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INTERNATIONAL FRANCHISING / LE FRANCHISAGE INTERNATIONAL

Collection of materials relating to franchising
Recueil de documentation relative au franchisage

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Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures


SUPPLEMENTARY INFORMATION:
The Federal Trade Commission, pursuant to the Federal Trade Commission Act, as amended, 15 U.S.C. 41 et seq., and the provisions of subpart B, part I, of the Commission's procedures and rules of practice, 16 CFR 1.11 et seq., has conducted a proceeding for the promulgation of a Trade Regulation Rule relating to Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures. Notice of this proceeding, including a proposed rule, was published in the Federal Register on November 11, 1971 (36 FR 21607). Interested parties were thereafter afforded an opportunity to participate in the proceeding through the submission of written data, views, and arguments, and to appear and express their views orally and to suggest amendments, revisions, and additions to the proposed rule. The Commission conducted public hearings on the rule from February 14 through March 1, 1972.

After having considered the suggestions, criticisms, objections, and other pertinent information on the record, the Commission on August 22, 1974, published a revised proposed rule in a notice in the Federal Register (39 FR 30360). This notice extended to interested parties an opportunity to submit data, views or arguments regarding the revised proposed rule. A period of 90 days was allowed for the submission of written comments on the revised proposed rule, with the record being held open for reception of comments until November 20, 1974.

The Commission has now considered all matters of fact, law, policy, and discretion, including the data, views, and arguments presented on the record by interested parties in response to the notices of proposed rulemaking, as prescribed by law, and has determined that the promulgation of the Trade Regulation Rule and its Statement of Basis and Purpose set forth herein is in the public interest.

Accordingly, the Commission hereby amends Subchapter D, Trade Regulation Rules, Chapter I of 16 CFR by adding a new part 436 as follows:

Sec.
436.1 The Rule.
436.2 Definitions.
436.3 Severability.


§ 436.1. In connection with the advertising, offering, licensing, contracting, sale, or other promotion in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, of any franchise, or any relationship which is represented either orally or in writing to be a franchise, it is an unfair or deceptive act or practice within the meaning of section 5 of that Act for any franchisor or franchise broker:
Federal Trade Commission Rule

(a) To fail to furnish any prospective franchisee with the following information accurately, clearly, and concisely stated, in a legible, written document at the earlier of the "time for making disclosures" or the first "personal meeting":

(i) The official name and address and principal place of business of the franchisor, and of the parent firm or holding company of the franchisor, if any;

(ii) The name under which the franchisor is doing or intends to do business; and

(iii) The trademarks, trade names, service marks, advertising or other commercial symbols (hereinafter collectively referred to as "marks") which identify the goods, commodities, or services to be offered, sold, or distributed by the prospective franchisee, or under which the prospective franchisee will be operating.

(2) The business experience during the past 5 years, stated individually, of each of the franchisor's current directors and executive officers (including, and hereinafter to include, the chief executive and chief operating officer, financial, franchise marketing, training and service officers). With regard to each person listed, those persons' principal occupations and employers must be included.

(3) The business experience of the franchisor and the franchisor's parent firm (if any), including the length of time each: (i) has conducted a business of the type to be operated by the franchisee; (ii) has offered or sold a franchise for such business; (iii) has conducted a business or offered or sold a franchise for a business (A) operating under a name using any mark set forth under paragraph (a)(1)(i), or (B) involving the sale, offering, or distribution of goods, commodities, or services which are identified by any mark set forth under paragraph (a)(1)(i); and (iv) has offered for sale or sold franchisees in other lines of business, together with a description of such other lines of business.

(4) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (a)(3) of this section:

(i) Has, at any time during the previous seven fiscal years, been convicted of a felony or pleaded no contest to a felony charge if the felony involved fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade;

(ii) Has, at any time during the previous seven fiscal years, been held liable in a civil action resulting in a final judgment or has settled out of court any civil action or is a party to any civil action (A) involving allegations of fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade, or (B) which was brought by a present or former franchisee or franchisee and which involves or involved the franchisee relationship. Provided, however, that only material individual civil actions need be so listed pursuant to this subparagraph (4)(ii), including any group of civil actions which, irrespective of the materiality of any single such action, in the aggregate is material;

(iii) Is subject to any currently effective State or Federal agency or court injunctive or restrictive order, or is a party to a proceeding currently pending in which such order is sought, relating to or affecting franchise activities or the franchisor, franchise relationship, or involving fraud (including violation of any franchise law, or unfair or deceptive practices law), embezzlement, fraudulent conversion, misappropriation of property, or restraint of trade.

Such statement shall set forth the identity and location of the court or agency; the date of conviction, judgment, or decision; the penalty imposed; the damages assessed; the terms of settlement or the terms of the order; and the date, nature, and issue of each such order or ruling. A franchisor may include a summary opinion of counsel as to any pending litigation, but only if counsel's consent to the use of such opinion is included in the disclosure statement.

