or her identity.”\(^1\)

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\(^1\) 72 Fed. Reg. 15,444 (March 30, 2007).

\(^1\) 16 C.F.R. § 436.1(u) (2011) (emphasis added).
2. Expansion of the definition of “written” and “in writing” in Section 436.1(w):

“Written or in writing means any document or information in printed form or in any form capable of being preserved in tangible form and read. It includes: type-set, word processed, or handwritten documents; information on computer disk or CD-ROM; information sent via email; or information posted on the Internet. It does not include mere oral statements.”

3. Adding a description of the means of fulfilling the obligation to furnish disclosures in Section 436.2(c):

“For purposes of paragraphs (a) and (b) of this section, the franchisor has furnished the documents by the required date if:

(1) A copy of the documents was hand-delivered, faxed, emailed, or otherwise delivered to the prospective franchisee by the required date;

(2) Directions for accessing the documents on the Internet were provided to the prospective franchisee by the required date; or

(3) A paper or tangible electronic copy (for example, computer disk or CD-ROM) was sent to the address specified by the prospective franchisee by first-class United States mail at least three calendar days before the required date.”

4. Revision of Item 23 (Receipt) in Section 436.5(w) to allow franchisors to include specific instructions on how to submit the Receipt and expansion of the means of delivery:

“(8) Franchisors may include any specific instructions for returning the receipt (for example, street address, email address, facsimile telephone number).”

Coupled with the impact of the definition of signature on the means by which the prospective franchisee can complete and the franchisor can document receipt of the FDD, the ability to deliver the Receipt electronically completes the enablement of E-Disclosure.

5. Updating the formatting requirements in the general instructions to address E-Disclosure by providing in Section 436.6(b) that disclosures must be in a form that:

“permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.”

6. Adding in Section 436.6(g) a requirement that before the franchisor furnishes the disclosure document it:

“advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure

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19 16 C.F.R. § 436.2(c) (2011) (emphasis added).

document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.”

Although not strictly an enabling provision, attention should be given to the provisions relating to the requirements for the Cover Page:

“A franchisor may include the following statement between the statements set out a paragraphs (e)(2) and (3) of this section [i.e., between the statement of what the disclosure document contains and when it must be delivered and the statement that the franchise agreement governs and should be read and reviewed by a trusted advisor]: “You may wish to receive your disclosure document in another format that is more convenient for you. To discuss the availability of disclosures in different formats, contact [name or office] at [address] and [telephone number].”21

Another Cover Page requirement tangentially related to electronic disclosure is the requirement that the Cover Page include the franchisor’s email address and primary home web page address, if it has one. This requirement applies whether or not the franchisor uses E-Disclosure.22

Section 436.2(c)(3), a portion of the new provisions that specify what actions constitute furnishing disclosures that allows for delivery of a paper or tangible electronic (CD or disk) copy of the FDD, requires that the tangible copy be sent by first class mail at least three days before the deadline for making disclosures. There is no explicit guidance on how that requirement interplays with the possibility that after receiving the FDD a prospective franchisee may contact the franchisor asking for a different form of delivery. Because the provision describing how the FDD will be effectively “delivered” is in the disjunctive, a franchisor should be able to rely on the first delivery mechanism and not have to be concerned about compliance with the three day rule of Section 436.2(c)(3) if a hard copy, CD, or diskette is subsequently requested and delivered.23 But there is no published answer to this question.

C. What the Amended Rule Requires

1. Specific Requirements and Prohibitions

The requirements and limitations that affect electronic disclosure are set forth in Section 436.6 of the Amended Rule, the instructions for preparing disclosure documents.

a. Section 436.6(b): Requiring Ability to Store, Download, and Print

Section 436.6(b) requires that disclosures be in a form that “permits each prospective franchisee to store, download, print, or otherwise maintain the document for future reference.”24

22 16 C.F.R. § 436.3(b) (2011).
23 16 C.F.R. § 436.2(c) (2011).
24 16 C.F.R. § 436.6(b) (2011).
This requirement reflects the FTC’s concern that the prospective franchisee be able to review thoroughly, retain, and refer back to the FDD, a concern that is echoed in other provisions of the Amended Rule pertaining to E-Disclosure. Thus, the commentary in the SBP notes, “This prevents deception, ensuring that prospective franchisees can review the disclosure document at will, as well as show a copy of the disclosure document to their advisors, if they wish to do so.”

b. **Section 463.6(d): Limiting Electronic Tools, Enhancements, and External Links**

Section 436.6(d) provides:

“For the sole purpose of enhancing the prospective franchisee’s ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features (e.g., multimedia tools such as audio, video, animation, pop-up screens, or links to external information) are prohibited.”

The prohibition of the use of technological innovations or gadgets such as audio, video, and pop-up screens is based on a belief that they could be used to draw attention to favorable portions of the disclosure document and/or distract attention from damaging disclosures. This prohibition seeks to assure that a prospective franchisee receives a single, cohesive document containing only the material required by the Amended Rule that can be printed or downloaded. Secondly, it seeks to prevent use of devices that might highlight some portions of an FDD and/or obscure others or that might undercut the requirement of a single, integrated disclosure document containing only the material required by the Amended Rule. It also interplays with the requirement discussed above that the prospective franchisee must be able to print and otherwise archive the FDD: electronic devices that would preclude the recipient of an electronic copy of the FDD from printing or otherwise archiving it are prohibited.

But there may be links to the FTC’s *Consumer Guide to Buying a Franchise* brochure on the FTC website and non-substantive links to external features that “aid a prospective franchisee’s review of the document.” Among the examples given in the SBP is a link to the Adobe™ website to obtain a copy of Adobe Acrobat™.

26 16 C.F.R. § 436.6(d) (2011).
28 16 C.F.R. § 436.6(d1) (2011).
30 16 C.F.R. § 436.6(d) (2011).
The FTC distinguished scroll bars, internal links, and similar search features from the electronic tools that were prohibited. Reasoning that these electronic innovations would facilitate review of the disclosure document, the Amended Rule permits use of these and other internal navigational tools in the FDD. So, for example, the table of contents can be linked to each specific disclosure item. But even this allowance was tempered by the requirement that navigational tools be used only for the prospective franchisee’s benefit.

Franchisors may even wish to be judicious in the use of internal links to avoid having prospective franchisees claim, for instance, that links from the particular items in the table of contents directly to particular content in the FDD caused and/or encouraged skipping over difficult, important material. A best practice may be to limit links to those linking only from the item title in the table of contents to the item itself in the body of the FDD. Even those links should only be used if the reader is still able to return easily from the endpoint of the link back to the table of contents and continue to access the full document.

c. Section 436.6(g): Advising of Available Delivery Formats

To address the addition of alternative means of delivering the FDD, Section 436.6(g) requires:

“Before furnishing a disclosure document, the franchisor shall advise the prospective franchisee of the formats in which the disclosure document is made available, any prerequisites for obtaining the disclosure document in a particular format, and any conditions necessary for reviewing the disclosure document in a particular format.”

Every franchisor, whether or not it uses E-Disclosure, is required to give this advance notice. Franchisors should by now have integrated the advance disclosure into their compliance practices. However, the Amended Rule does not indicate how this advance notice is to be delivered to prospective franchisees, leaving it to the franchisor to decide. Although the alternatives at least theoretically include verbal communication, best practices call for delivery of this information in writing. One possible choice is to include a list of delivery methods on the prospective franchisee’s application form, with a check box for the franchisee to select the desired delivery mechanism. Some franchisors are including a list of alternative delivery methods on the company website. Inclusion in an email to the prospective franchisee is another means of complying with this requirement.

d. Sections 436.6(h) and (i): Recordkeeping and Retention

Two other provisions of the Amended Rule impact the use of E-Disclosure and recordkeeping. Section 436.6 (h) requires a franchisor to retain and make available to the FTC on request a sample copy of each “materially different” version of the disclosure document for three years after the close of the fiscal year in which it was used. Section 436.6(i) requires a


33 16 C.F.R. § 436.6(g) (2011).

34 16 C.F.R. § 436.6(h) (2011).
franchisor to retain a copy of the signed receipt for at least three years. Franchisors must be mindful of these requirements not only for purposes of archiving but also when thinking about how to back up electronic data and provide for its preservation in the face of a computer crash or a disaster.

Anecdotal evidence suggests that the three-year archiving requirement is much less than common practice. A typical franchisor retains the different versions of its disclosure documents in perpetuity and a copy of the signed Receipt (or other proof of delivery and receipt) for a minimum of three, and typically four to five, years after the termination or expiration of the franchise agreement to which it relates.

Another important retention-related issue is having a means to capture, authenticate, and retain the Receipt. The issues raised by and mechanisms for fulfilling this requirement are discussed below.

e. FAQ 15: Using Electronic Tools for Receipt

The FTC staff has refined the parameters of the use of electronic tools through its answers to frequently asked questions (“FAQs”). These FAQs and the staff answers are available on the FTC’s website and are updated as additional questions are asked and answered.