(5) A statement disclosing who, if any, of the persons listed in paragraphs (a)(2) and (a)(3) of this section at any time during the previous 7 fiscal years has:

(i) Filed in bankruptcy;

(ii) Been adjudged bankrupt;

(iii) Been reorganized due to insolvency; or

(iv) Been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within 1 year after the period that such person held such position in such other person. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, and any other material facts relating thereto, shall be set forth.

(6) A factual description of the franchise offered to be sold by the franchisor.

(7) A statement of the total funds which must be paid by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, in order to obtain or commence the franchise operation, such as initial franchise fees, deposits, down payments, prepay rent, and equipment and inventory purchases. If all or part of these fees or deposits are returnable under certain conditions, these conditions shall be set forth; and if not returnable, such fact shall be disclosed.

(8) A statement describing any recurring funds required to be paid, in connection with carrying on the franchise business, by the franchisee to the franchisor or to a person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or collects in whole or in part on behalf of a third party, including, but not limited to, royalty, lease, advertising, training, and sign rental fees, and equipment or inventory purchases.

(9) A statement setting forth the name of each person (including the franchisor) the franchisee is directly or indirectly required or advised to do business with by the franchisor, where such persons are affiliated with the franchisor.
Federal Trade Commission Rule

(10) A statement describing any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent; and if such purchases, leases or rentals must be made from specific persons (including the franchisor), a list of the names and addresses of each such person. Such list may be made in a separate document delivered to the prospective franchisee with the prospectus if the existence of such separate document is disclosed in the prospectus.

(11) A description of the basis for calculating and, if such information is readily available, the actual amount of, any revenue or other consideration to be received by the franchisor or persons affiliated with the franchisor from suppliers to the prospective franchisee in consideration for goods or services which the franchisor requires or advises the franchisee to obtain from such suppliers.

(12)(i) A statement of all the material terms and conditions of any financing arrangement offered directly or indirectly by the franchisor, or any person affiliated with the franchisor, to the prospective franchisee; and
(ii) A description of the terms by which any payment is to be received by the franchisor from (A) any person offering financing to a prospective franchisee; and (B) any person arranging for financing for a prospective franchisee.

(13) A statement describing the material facts of whether, by the terms of the franchise agreement or other device or practice, the franchisee is:
(i) Limited in the goods or services he or she may offer for sale;
(ii) Limited in the customers to whom he or she may sell such goods or services;
(iii) Limited in the geographic area in which he or she may offer for sale or sell goods or services; or
(iv) Granted territorial protection by the franchisor, by which, with respect to a territory or area, (A) the franchisor will not establish another, or more than any fixed number of, franchises or company-owned outlets, either operating under, or selling, offering, or distributing goods, commodities or services, identified by any mark set forth under paragraph (a)(1)(iii) of this section; or (B) the franchisor or its parent will not establish other franchises or company-owned outlets selling or leasing the same or similar products or services under a different trade name, trademark, service mark, advertising or other commercial symbol.

(14) A statement of the extent to which the franchisor requires the franchisee (or, if the franchisee is a corporation, any person affiliated with the franchisee) to participate personally in the direct operation of the franchise.

(15) A statement disclosing, with respect to the franchise agreement and any related agreements:
(i) The term (i.e., duration of arrangement), if any, of such agreement, and whether such term is or may be affected by any agreement (including leases or subleases) other than the one from which such term arises;
(ii) The conditions under which the franchisee may renew or extend;
(iii) The conditions under which the franchisor may refuse to renew or extend;
(iv) The conditions under which the franchisee may terminate;
(v) The conditions under which the franchisor may terminate;
(vi) The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor, and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee and after the expiration of the franchise;
(vii) The franchisee's interest upon termination of the franchise, or upon refusal to renew or extend the franchise, whether by the franchisor or by the franchisee;
(viii) The conditions under which the franchisor may repurchase, whether by right of first refusal or at the option of the franchisor (and if the franchisor has the option to repurchase the franchise, whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee);
(ix) The conditions under which the franchisee may sell or assign all or any interest in the ownership of the franchise, or of the assets of the franchise business;
(x) The conditions under which the franchisor may sell or assign, in whole or in part, its interest under such agreements;
(xi) The conditions under which the franchisee may modify;
(xii) The conditions under which the franchisor may modify;
(xiii) The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee; and
(xiv) The provisions of any covenant not to compete.

(16) A statement disclosing, with respect to the franchisor and as to the particular named business being offered:
(i) The total number of franchises operating at the end of the preceding fiscal year;
(ii) The total number of company-owned outlets operating at the end of the preceding fiscal year;
(iii) The names, addresses, and telephone numbers of (A) the 10 franchise outlets of the named franchise business nearest the prospective franchisee’s intended location; or (B) all franchisees of the franchisor, or (C) all franchisees of the franchisor in the State in which the prospective franchisee lives or where the proposed franchise is to be located. Provided, however, That there are more than 10 such franchisees. If the
Federal Trade Commission Rule

number of franchisees to be disclosed pursuant to subparagraph (B) or (C) exceeds 50, such listing may be made in a separate document delivered to the prospective franchisee with the prospectus if the existence of such separate document is disclosed in the prospectus;

(iv) The number of franchises voluntarily terminated or not renewed by franchisees within, or at the conclusion of, the term of the franchise agreement, during the preceding fiscal year;

(v) The number of franchises reacquired by purchase by the franchisor during the term of the franchise agreement, and upon the conclusion of the term of the franchise agreement, during the preceding fiscal year;

(vi) The number of franchises otherwise reacquired by the franchisor during the term of the franchise agreement, and upon the conclusion of the term of the franchise agreement, during the preceding fiscal year;

(vii) The number of franchises for which the franchisor refused renewal of the franchise agreement or other agreements relating to the franchise during the preceding fiscal year; and

(viii) The number of franchises that were canceled or terminated by the franchisor during the term of the franchise agreement, and upon conclusion of the term of the franchise agreement, during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(16)(v), (vi), (vii), and (viii) of this section, the disclosure statement shall also include a general categorization of the reasons for such reacquisitions, refusals to renew or terminations, and the number falling within each such category, including but not limited to the following: failure to comply with quality control standards, failure to make sufficient sales, and other breaches of contract.

(17)(i) If site selection or approval thereof by the franchisor is involved in the franchise relationship, a statement disclosing the range of time that has elapsed between signing of franchise agreements or other agreements relating to the franchise and site selection, for agreements entered into during the preceding fiscal year; and

(ii) If operating franchise outlets are to be provided by the franchisor, a statement disclosing the range of time that has elapsed between the signing of franchise agreements or other agreements relating to the franchise and the commencement of the franchisee's business, for agreements entered into during the preceding fiscal year.

With respect to the disclosures required by paragraphs (a)(17)(i) and (ii) of this section, a franchisor may at its option also provide a distribution chart using meaningful classifications with respect to such ranges of time.

(18) If the franchisor offers an initial training program or informs the prospective franchisee that it intends to provide such person with initial training, a statement disclosing:

(i) The type and nature of such training;

(ii) The minimum amount, if any, of training that will be provided to a franchisee; and

(iii) The cost, if any, to be borne by the franchisee for the training to be provided, or for obtaining such training.

(19) If the name of a public figure is used in connection with a recommendation to purchase a franchise, or as a part of the name of the franchise operation, or if the public figure is stated to be involved with the management of the franchisor, a statement disclosing:

(i) The nature and extent of the public figure's involvement and obligations to the franchisor, including but not limited to the promotional assistance the public figure will provide to the franchisor and to the franchisee;

(ii) The total investment of the public figure in the franchise operation; and

(iii) The amount of any fee or fees the franchisee will be obligated to pay for such involvement or assistance provided by the public figure.

(20)(i) A balance sheet (statement of financial position) for the franchisor for the most recent fiscal year, and an income statement (statement of results of operations) and statement of changes in financial position for the franchisor for the most recent 3 fiscal years. Such statements are required to have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant. Provided, however, that where a franchisor is a subsidiary of another corporation which is permitted under generally accepted accounting principles to prepare financial statements on a consolidated or combined statement basis, the above information may be submitted for the parent if (A) the corresponding unaudited financial statements of the franchisor are also provided, and (B) the parent absolutely and irrevocably has agreed to guarantee all obligations of the subsidiary;

(ii) Unaudited statements shall be used only to the extent that audited statements have not been made, and provided that such statements are accompanied by a clear and conspicuous disclosure that they are unaudited. Statements shall be prepared on an audited basis as soon as practicable, but, at a minimum, financial statements for the first full fiscal year following the date on which the franchisor must first comply with this part shall contain a balance sheet opinion prepared by an independent certified or licensed public accountant, and financial statements for the following fiscal year shall be fully audited.

(21) All of the foregoing information in paragraph (a)(1) through (20) of this section shall be contained in a single disclosure statement or prospectus, which shall not contain any materials or information other than that required by this part or by State law not preempted by this part. This does not preclude franchisors or franchise brokers from giving other nondeceptive information orally, visually, or in separate literature so long as such information is not contradictory to the information in the disclosure statement required by paragraph (a) of this section. This disclosure statement shall carry a cover sheet distinguively and conspicuously showing the name of the franchisor, the date of issuance of the disclosure statement, and the following notice imprinted thereon in upper and lower case boldface type of not less than 12 point size:
Federal Trade Commission Rule

Information for Prospective Franchisees Required by Federal Trade Commission

To protect you, we've required your franchisor to give you this information. We haven't checked it, and don't know if it's correct. It should help you make up your mind. Study it carefully. While it includes some information about your contract, don't rely on it alone to understand your contract. Read all of your contract carefully. Buying a franchise is a complicated investment. Take your time to decide. If possible, show your contract and this information to an advisor, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, you should let us know about it. It may be against the law.