In its answer to FAQ 15, the FTC staff has opined that a franchisor may:

- Place an icon or button, such as a “submit” button or a “submit receipt” button within the Item 23 Receipt page of the electronic version of the FDD that links to an external receipt page the prospective franchisee can fill in and submit electronically, so long as this electronic receipt page does not link the prospective franchisee to any other external page or site;
- Place a print icon on the Receipt page of the electronic version of the FDD to permit the prospective franchisee to print a copy of the Receipt page. The prospective franchisee can then sign and submit the paper copy of the Receipt.

The first of these two permissible uses of electronic tools is more integrally a part of the E-Disclosure process, with both delivery and acknowledgement of Receipt being accomplished electronically. The second accomplishes electronic delivery but still requires manual completion, signature, and return of the Receipt. But the latter practice may persist because franchisors may be more comfortable retaining some tangible form of proof of receipt, either a paper copy of the Receipt itself or a paper copy of the electronic confirmations.

Although the methods of completing and delivering the Receipt are presently the only ones the FTC has approved, other similar options for completing and delivering the Receipt process may be permissible under the Amended Rule. In its answer to FAQ 15, the FTC staff stated that it is not permissible to send a prospective franchisee two separate documents, an

35 16 C.F.R. § 436.6(i) (2011).
FDD and a separate Receipt page, because that would permit the prospective franchisee to open nothing but the Receipt page, bypassing the FDD altogether, which is just the sort of thing the FTC has assiduously sought to avoid while enabling E-Disclosure.

2. **Summary of Effect of the Requirements**

   a. **Enabling Pure Electronic Disclosure.**

   The Amended Rule still does not designate a single disclosure medium. In fact, the Amended Rule endorses more delivery media than ever before. The FDD can be delivered in any medium that permits it to be downloaded, printed, or otherwise saved and retrieved.37 The revisions to the definitions of “written,” “in writing,” and “signature,” coupled with the deletion of the NPR’s proposed requirement for delivery of a paper summary, make pure E-Disclosure a real possibility, so long as the prospective franchisee can access and retain the FDD. For the first time, a franchisor can choose to use only E-Disclosure. But doing so would prevent making an offer to a prospective franchisee that does not use electronic media. There are no doubt those who would say that anyone who does not use electronic media is not qualified to operate some, if not all, businesses in the 21st Century. As a practical matter, though, franchisors are likely to continue a “paper” option for some time to come.

   b. **Advance Notice of Available Formats**

   All franchisors, even those that use only paper disclosure, must now make what some are referring to as a pre-disclosure disclosure: telling the prospective franchisee how the FDD can be made available and what is required to access the FDD in various media other than paper hard copy.38 There is no particular requirement for how this information is delivered, only an implicit requirement that the franchisor be able to prove the franchisee received it before the first day that the 14-day period began to run. The seeming ease of fulfilling this requirement should not lull franchisors into sloppy practices: franchisors must continue to assure that every prospective franchisee, even those who may not visit a webpage or fill out an application, knows all the ways he or she may receive the FDD. The most cautious franchisors may archive electronic or hard copies of the notice each prospective franchisee receives as a means of maintaining a record and being able to prove how each prospective franchisee received the required notice. At a minimum, franchisors should have a written procedure, with prescribed language to be used for initial communications with prospective franchisees, and be able to document that it follows that procedure. Appendix 1 is a sample form of the advance notice.

   c. **Need to Know Chosen Medium Before Target Delivery Date**

   A franchisor that uses E-Disclosure over the internet only must bear in mind that prospective franchisees must be given specific directions for accessing the FDD over the internet on or before the disclosure date. The franchisor must know how the franchisee wishes to receive the FDD not only to comply with this requirement, but also to comply, if necessary, with the requirement added to Section 436.2(c)(3) that if a hard copy, diskette, or CD is mailed to the prospective franchisee, the franchisor must be able to demonstrate that it was sent at least three days before the deadline for delivery of the FDD.

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37 16 C.F.R. § 436.2(c) (2011).

38 16 C.F.R. § 436.6(g) (2011).
d. Single Written Document

Some things that have not changed are that the prospective franchisee must still receive a single, legible, "written" document containing all the required disclosures and the franchisor must still be able to prove that the franchisee received the document by being able to produce a "signed" receipt. As discussed above, the general instructions also preserve the basic protection the FTC sought to obtain by requiring that disclosures be in a form that permits either downloading or printing. Because the prospective franchisee must be able to print and otherwise archive the FDD, electronic devices that would preclude the recipient of an electronic copy of the FDD from doing that are also prohibited.

D. NASAA Guidelines and State Registration and Disclosure Laws

The North American Securities Administrators Association ("NASAA") has adopted amended and restated disclosure guidelines (the "NASAA Guidelines")\(^{39}\) that include provisions for E-Disclosure. The NASAA Guidelines provide that unless a state that has adopted the NASAA Guidelines has adopted its own E-Disclosure requirements, franchisors may deliver an FDD electronically by complying with the NASAA Statement on Policy Regarding Electronic Delivery of Franchise Disclosure Documents, adopted September 14, 2003 (the "NASAA 2003 Policy").\(^{40}\) The NASAA 2003 Policy generally tracks (or vice-versa) the provisions of the Amended Rule. It provides:

"(a) A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:

(1) the disclosure document

   (i) is delivered as a single, integrated, document or file;

   (ii) has no extraneous content beyond what is required or permitted by law and by the UFOC Guidelines, but which may include customary devices for manipulating electronic documents in machine readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;

   (iii) has no links to or from external documents or content;

   (iv) is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document; and

   (v) conforms as to its content and format to the requirements of law;

and


(2) the franchisor

(i) can prove that it delivered the disclosure document electronically in compliance with this section, and that it did so at or before the time required by law; and

(ii) keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the state franchise administrator with jurisdiction over the franchisor's offers and sales.

“(b) ‘Delivery’ requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure document is stored be physically delivered to the prospective franchisee in accordance with subsection (a)(1).

“(c) This section does not change or waive any other requirement of law concerning registration or presale disclosure of franchise offerings.”

These provisions reinforce the importance of using a method of receiving the Receipt that will permit the franchisor to retrieve a receipt and be able to prove that it was executed and returned on a particular date.

An ancillary note for franchisors that file with the state regulators electronically: the NASAA Guidelines add a requirement that the cover letter submitting an electronic version of the FDD contain a representation that all of the information contained in the electronic file is identical to the paper documents, as well as a requirement that the electronic version of the FDD be text searchable.

Only three of the registration states provide specifically for E-Disclosure. Both California and Virginia do so by regulation. Indiana does so by administrative order. The California and Virginia regulations are quite similar and track quite closely the NASAA 2003 Policy requirements. The text of those regulations is set forth in Appendix 2. Appendix 2 also summarizes the statutory or regulatory authority pertaining to E-Disclosure (or implicit in the adoption of the Amended Rule or NASAA Guidelines) in each registration state. Arguably all of the registration states except Rhode Island (the only registration state that has not adopted the NASAA Guidelines) have implicitly endorsed E-Disclosure by adopting the NASAA Guidelines.

41 Id.


E. **Electronic Signature Laws**

The principal legislation on electronic signatures is E-Sign, enacted on October 1, 2000. E-Sign was enacted to validate the use of electronic contracts and electronic signatures on a variety of legal and disclosure documents, including those required by governmental agencies. E-Sign eliminated any doubt about the legal enforceability of a document that was signed electronically by providing that a transaction may not be denied legal effect, validity, or enforceability solely because it is only in an electronic medium or an electronic signature was used. But E-Sign does not make the use of electronic disclosures or signatures mandatory. Nonetheless, its provisions had a significant impact on the content of the Amended Rule.

E-Sign generally prohibits imposition of conditions on use of electronic signatures but permits use of some conditions in consumer transactions. That exception might have permitted the FTC to impose some of the restrictions proposed in the NPR. But E-Sign defines a consumer transaction as one that is primarily for personal, family, or household purposes. Thus, the E-Sign definition of consumer transactions may have made the limitations on the use of electronic signatures originally proposed by the FTC in its NPR unenforceable. To address that problem, in the final Amended Rule specific instructions for E-Disclosure were replaced by more general instructions that cover both paper and E-Disclosure documents and various conditions on use of E-Disclosure, for example requiring a paper summary, were eliminated.

One significant effect E-Sign had on the Amended Rule is through its definition of electronic signature:

“The term ‘electronic signature’ means an electronic sound, symbol, or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record.”

The impact of this definition can be seen in the expansive definition of the term “signature” in the Amended Rule, including addition of symbols and passwords as signatures.

E-Sign also impacted the record retention requirements of the Amended Rule by providing:

“(1) Accuracy and Accessibility

If a statute, regulation, or other rule of law requires that a contract or other record relating to a transaction in or affecting interstate or foreign commerce be retained, that requirement is met by retaining an electronic record of the information in the contract or other record that—

---

(a) accurately reflects the information set forth in the contract or other record; and
(b) remains accessible to all persons who are entitled to access by statute, regulation, or rule of law, for the period required by such statute, regulation, or rule of law, in a form that is capable of being accurately reproduced for later reference, whether by transmission, printing, or otherwise.

“(3) Originals

If a statute, regulation, or other rule of law requires a contract or other record relating to a transaction in or affecting interstate or foreign commerce to be provided, available, or retained in its original form, or provides consequences if the contract or other record is not provided, available, or retained in its original form, that statute, regulation, or rule of law is satisfied by an electronic record that complies with paragraph (1).”

E-Sign makes limited provision for enactment of state laws affecting electronic signatures and the validity of electronic contracts. It generally limits pre-emption by state laws to those that constitute an enactment of the Electronic Transactions Act as approved by the National Conference of Commissioners on Uniform State Laws in 1999 or that specify alternative procedures or requirements for electronic signatures that are consistent with E-Sign and do not require specific technology or technical specifications.

Appendix 3 is a list of some principal resources regarding electronic contracting in the various states.

F. E-Disclosure Outside the US

Franchise disclosure laws and regulations outside the US offer a mixed bag with regard to E-Disclosure. Most are similar to the FTC Rule before it was amended – they are silent as to permission or prohibition. For this reason, the focus of this paper is on the US. However, a brief description of the provisions (or lack thereof) for E-Disclosure in Canada and Mexico is instructive of possible approaches to E-Disclosure outside the US.

In Canada, regulation of franchise disclosure is at the provincial level. Four provinces (Ontario, Alberta, Prince Edward Island and New Brunswick) have currently effective franchise disclosure requirements. A fifth province, Manitoba, has adopted such requirements but they are not yet in effect. Of the currently-effective regulations, Prince Edward Island53 and New Brunswick54 specifically permit electronic disclosure, including delivery by electronic means and electronic receipt; Ontario likely permits delivery of an FDD in an electronic form (such as a CD),

54 Franchises Act (O.C. 2010-317), Section 5(2); Disclosure Document Regulation - Franchises Act Reg. 2010-92, Section 3(1)(b), 3(2).
but requires that it be delivered personally, by registered mail, or by other prescribed method; and Alberta is entirely silent on both issues. The Manitoba Act, similar to the Arthur Wishart Act in Ontario, requires delivery of the disclosure document in person, by registered mail, by fax or by any other prescribed method. The requirements in Prince Edward Island and New Brunswick generally mirror or are otherwise consistent with the requirements of the Amended Rule. Thus, if a franchisor’s E-Disclosure process complies with the Amended Rule, it should comply with the Prince Edward Island and New Brunswick requirements. Because Alberta is silent on form and method of delivery, if a franchisor chooses to implement an E-Disclosure process for Alberta, complying with the Prince Edward Island/New Brunswick requirements would be well-advised. Until specific provisions for electronic delivery of FDDs are made in Ontario and Manitoba (when its law becomes effective), disclosure by delivery in person or by registered mail will be required to comply with the law, but a franchisor may choose to deliver a CD. If electing this method, a franchisor should otherwise structure its process to comply with the remaining provisions applicable in Prince Edward Island/New Brunswick, such as presenting the FDD in a single integrated document with no external content, in a form that permits the prospective franchisee to view and print it.

The laws of Mexico require pre-sale disclosure. As in Alberta, these laws are silent as to the permissibility of electronic format for the FDD or its delivery electronically. In the absence of a prohibition, franchisors may choose to deliver FDDs electronically and in an electronic format. A best practice would be to conform any E-Disclosure process for Mexico to the standards applicable to an E-Disclosure process under the Amended Rule.

III. THE BENEFITS OF E-DISCLOSURE

Now that E-Disclosure is specifically available, why would a franchisor choose to adopt or not adopt an E-Disclosure process? In making that decision, there are a number of potential benefits to E-Disclosure that should be considered. Among these are:

1. Expediting Preparation of Final Documents. As more Registration States permit electronic filing of annual renewals and amendments, eliminating the requirement to print FDDs for disclosure purposes would eliminate a step in the disclosure process. As a practical matter, if a franchise is offered in each Registration State, the printing and handling of the required redline and clean versions of the FDD requires at least a day of production time. If a franchisor offers multiple concepts, with multiple registrations, this time requirement is extended. If last-minute changes are required, reprinting entire sets of FDDs may also be required. Printing paper copies for mailing or overnight delivery to franchisees may take another day or more. Time must be built into the process to accommodate revisions required by state regulators.

55 Arthur Wishart Act (Franchise Disclosure), 2000. S.O. 2000, Chapter 3, Section 5(2). There is currently no other prescribed method for delivery. The Arthur Wishart Act and its Regulations are silent as to the medium in which the disclosure document must be prepared.

56 Franchises Act, RSA 2000, Chapter F-23.

57 The Franchises Act, 4th Session, 39th Legislature, Manitoba, 59 Elizabeth II, 2010. There is currently no other prescribed method.

58 See notes 52 and 53, supra.

59 Ley de la Propiedad Industrial (Industrial Property Law), as amended, Diario Oficial de la Federation (D.O.), 26 de Enero de 2006 (Mex.) (“IPL”), Article 142; and regulations thereunder.
2. Expediting Delivery. Adopting and using a CD-based E-Disclosure process can expedite the delivery process somewhat. It makes last-minute revisions or revisions required by state regulators simpler to make. However, the CDs still have to be created and delivered. In small franchise systems with relatively few disclosure or re-disclosure candidates, this may be a preferable option. In franchise systems with higher volumes, or where a franchisor offers multiple concepts, production and delivery issues are not wholly resolved by eliminating paper FDDs in favor of CDs. If a franchisor adopts an internet-based or email-based delivery system, FDDs can be made available to prospective franchisees the same day the annual update or amendment is effective.

3. Minimizing Sales Interruptions. Making delivery of FDDs possible on the day they become effective can reduce the stop-sales period by the four days or more it takes to get the FDD in the hands of the recipient. Using a CD-based system does not accomplish this, but internet-based access and email delivery do.

4. Ease of Electronic Recordkeeping. In a CD-based or email-based delivery system, there can be significant delays in signing and return of receipts by prospective franchisees, and sometimes confusion over when they actually received the FDD and signed the receipt. Significant time may be spent following up with recipients to remind them to send in the receipt. In this respect, delivery of CDs or emailed FDDs is no different from delivery of paper receipts. As a compliance matter, it is necessary to manually track the transmittal date and allow for sufficient delivery time if sent by mail. By contrast, a properly designed internet based E-Disclosure process can provide for tracking the date the prospective franchisee accesses the FDD on-line, immediate electronic signature of the receipt (with date included), and transmittal of an electronic copy of the electronically-signed receipt to the appropriate in-house person or persons. Franchisors may choose to maintain such receipts only electronically or only in paper format (printed out and placed in the prospective franchisee’s file) or both.

5. Lowering Cost. It is likely that any E-Disclosure option adopted by a franchisor will be less expensive than a paper-based option. The cost of producing a paper version of an FDD, depending on its size and the number of color pages, as well as the volume being printed and how it is bound, can vary from $10 to over $100 plus the cost of mailing it or sending it by express courier. A CD-based system should reduce these costs, but will not eliminate them. A CD should be less expensive than a paper copy and the mailing/shipping costs may be less because of weight and size; however, “printing” a large number of CDs (to obtain volume discounts) that later are discarded because of changes to the FDD may significantly reduce this cost advantage. Emailing an FDD is cost free (unless the franchisor pays an outside vendor a per-disclosure fee) as is the download of the FDD by the prospective franchisee from the franchisor’s website. Costs of outsourced E-Disclosure would vary by vendor and should be weighed as one factor in whether to adopt an E-Disclosure program and whether to outsource it.

IV. THE DRAWBACKS OF E-DISCLOSURE

As franchisors increasingly deal with a population that grew up using electronic communication, the drawbacks of E-Disclosure will increasingly be related only to the technology. But for now, user resistance remains a factor in the decision to implement E-Disclosure. In an unscientific survey of franchise listserv participants, the following perceived drawbacks were identified:
• The recipient has to print the document, which some complain about
• A very large pdf document may be too big to send through some email accounts
• Is a missed opportunity for personal contact (first personal meeting) and seems less personal than a letter with enclosure
• Tracking delivery and receipt may be a challenge
• It is new and some recipients do not like change
• Some people are still not very tech-savvy (both franchise sellers and prospective franchisees) so electronic processes are sometimes hard to explain or hard to understand
• If things go wrong in the E-Disclosure process, it is not a good way to start a relationship

Respondents from higher volume franchisors generally saw more advantages and fewer drawbacks to electronic delivery of FDDs.

Storing and maintaining receipts can be especially challenging with electronic disclosure. But it is a consideration that is particularly important because the franchisor may need to prove not only that the FDD was delivered, but precisely when it was delivered. With the demise of the first personal meeting requirement (except in Rhode Island and some states with applicable Business Opportunity laws), both as a measuring point and as a part of the franchise sales process in many systems, franchisors must find a suitable replacement for obtaining the receipt and verifying that the prospective franchisee has actually received the FDD and signed the receipt. Although it undercuts the purity of electronic disclosure, some franchisors may choose to obtain an originally signed hard copy to this need. However, doing so may create an ambiguity as to the actual date the FDD was received (an electronic tracking log may show one date of delivery and the recipient may put a different date on the receipt), so any such process should be carefully designed and monitored.

Some other practical drawbacks include:

1. Pdfs can be slow, halting, or awkward to use on some computer systems and some remote access programs.

2. Allowance must be made for the fact that prospective franchisees may use a variety of operating systems, depending on whether they are PC or Mac users. This impact can be minimized by the use of pdfs as the format for the FDD, but the distinction may also impact compatibility with an internet-based E-Disclosure system’s delivery methods.

3. Prospective franchisees may be using computers that are relatively slow and/or have relatively small capacity, affecting accessibility of documents. Documents in pdf format can be very large documents, which may exceed the size limit of some prospective franchisees’ email systems.

4. Prospective franchisees may be using software that is incompatible with the franchisor’s documents, another impact that can be minimized by the use of pdfs.

5. Prospective franchisees may use internet browsers that do not interface well with the franchisor’s delivery systems.
6. CDs may require special labeling to indicate that disclosure can be obtained in other formats.

7. Documents on a website must be accompanied by or preceded by download instructions.

8. The same technical issues that can plague any computer system can affect electronic disclosure programs. Documents may become inaccessible or corrupted. Programs may crash.

V. STRUCTURING A COMPLIANT PROGRAM

A. Available E-Disclosure Methods and Structures

After deciding to use E-Disclosure, the franchisor must pick a disclosure platform or platforms and decide whether to continue to offer paper disclosure. The available platforms include:

1. Emailing a pdf and having the prospective franchisee print the Receipt, manually sign it and return it as an email pdf, a snail mail hard copy, or both.

2. Making a pdf available on the franchisor’s website for download and having the prospective franchisee print the Receipt, manually sign it, and return it as an email pdf, a snail mail hard copy, or both.

3. Making a pdf available on the franchisor’s website for download and having the prospective franchisee both sign and return the Receipt electronically.

4. Delivering a CD by hand or snail mail and having the prospective franchisee print the Receipt, manually sign it, and return it as an email pdf, a snail mail hard copy, or both.

B. Compliance with Amended Rule’s E-Disclosure Related Provisions

As noted above, before the date for delivering disclosures the franchisor must communicate to the prospective franchisee the available means of receiving the FDD and the prerequisites to using E-Disclosure if it is available. Because the Amended Rule does not designate how the franchisor should fulfill those requirements, the franchisor can select any method it chooses, including an email message to the prospective franchisee, disclosure in or with the application form, disclosure in marketing materials, or any other means it chooses.

Primary among the considerations that will impact the choice a franchisor makes are the ability to later prove this advance notice was delivered. Giving the advance notice in a way that permits the franchisor to prove that the franchisee received it may dictate that the disclosure be made not in marketing materials that the franchisee may not read but by a means such as inclusion in the application, where proof that the franchisee received it can be made with relative ease. Whatever method it chooses must permit the franchisor to later prove that it communicated the alternative methods of disclosure and the prerequisites to receipt of electronic disclosure.
Although it would not satisfy the requirement to inform a prospective franchisee in advance of the available methods of receiving the FDD, the Amended Rule also permits a franchisor to include on the Cover Page the optional statement:

“You may receive your disclosure document in another format. To learn about the availability of the Franchise Disclosure Document in different formats, contact ***** at *****."

Some franchisors also include a statement at the end of the receipt:

“This Franchise Disclosure Document is also available as a PDF on our website at www.****.com.”

The requirement that the franchisor name each “franchise seller” also impacts E-Disclosure, both initially and during the application, approval, and negotiation process. In response to FAQ 23, the FTC Staff outlined various ways the franchisor can generally comply with the requirements to list each franchise seller on the Receipt signed by the prospective franchisee. The franchisor may amend an initial Receipt to include additional franchise sellers, as is frequently necessary in the sales process, by adding the names of additional franchise sellers. A franchisor that uses E-Disclosure must include in its compliance process either a way to provide an amended Receipt electronically or a process for amending a hard copy of the Receipt, sending it to the prospective franchisee, and retaining the copy of the amended Receipt in the file. It is likely that transmittal and retention of these amended Receipts electronically will be permissible under the Amended Rule.

Retaining receipts both affects and is affected by E-Disclosure. With the advent of an express requirement that receipts be retained for three years, an E-Disclosure program must include provision for archiving the electronic Receipt or for return of a hard copy of the Receipt that is kept with the prospective franchisee’s file. As a practical matter, this standard should be the absolute minimum. Best practices call for keeping the Receipt for no less than four years after the expiration or termination of the franchise. That is why the archival characteristics of an E-Disclosure program must protect against loss through a computer failure and why many franchisors still choose to obtain and archive both paper and electronic Receipts.

Similarly, the requirement that each materially different version of the FDD be retained for three years impacts E-Disclosure. Archiving is essential for this purpose also.

C. **In-House or Outsourced Electronic Fulfillment**

Having decided to implement some form of E-Disclosure process, the franchisor must decide exactly what kind of process works best for it and whether to carry out the process in-house or to outsource it, in whole or in part. The analysis leading to this decision is similar to the analysis for paper disclosure and involves at least the following considerations:

1. **Cost.** The cost of implementing an E-Disclosure process involves a consideration of both the cost of designing the process (or paying an upfront fee to an outside vendor) and the cost of fulfilling each disclosure requirement. If a franchisor has significant in-house information technology resources, the design and operation of a compliant internet-based E-Disclosure
process may be accomplished at no extra cost or minimal incremental cost. In smaller companies, or those in which in-house IT charges are passed through, a CD-based or email-based program may be more economical on the front-end as well as on an ongoing basis. If a vendor in a CD-based program bases costs on certain volumes of production, those volumes should account for the possible need to amend the FDD, rendering any existing copies obsolete.

2. Control. As a general rule, the more the E-Disclosure process is automated and compliance is tracked electronically, the less human intervention, paper tracking and compliance work will be required. In designing any E-Disclosure process, adequate safeguards must be in place, but if all or part of the process is outsourced, an extra layer of compliance tracking may be necessary. In selecting an outside vendor, careful attention must be paid to the interaction between the role of the outside vendor and that of the in-house development/sales function (or any outside sales persons), the in-house contracting function, and the in-house compliance function. Of particular importance is coordinating stop-sales periods and re-starting of disclosure activity.

3. Customization. Conducting E-Disclosure entirely in-house offers the advantage of being able to easily customize the process to the needs of the franchise system and to make changes whenever necessary. Using an outside vendor may require additional payments for customized approaches or changes to an adopted process. In some instances, selecting a vendor may merely mean adopting the process dictated by the vendor’s needs and approaches. That is a reasonable alternative if it is the most cost-effective, meets the franchisor’s needs, and is compliant with the Amended Rule.

4. Flexibility. An E-Disclosure process conducted entirely in-house offers the franchisor complete flexibility as to the timing of renewals and updates and the communications going to a particular prospective franchisee.

VI. A SAMPLE PROGRAM

A. Building an In-House E-Disclosure Process.

Companies that wish to structure an in-house E-Disclosure process that involves internet-based disclosure must do so as a cooperative effort between the company’s IT department, in-house counsel, outside counsel, contract administration team and development team. A typical process will use internet-based disclosure of a pdf copy of the FDD as the primary disclosure method, with electronic signature and submission of receipts, but has the flexibility to provide CD or email disclosure of pdf copies of the FDD with return of a hard copy receipt, or paper disclosure with return of a hard copy receipt, if the need arises.

In an in-house internet-based E-Disclosure process, the contact is initially driven by the in-house franchise seller. The franchise seller will communicate to the prospective franchisee the method for accessing the system. The system will have the capability to identify the specific person accessing the FDD, either by use of an access code unique to that individual or by tying the access in some other way to the individual.

In the sample program described in the balance of this paper, the franchise seller or his or her assistant sends an email to an identified prospective franchisee with instructions for logging onto an initial site to obtain a personalized link to the E-Disclosure site. When the prospective franchisee obtains the personalized link, the E-Disclosure system tracks the
personalized link and associates it with the unique individual to whom it is assigned and the activity of that individual on the site. This acts as a double-check and back-up trail of when the FDD was accessed and by whom, and when the receipt was completed. However, as can be seen below, the prospective franchisee still fills out a receipt and e-signs it, then the system routes it to the franchise seller for processing. The franchisor can then either retain the copies of the receipts electronically, or in hard copy or both. In the system described here, hard copies are ultimately placed in the franchise file of any prospective franchisee that becomes a franchisee.

In this sample program for a multi-brand franchise company using in-house franchise sellers, the process looks and feels much like the paper disclosure process, while taking advantage of the ease, speed, and flexibility of delivering the FDD electronically and receiving the receipt electronically. Among the issues to be addressed in the development of such a program are:

- Look and feel of the receipt
- Content of the receipt
- Assuring compliance with FTC regulations and E-Sign requirements
- Ease of access
- Management of the notice process
- Processing and storage of receipts and access logs
- Ongoing management and maintenance of both the IT platforms and the E-Disclosure process

When rolling out such a program, a franchisor may encounter unanticipated technical issues, including incompatible operating systems, incompatible web browsers, confusing instructions, and periodic problems downloading pdfs. However, these problems can be quickly identified and resolved, such that disclosure and re-disclosure cycles can proceed smoothly.

B. The Sample Program

STEP 1: Beginning the Process

The following instruction to franchise sellers describes the communication they are to send to a prospective franchisee, which includes how to access the electronic documents, how to identify the franchise seller, and that the FDD is also available in paper form. If more than one individual needs to sign a receipt, then each individual will need to receive the email in Step 1, so that they can E-sign a receipt.

For Rhode Island, the only remaining first-personal-meeting state, the franchise seller has the choice of sending the initial link (Step 1) before the meeting, walking them through the E-Disclosure links and process at the first personal meeting, or disclosing them with a hard copy of the FDD at the first personal meeting or beforehand.

Here is the instruction given to franchise sellers:

When you are ready to provide an FDD to a prospective franchisee, inform the prospective franchisee about the E-Disclosure process and encourage the prospective franchisee to complete the process and
submit the Electronic Receipt as soon as possible, so that the required disclosure periods begin to run.

Begin the process by sending the prospective franchisee an email that contains a link to an initial site. The email can come from you or from a person you designate (your Assistant or Coordinator, etc.). The sender should fill in the bracketed information in the email text set forth below [SEE HIGHLIGHTED AREA]. Please be sure to include full contact information in the signature block, so the prospective franchisee can contact you about the process if needed. Please do not alter the text of the email other than to fill in the blanks. Here is the text of the email you should send:

Thank you for your interest in a [FILL IN BRAND OR BRANDS] franchise in [FILL IN CITY/STATE INFORMATION]. Please Click (or Control Click) on this Link to access our U.S. Franchise Disclosure Documents (FDDs) electronically and participate in our Electronic Disclosure process:

Link: [e-disclosure website link here]

When filling out your Electronic Receipt, please Click (or Control Click) on the following name(s) in the “franchise seller” box.

[PERSON SENDING EMAIL TO LIST ONE OR MORE FRANCHISE SELLER NAMES HERE]

If you have any questions about this process, you may contact me for assistance.
If you would prefer a paper copy of the FDD rather than downloading it electronically, please contact me.

[Signature block for Developer or Assistant]

STEP 2: The prospective franchisee receives the initial email from the franchise seller and clicks on the link

The following shows the webpage that appears when the prospective franchisee clicks on the link in the email sent by the franchise seller. It allows the prospective franchisee to fill in basic contact information so that a personalized link can be emailed to the prospective franchisee. The personalized link is the mechanism for tracking actual access to the particular FDD and is both a back-up confirmation of receipt and an aid in troubleshooting access problems. When the prospective franchisee clicks on the initial link in your email, the following page will appear:
Electronic Franchise Disclosure

[FRANCHISOR NAME APPEARS HERE] is pleased to offer Franchise Disclosure Documents (FDDs) electronically for our brands in the United States. We anticipate that this will help save you time and effort in the disclosure process and we hope that it enhances your overall development experience with us.

To get started, please enter your name, title, company name, email address and phone number. If you are an individual applicant, enter INDIVIDUAL in the Company box and the Title box.

Click on the “Submit” button. You will then receive an email with further instructions and a personalized link to the FDD page, from which you can select the brand FDD.

**STEP 3: The prospective franchisee receives an email with the personalized Disclosure Link**

The email that goes to the prospective franchisee from the E-Disclosure system gives them specific information about how to access the system and how to print the receipt and the FDD. The prospective franchisee will receive this email at the address submitted in Step 2. It should arrive within one to two minutes after the franchisee clicks Submit. The email contains instructions for completing the process. The Date and To fields on the email are automatically generated from the information submitted by the prospective franchisee in Step 2.
E-Disclosure Link is automatically generated by the system and is personal to the prospective franchisee.

Here is a sample of the text of email the prospective franchisee will receive:

From: Franchise Development
To: [the email address submitted]
Subject: [BRAND NAME] Electronic Franchise Disclosure

Thank you for participating in the Electronic Disclosure (E-Disclosure) process for our franchised brands in the U.S.

In order to complete the E-Disclosure process and download the U.S. Franchise Disclosure Document (FDD) you have requested, please complete the following steps:

1. Click on the “E-Disclosure Link” below. This link is personal to you and for your use only. This link will expire in 90 days.
2. Click on the Brand logo for the U.S. FDD you wish to download.
3. Once the FDD opens, click on the “Electronic Receipt” button at the top of the first page to open the Electronic Receipt.
4. Fill in the requested information (including the names of the “franchise sellers” identified in our original email to you).
5. Click the box to authorize your Electronic Signature and click on the “SUBMIT” button.
6. On the Acknowledgement of Receipt page, click on the link to PRINT YOUR COPY of the Receipt.
7. On the Acknowledgement of Receipt page, click on the link to RETURN TO FDD.
8. You may then save the FDD to your computer, print it, or both.

As long as your E-Disclosure Link is active, you may return to the FDD you previously accessed, or you may download a different Brand FDD and complete the Electronic Receipt process for that Brand.

E-Disclosure Link: [HERE IS WHERE THE PERSONALIZED LINK WILL APPEAR]

If you have any questions or need any additional information, please contact your [BRAND NAME] franchise development representative

STEP 4: The prospective franchisee clicks on the personalized link and selects the FDD for download

When the prospective franchisee clicks on the personalized E-Disclosure Link, it accesses the webpage from which the prospective franchisee can select an FDD to download.
(Note that in a single brand system, clicking on the link could take the prospective franchisee straight to the FDD.) The webpage is accessible through virtually any internet browser when the prospective franchisee clicks on his or her personalized link. The page notifies the prospective franchisee that Adobe Reader is required for download and provides a link to download it. The prospective franchisee can return to this page at any time and click on the same or a different brand. The webpage looks like this:

**FRANCHISOR LOGO APPEARS HERE**

Click on the Requested Brand to access the FDD. Adobe Reader is required to open the files. If you do not have Adobe Reader, you can download it by clicking “Get Adobe Reader” at the bottom of the page.

LOGO OF BRAND 1 APPEARS HERE

LOGO OF BRAND 2 APPEARS HERE

LOGO OF BRAND 3 APPEARS HERE

LOGO OF BRAND 4 APPEARS HERE

©2011 [FRANCHISOR NAME HERE] 36 USC 220506. All Rights Reserved.

**STEP 5:** The prospective franchisee opens the FDD, receives, completes, and submits the Receipt

When the prospective franchisee clicks on the Brand in Step 4, the selected Brand FDD opens. At top center of the cover page will be a box that says:

Click Here for Electronic Receipt

The prospective franchisee will click on that box and the E-Receipt will open. The E-Receipt is a fill-in-the-blank receipt. Its text mirrors the text in the printed receipt at the back of the FDD document. The date automatically fills in. Each E-Receipt will be brand specific. The prospective franchisee will fill in information in the boxes, including information identifying the prospective franchisee and the proposed franchised location. There are options for competing an Individual signature block or a Corporation/Entity signature block. The prospective franchisee must also fill in the name of at least one franchise seller. This should be the franchise seller who sent the prospective franchisee the email containing the initial link.

The signature block permits the prospective franchisee to both affirm its electronic signature, but authorize its use. This satisfies E-Sign requirements. When complete, the prospective franchisee will click on Submit. If the prospective franchisee has failed to fill in any required information, the Submit button will not function and the missing information will be highlighted on the receipt form so the prospective franchisee can fill it in.
Here is a sample of what the E-Receipt will look like on the screen (this sample shows the Corporation/ Entity signature block):

**Electronic Receipt**

*[BRAND NAME]* Franchise LLC

This disclosure document summarizes certain provisions of the franchise agreement and other information in plain language. Read this disclosure document and all agreements carefully.

If *[BRAND NAME]* Franchise LLC offers you a franchise, it must provide this disclosure document to you 14 calendar days before you sign a binding agreement with, or make a payment to, the franchisor or an affiliate in connection with the proposed franchise sale.

Rhode Island requires that we give you this disclosure document at the earlier of the first personal meeting or 10 business days before the execution of the franchise or other agreement or the payment of any consideration that relates to the franchise relationship.

Michigan and Washington require that we give you this disclosure document at least 10 business days before the execution of any binding franchise or other agreement or the payment of any consideration, whichever occurs first.

If *[BRAND NAME]* Franchise LLC does not deliver this disclosure document on time or if it contains a false or misleading statement, or a material omission, a violation of federal law and state law may have occurred and should be reported to the Federal Trade Commission, Washington, DC 20580 and the state agency listed on Exhibit I.

The franchisor is *[BRAND NAME]* Franchise LLC, located at *[ADDRESS OF FRANCHISOR]*. The telephone number is *[PHONE NUMBER OF FRANCHISOR]*.

Issuance Date: March 31, 2011

The franchise sellers for this offering are *[NAME ANY ENTITY THAT QUALIFIES AS A FRANCHISE SELLER]* and

<table>
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<th>Seller * [Check ONLY those that apply]</th>
<th>Title</th>
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</table>
The address for all franchise sellers is [ADDRESS OF FRANCHISOR]; the phone number is [PHONE NUMBER OF FRANCHISOR].

[BRAND NAME] Franchise LLC authorizes the respective state agencies identified on Exhibit J to receive service of process for it in the particular state.

I received a disclosure document dated March 31, 2011 that included the following Exhibits:

<table>
<thead>
<tr>
<th>Exhibit</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exhibit A</td>
<td>List of Licensed Hotels (as of December 31, 2010)</td>
</tr>
<tr>
<td>Exhibit B</td>
<td>List of Licensed Hotels Terminated, Canceled, Not Renewed or with Changes in Controlling Interest During FY 2010</td>
</tr>
<tr>
<td>Exhibit C</td>
<td>Financial Statements</td>
</tr>
<tr>
<td>Exhibit D</td>
<td>Franchise License Agreement, Rider, Attachment A and State Addenda</td>
</tr>
<tr>
<td>Exhibit D-1</td>
<td>Development Incentive Promissory Note</td>
</tr>
<tr>
<td>Exhibit E</td>
<td>Guarantee of Franchise License Agreement</td>
</tr>
<tr>
<td>Exhibit F</td>
<td>Franchise License Application</td>
</tr>
<tr>
<td>Exhibit G</td>
<td>Computer Services Agreements</td>
</tr>
<tr>
<td>Exhibit H</td>
<td>Table of Contents of Brand Standards Manual</td>
</tr>
<tr>
<td>Exhibit I</td>
<td>State Administrators</td>
</tr>
<tr>
<td>Exhibit J</td>
<td>Agents for Service of Process</td>
</tr>
<tr>
<td>Exhibit K</td>
<td>State Addenda to Franchise Disclosure Document</td>
</tr>
<tr>
<td>Exhibit L</td>
<td>Voluntary Termination Agreement (Franchise License Agreement)</td>
</tr>
<tr>
<td>Exhibit M</td>
<td>Receipt</td>
</tr>
</tbody>
</table>

PROSPECTIVE FRANCHISEE*:
(Fill in the name of Prospective Franchisee. If Entity to be formed, so state)
Corporation or Business Entity

Name of Entity: *

Printed Name: *

Signature: *

Title: *

Date: * 03/31/2011

Signing Capacity / Additional Signature Blocks:
(Add here any additional signature blocks or any notation of signing capacity necessary to complete your signature.)

DESCRIPTION OF PROPOSED FRANCHISE LOCATION (Include City and State where known) *:

☐ Check here to authorize electronic signature*

*Required Field

STEP 6: Processing and printing Receipts and return to the FDD

When the prospective franchisee clicks SUBMIT in Step 5, the system will send a copy of the E-Receipt to each of the franchise sellers the prospective franchisee has identified in the dropdown box on the E-Receipt. Each franchise seller may designate one additional email address (such as an administrative assistant) to receive a copy of each E-Receipt that goes to the franchise seller. A copy of the E-Receipt will also be sent to a centralized E-Receipt mailbox. Each franchise seller will print out the E-Receipt and include it with the prospective franchisee’s application form.
At the same time the E-Receipt is being sent automatically to the franchise seller, the prospective franchisee will see a page that says:

**BRAND LOGO OR FRANCHISOR NAME APPEARS HERE**

Acknowledgement of Receipt

[Click here to print your copy of the Receipt]
[Click here to return to the Franchise Disclosure Document]

The prospective franchisee clicks on the first link to print a copy of the E-Receipt. The prospective franchisee clicks on the second link, which takes the prospective franchisee back to the FDD pdf, where the FDD can be printed and/or downloaded.

**STEP 7: Re-Access and Re-Disclosure**

While the personalized E-Disclosure Link is active, the prospective franchisee can either revisit the FDD or go through the process on another brand. The personalized E-Disclosure Link will expire 90 days after it is assigned. All active personalized E-Disclosure Links will be terminated if the FDDs are amended. When amended FDDs are available on the site, the franchise seller or the will send an email containing the following text:

Our U.S. Franchise Disclosure Documents (FDDs) have been amended. We are now required to provide you the amended versions. Please Click (or Control Click) on the Link below to access our amended U.S. Franchise Disclosure Documents (FDDs) electronically and participate in our Electronic Disclosure process. When filling out your Electronic Receipt, please Click (or Control Click) on the following name(s) in the "franchise seller" box.

[PERSON SENDING EMAIL TO LIST ONE OR MORE FRANCHISE SELLER NAMES HERE]*

Link: [e-disclosure site link will appear here]

If you have any questions about this process, you may contact me for assistance.

If you would prefer a paper copy of the FDD rather than downloading it electronically, please contact me.

[Signature block for Developer or Assistant]
VII. CONCLUSION

Many franchisors now offer some form of E-Disclosure, most commonly sending an FDD in pdf format by email or on CD. This may be the best option for small volume franchisors for the foreseeable future. However, franchisors with higher volume disclosure needs can gain significant benefit from a more automated delivery and receipt system. Now that the door to E-Disclosure and electronic signature has been opened, more companies will begin to take advantage of its benefits. Advances in technology will offer new and better ways to meet the franchisor’s responsibility, while adding cost saving benefits to the franchisor and convenience to the prospective franchisee. With use of electronic disclosure growing at a fast pace, encouraged by the increasingly global nature of business communication, increasing use of E-Disclosure is likely to continue to grow and perhaps become imperative as franchise systems expand into geographically distant locations and an increasingly electronic communication oriented population becomes the target of franchise offerings.

Appendix 4 contains a Bibliography of E-Disclosure resources.
HOW YOU CAN RECEIVE YOUR FRANCHISE DISCLOSURE DOCUMENT

Our Franchise Disclosure Document in available in the formats listed below. Please check the one you choose.

___ Hard copy by overnight delivery
___ Hard copy by USPS
___ Electronic copy on CD
___ Electronic copy as a PDF by electronic mail
___ Electronic copy through our online service at www._________

Please sign and date below to acknowledge your choice. Then please return this form to us.

Dated: ____________  

__________________________
Signature

__________________________
Print Name
1. Franchise Law or Registration States That Have Adopted E-Disclosure Provisions

California:

Cal. Code Regs. tit. 10, § 310.114.4 explicitly allows E-Disclosure


(a) A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided all of the following are met: (1) before furnishing a disclosure document or making it accessible to the prospective franchisee, the franchisor has advised the prospective franchisee of the formats in which the disclosure document is available and any prerequisites or conditions necessary for obtaining or reviewing it in a particular format; and (2) the disclosure document:

(A) is delivered as a single, integrated, document or file;

(B) has no extraneous content beyond what is required or permitted by law and by the UFOC Guidelines, except for the items allowed under subsection (i) below:

(i) for the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of the disclosure document, the franchisor may include scroll bars, internal links, and search features;

(ii) all other features are prohibited, including audio, video, "pop-up" screens, and links to external documents.

(C) is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document; and

(D) conforms as to its content and format to the requirements of law; and

(3) the franchisor:

(A) can prove that it delivered the disclosure document electronically in compliance with this section, and that it did so at or before the time required by law; and

(B) keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the Department.
(b) "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure document is stored be physically delivered to the prospective franchisee in accordance with subsection (a).

(c) Proof of delivery may be demonstrated by a return email from the recipient acknowledging receipt of the document, or the recipient's use of security codes, passwords, electronic signatures, or similar devices to authenticate the recipient's identity, or by any other form of written confirmation of receipt from the prospective franchisee.

(d) This section does not change or waive any other requirement of law concerning registration or presale disclosure of franchise offerings.


Indiana

A 2005 Indiana administrative order, rather than the Indiana Code or Administrative Code, explicitly allows E-Disclosure as permitted under the FTC Rule:

Administrative Order:
http://www.in.gov/sos/securities/files/FranchiseSOP.pdf

The Indiana Code states, “the disclosure statement shall be in a form prescribed by the commissioner or in a form permitted under 16 CFR 436, as amended.”

http://www.in.gov/legislative/ic/code/title23/ar2/ch2.5.html

Virginia


http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+21VAC5-110-80

21VAC5-110-80. General requirements for preparation of disclosure documents; master franchises; electronic disclosure.
C. Electronic disclosure.
1. A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:
a. The disclosure document is delivered as a single, integrated document or file;
b. The disclosure document has no extraneous content beyond what is required or permitted by law or regulation, but which may include customary devices for manipulating electronic documents in machine-readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;
c. The disclosure document has no links to or from external documents or content;
d. The disclosure document is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document;
e. The disclosure document conforms as to its content and format to the requirements of applicable law or regulation;
f. The franchisor can prove that it delivered the disclosure document electronically in compliance with this subsection, and that it did so at or before the time required by applicable law or regulation; and
g. The franchisor keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commission.

2. For the sole purpose of enhancing the prospective franchisee’s ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features such as audio, video, animation, pop-up screens or links to external information are prohibited.

3. "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure is stored be physically delivered to the prospective franchisee in accordance with subdivision 1 a of this subsection.

4. This subsection does not change or waive any other requirement of law or regulation concerning registration or presale disclosure of franchise offerings.

2. Franchise Law or Registration States That Have Adopted the Amended Rule or NASAA Guidelines

Hawaii

Adopts the Amended Rule and NASAA Guidelines by statute.

Haw. Rev. Stat. §482E-3(e) "In lieu of an offering circular meeting the requirements set forth in this section, franchises may be sold in this State by means of an offering circular or disclosure statement required by a federal or government agency of another state, or an offering circular or disclosure statement meeting the requirements approved by an association of state regulatory agencies; provided that the director determines that such offering circular or disclosure statement substantially meets the disclosure requirements set forth in this section."

Illinois

Adopts the Amended Rule and NASAA Guidelines by statute.

“Sec. 16. Form and contents of disclosure statements. The disclosure statement required under this Act shall be prepared in accordance with the Federal Trade Commission rule entitled Disclosure Requirements and Prohibitions Concerning Franchising, 16 C.F.R. Part 436, as it may be amended, the Guidelines promulgated by the North American Securities Administrators
APPENDIX 2

Association, Inc., as they may be amended, and the rules adopted by the Administrator pursuant to Section 32 of this Act. “ 815 Ill. Comp. Stat. 705/16

Maryland

Adopts the NASAA Guidelines in a memorandum posted on its website:
http://www.oag.state.md.us/securities/info_for_franchisors5.pdf

The regulations incorporate and reference the 1993 NASAA guidelines but do not appear to have been amended to reflect the memorandum. The regulations provide:
“An application to register a franchise shall be prepared in accordance with the Uniform Franchise Offering Circular Guidelines adopted by the North American Securities Administrators Association, Inc., on April 25, 1993 (UFOC), which is incorporated by reference”Md. Code Regs. 02.02.08.04

http://www.dsd.state.md.us/comar/SubtitleSearch.aspx?search=02.02.08.*

Note also that for state registration purposes, both a hard copy and CD-Rom are required.

Michigan

Although there is no statutory or regulatory supporting authority, Michigan follows the Amended FTC Rule and NASAA Guidelines.

The Attorney General’s website links to the Amended Rule Compliance Guide and approves E-Disclosure so long as Section 8 of the Michigan Franchise Investment Law is followed.

http://www.michigan.gov/ag/0,1607,7-164-48127-198444--F,00.html

Statute:

Minnesota

Although there is no statutory or regulatory supporting authority, Minnesota follows the Amended Rule and NASAA Guidelines.

The Minnesota Department of Commerce website refers and links to the Amended Rule and the NASAA Guidelines.

Department of Commerce website, “How to Register”:
http://www.state.mn.us/portal/mn/jsp/content.do?subchannel=-536881352&programid=536884561&sc3=null&sc2=null&id=-536881352&agency=Commerce
Statute:  
https://www.revisor.mn.gov/statutes/?id=80C

Regulations:  
https://www.revisor.mn.gov/rules/?id=2860

**New York**

Although there is no statutory or regulatory supporting authority, New York follows the Amended Rule and NASAA Guidelines.

The website refers to the Amended Rule Compliance Guide and even Opinion 97-2.

Attorney General Website - Franchise Section -  
http://www.ag.ny.gov/bureaus/investor_protection/franchisors_franchises.html

Note that registration in New York requires two copies of the FDD; one of these copies can be on a CD.

Franchise Information sheet:  

Statute:  
http://law.justia.com/codes/new-york/2006/general-business/idx_gbs0a33.html

**North Dakota**

Although there is no statutory or regulatory supporting authority, North Dakota follows the Amended Rule and NASAA Guidelines.

The North Dakota Securities Department. website links to the NASAA Guidelines and allows E-Disclosure for state registration.

Securities Dept. Website:  

Statute:  

Regulations:  
http://www.legis.nd.gov/information/acdata/html/Title73.html
Oregon

Regulations refer to the Amended Rule:

Statute:
http://landru.leg.state.or.us/ors/650.html

Regulations:
http://arcweb.sos.state.or.us/rules/OARS_400/OAR_441/441_325.html

Rhode Island:

Although there is no statutory or regulatory supporting authority, Rhode Island follows the Amended FTC Rule and NASAA Guidelines.

Rhode Island’s “Franchise Registration Application” directs applicants to the NASAA Guidelines and the regulators generally follow the NASAA Guidelines. A memorandum on the Department of Business Regulation’s website indicates that Rhode Island only accepts CD-rom copies of documents, including the FDD.

Memorandum on website:
http://www.dbr.state.ri.us/documents/divisions/banking/securities/Franchise_Filing_Notice.pdf

Statute:
http://www.rilin.state.ri.us/statutes/title19/19-28.1/INDEX.HTM

South Dakota


Statute:
http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=37-5B

The website links to the Amended Rule and NASAA Guidelines. Note that the South Dakota website indicates that an electronic FDD on CD is preferred for registration purposes.

Website:
http://www.state.sd.us/drr2/reg/securities/franchise.htm
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Washington

Adopts the NASAA Guidelines by regulation.

Regulation:
“To implement the offering circular and disclosure requirements of RCW 19.100.030 (4)(a) and 19.100.040, the director adopts the requirements for preparing the contents of a Franchise Disclosure Document set forth in sections III. and VII. of the 2008 Franchise Registration and Disclosure Guidelines promulgated by the North American Securities Administrators Association, Inc. (NASAA).” Wash. Admin. Code § 460-80-315.


Statute:

Wisconsin

Adopts the Amended Rule by statute.

553.27(4)
“No franchise subject to registration under this chapter may be sold in this state unless a copy of an offering circular is provided to the prospective franchisee at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement with the franchisor or any affiliate of the franchisor or at least 14 days prior to the payment of any consideration to the franchisor or any affiliate of the franchisor, whichever first occurs. The offering circular may be in a form that the division requires by rule, in a form permitted under 16 CFR 436 or in a form permitted by a successor to that regulation.” Wis. Stat. § 553.27.

Regulations:

The website includes detailed information regarding the Amended Rule and a link to the NASAA Guidelines. Wisconsin has its own e-filing system for registration.

Department of Financial Institutions Website:
http://www.wdfi.org/fi/securities/franchise/regulatn.htm
APPENDIX 3

State Electronic Transactions Laws and Other E-Sign Resources

A. States that have enacted the Uniform Electronic Transactions Act (“UETA”):

**Alabama**
Alabama Code §8-1A
From state home page at [http://alisondb.legislature.state.al.us/acas/ACASLoginMac.asp](http://alisondb.legislature.state.al.us/acas/ACASLoginMac.asp) the code is accessible on a side tab, then under Title 8, Chapter 1-A

**Alaska**
Alaska Stat. § 09.80.010
[http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=HB0285Z&session=23](http://www.legis.state.ak.us/basis/get_bill_text.asp?hsid=HB0285Z&session=23)

**Arizona**
From [http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=44](http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=44) the Act is located under Chapter 26

**Arkansas**

**California**
Cal. Civil Code §1633.1 et seq.

**Colorado**
From [http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=](http://www.michie.com/colorado/lpext.dll?f=templates&fn=main-h.htm&cp=) left tab under Colorado Revised Statutes, Chapter 24 (Government - State), Section 71.3.

**Connecticut**
Conn. Gen. Stat. §1-266 et seq.
[http://www.cga.ct.gov/2005/pub/Chap015.htm#Sec1-266.htm](http://www.cga.ct.gov/2005/pub/Chap015.htm#Sec1-266.htm)

**Delaware**
Del. Code tit. 12A§101 et seq.
APPENDIX 3

District of Columbia
D.C. Code §28-4901 et seq.
From http://government.westlaw.com/linkedslice/search/default.asp?RS=GVT1.0&VR=2.0&SP=dcc-1000 type “28-4901” in the search field, the first result is the first applicable section; scroll to the bottom to find the “docs in sequence” option to page through in sections of the Act in order.

Florida
Fla. Stat. §668.50 et seq.

Georgia
Ga. Code §10-12-1 et seq.
http://law.justia.com/codes/georgia/2010/title-10/chapter-12/

Hawaii
Hawaii Rev. Stat. §489E-1 et seq.
http://www.capitol.hawaii.gov/hrscurrent/Vol11_Ch0476-0490/HRS0489E/HRS_0489E-.htm

Idaho
Idaho Code §28-50-101 et seq.
http://www.legislature.idaho.gov/idstat/Title28/T28CH50.htm

Indiana
Ind. Code §26-2-8-101 et seq.

Iowa
Iowa Code §554D.101 et seq. From http://search.legis.state.ia.us/nxt/gateway.dll?ic?f=templates&fn=default.htm click on Iowa Code tab on left side; choose Code by chapter option and scroll down to 554D.

Kansas
Kan. Stat. §16-1601 et seq.
http://www.kslegislature.org/li/statute/016_000_0000_chapter/016_016_0000_article/

Kentucky
http://www.lrc.state.ky.us/KRS/369-00/CHAPTER.HTM
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Louisiana
From http://www.legis.state.la.us/lss/lss.asp?doc=107127 at top left of screen pick link to page through the Act.

Maine
Me. Rev. Stat. tit. 10§9401 et seq.
http://www.mainelegislature.org/legis/statutes/10/title10ch1051sec0.html

Maryland
From http://michie.lexisnexis.com/maryland/lpext.dll?f=templates&fn=main-h.htm&cp - click Maryland Code, then subfolder “Commercial Law,” then scroll to Title 21.

Massachusetts
Mass. Gen. Laws. ch. 110G -
http://www.massachusetts.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter110g

Michigan

Minnesota
Minn. Stat. §325L.01 et seq.
https://www.revisor.mn.gov/statutes/?id=325L

Mississippi
Miss. Code §75-12-1 et seq.
From http://michie.com/mississippi/lpext.dll?f=templates&fn=main-h.htm&cp= select Mississippi Code folder on left side of window, then select Title 75, then Chapter 12.

Missouri
Mo. Rev. Stat. §432.200 et seq.
http://www.moga.mo.gov/statutes/chapters/chap432.htm

Montana
Mont. Code §30-18-101 et seq
http://data.opi.mt.gov/bills/mca_toc/30_18_1.htm

Nebraska
Nevada
http://www.leg.state.nv.us/NRS/NRS-719.html

New Hampshire
N.H. Rev. Stat. §294-E:1 et seq

New Jersey
N.J. Rev. Stat. §12A:12-1 et seq
http://law.onecle.com/new-jersey/12a-commercial-transactions/12-1.html

New Mexico
N.M. Stat. §14-16-1 et seq.
From http://www.conwaygreene.com/nmsu/lpext.dll?f=templates&fn=main-h.htm&2.0 on left, select “2010 NMSA 1978” then “Statutory Chapters” then “Chapter 14” then the last article, 16.

North Carolina
http://www.ncleg.net/EnactedLegislation/Statutes/HTML/ByArticle/Chapter_66/Article_40.html

North Dakota
N.D. Cent. Code §9-16-01 et seq.

Ohio
Ohio Rev. Code Ann. §1306.01 et seq.
http://codes.ohio.gov/orc/1306

Oklahoma
From http://www.oklegislature.gov/osStatuesTitle.html - Select Title 12A

Oregon
Or. Rev. Stat. §84.001 et seq.
http://landru.leg.state.or.us/ors/084.html

Pennsylvania:
Rhode Island:
http://www.rilin.state.ri.us/Statutes/TITLE42/42-127.1/INDEX.HTM

South Carolina:
S.C. Code §26-6-10 et seq.
http://www.scstatehouse.gov/code/t26c006.htm

South Dakota:
S.D. Codified Laws §53-12-1 et seq.
http://legis.state.sd.us/statutes/DisplayStatute.aspx?Type=Statute&Statute=53-12

Tennessee:
Tenn. Code §47-10-101 et seq. From
http://www.michie.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=tncode go to Title 47 on left side, then Chapter 10.

Texas:
Tex. Business and Commerce Code §322.001 et seq.
http://www.statutes.legis.state.tx.us/Docs/BC/htm/BC.322.htm#322.001

Utah:
Utah Code §46-4-101 et seq.
http://le.utah.gov/~code/TITLE46/46_04.htm

Vermont:
Vt. Stat. tit. 9, §270 et seq.
http://www.leg.state.vt.us/statutes/sections.cfm?Title=09&Chapter=020

Virginia:
http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+TOC5901000004200001000000

West Virginia:
http://www.legis.state.wv.us/WVCODE/code.cfm?chap=39a&art=1

Wisconsin:
Wis. Stat. §137.01 et. seq

Wyoming:
http://legisweb.state.wy.us/statutes/statutes.aspx?file=titles/Title40/T40CH21.htm
B. States that have not enacted UETA but have state laws:

**Illinois:**
Electronic Commerce Security Act

**New York:**
Electronic Signatures and Records
[http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@LLSTT+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=51972489+&TARGET=VIEW](http://public.leginfo.state.ny.us/LAWSSEAF.cgi?QUERYTYPE=LAWS+&QUERYDATA=@LLSTT+&LIST=LAW+&BROWSER=BROWSER+&TOKEN=51972489+&TARGET=VIEW) - select Article 3.

**Washington:**
Electronic Authentication Act

**Other Resources on E-Sign**


APPENDIX 4

E-DISCLOSURE BIBLIOGRAPHY


APPENDIX 4


NANCY GLISAN GOURLEY

Nancy Glisan Gourley is Vice President-Franchise Legal with LQ Management, LLC in Irving, Texas, where her responsibilities include all matters related to franchising of the LaQuinta Inn & Suites and LaQuinta Inn brands. She was previously Senior Counsel-Franchise with Hilton Worldwide, Inc. in McLean, Virginia, where her primary responsibilities involved franchising issues related to Hilton Worldwide’s 9 hotel brands in the Americas. She is an Honors graduate of Oklahoma State University and the University of Tulsa College of Law. She is admitted to practice in Oklahoma and is a member of the bar of the United States Supreme Court.

Ms. Gourley has been involved in franchising since 1985 and has served on the Litigation and Alternative Dispute Resolution (LADR) Steering Committee of the ABA Forum on Franchising, and as LADR Director. As LADR Director, she served on the Forum Governing Committee. She is a frequent speaker at the Forum and contributed the “Oklahoma” section of the current edition of the Forum publication “Covenants Against Competition.”

Ms. Gourley has practiced law for 28 years, one-third of that time in-house in the hospitality and travel industries and two-thirds in private law practice in Tulsa, Oklahoma. While in private law practice, Ms. Gourley also served as an Adjunct Settlement Judge in the U.S. District Court and the U.S. Bankruptcy Court for the Northern District of Oklahoma, conducting mediations of pending cases. She also served two years as a part-time Administrative Law Judge for the Oklahoma Department of Labor, hearing wage and hour, child labor, and workers’ compensation coverage cases. She drafted legislation enacted by the Oklahoma Legislature in 2002 clarifying the application of various statutes related to Mediation in Oklahoma.

Ms. Gourley has been active in her state and local bar associations. She served several terms on the Tulsa County Bar Association Board of Directors, as well as Editor of its Tulsa Lawyer monthly newsletter. She also served as President of the Board of Trustees of the Tulsa County Law Library. Ms. Gourley has served on numerous committees of the Oklahoma Bar Association and chaired the Legal Internship Committee for several years. She has also chaired both the Litigation Section and the Alternative Dispute Resolution Section of the Oklahoma state bar and served a three-year term on the Oklahoma Bar Association Board of Governors.
Phyllis Alden Truby is a sole practitioner in Los Angeles, California with more than 30 years of law practice experience, concentrating on franchising and distribution, business, and real estate law.

Ms. Truby is a former member of the Governing Committee of the American Bar Association Forum on Franchising and has held various other leadership positions in the Forum. She is a past chair of the California State Bar Business Law Section’s Franchise Law Committee. She has been a franchise law program panelist at the California State Bar Conference, for California Continuing Education of the Bar, for the Denver Bar Association’s Patent and Trademark Law Section, for the National CLE Conference, at the American Bar Association’s Annual Meeting, and at the American Bar Association’s Forum on Franchising, and is the co-author of various articles and papers on franchise law and was a co-author of the California law chapter of the first edition of the American Bar Association Forum on Franchising publication *The Franchise Deskbook*.

Ms. Truby holds Bachelor of Arts and Master of Journalism degrees from the University of California at Los Angeles and a Juris Doctor degree from Loyola University of Los Angeles. She also holds a California real estate broker’s license. Ms. Truby is a State Bar of California Board of Legal Specialization Certified Specialist in Franchise and Distribution Law.