There may also be laws on franchising in your state. Ask your state agencies about them.

Federal Trade Commission
Washington, D.C.

Provided, That the obligation to furnish such disclosure statement shall be deemed to have been met for both the franchisor and the franchise broker if either such party furnishes the prospective franchisee with such disclosure statement.

(22) All information contained in the disclosure statement shall be current as of the close of the franchisor's most recent fiscal year. After the close of each fiscal year, the franchisor shall be given a period not exceeding 90 days to prepare a revised disclosure statement and, following such 90 days, may distribute only the revised prospectus and no other. The franchisor shall, within a reasonable time after the close of each quarter of the fiscal year, prepare revisions to be attached to the disclosure statement to reflect any material change in the franchisor or relating to the franchise business of the franchisor, about which the franchisor or franchise broker, or any agent, representative, or employee thereof, knows or should know. Each prospective franchisee shall have in his or her possession, as the "time for making disclosures," the disclosure statement and quarterly revisions for the period most recent to the "time for making disclosures" and available at that time. Information which is required to be audited pursuant to paragraph (a)(20) of this section is not required to be audited for quarterly revisions, Provided, however, That the audited information be accompanied by a statement in immediate conjunction therewith that clearly and conspicuously discloses that such information has not been audited.

(23) A table of contents shall be included within the disclosure statement.

(24) The disclosure statement shall include a comment which either positively or negatively responds to each disclosure item required to be in the disclosure statement, by use of a statement which fully incorporates the information required by the item. Each disclosure item therein must be preceded by the appropriate heading, as set forth in Note 3 of this part.

The Rule

(b) To make any oral, written, or visual representation to a prospective franchisee which states a specific level of potential sales, income, gross or net profit for that prospective franchisee, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the franchise is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand. Provided, further, That in immediate conjunction with such representation, the franchisor shall disclose in a clear and conspicuous manner that such material is available to the prospective franchisee; and Provided, however, That no provision within paragraph (b) of this section shall be construed as requiring the disclosure to any prospective franchisee of the identity of any specific franchisee or of information reasonably likely to lead to the disclosure of such person's identity; and Provided, further, That no additional representation as to a prospective franchisee's potential sales, income, or profits may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document whose text accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective franchisee to whom the representation is made shall be furnished with such document no later than the "time for making of disclosures"; Provided, however, That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures," the document shall be furnished to the prospective franchisee to whom the representation is made at that "personal meeting";

(4) The following statement is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation and in not less than twelve point upper and lower-case boldface type:

CAUTION: These figures are only estimates of what we think you may earn. There is no assurance you'll do as well. If you rely upon our figures you must accept the risk of not doing as well.

(5) The following information is clearly and conspicuously disclosed in the document described by paragraph (b)(3) of this section in immediate conjunction with such representation:
Federal Trade Commission Rule

(1) The number and percentage of outlets of the named franchise business which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those potential sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by paragraph (b)(2)(i) of this section. Provided, however, That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (b)(3) of this section.

Except, That representations of the sales, income or profits of existing franchise outlets need not comply with this paragraph (b).

(c) To make any oral, written or visual representation to a prospective franchisee which states a specific level of sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business, or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, such representation is relevant to the geographic market in which the franchise is to be located;

(2) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation, and such material is made available to any prospective franchisee and to the Commission or its staff upon reasonable demand, Provided, however, That in immediate conjunction with such representation, the franchisor discloses in a clear and conspicuous manner that such material is available to the prospective franchisee; and Provided, further, That no provision within paragraph (c) of this section shall be construed as requiring the disclosure to any prospective franchisee of the identity of any specific franchisee or of information reasonably likely to lead to the disclosure of such person's identity; and Provided, further, That no additional representation as to the sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business may be made later than the "time for making of disclosures";

(3) Such representation is set forth in detail along with the material bases and assumptions therefor in a single legible written document which accurately, clearly and concisely discloses such information, and none other than that provided for by this part or by State law not preempted by this part. Each prospective franchisee to whom the representation is made shall be furnished with such document no later than the "time for making of disclosures", Provided, however, That if the representation is made at or prior to a "personal meeting" and such meeting occurs before the "time for making of disclosures," the document shall be furnished to the prospective franchisee to whom the representation is made at that "personal meeting";

(4) The underlying data on which the representation is based have been prepared in accordance with generally accepted accounting principles,

(5) The following statement is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation, and in not less than twelve point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(6) The following information is clearly and conspicuously disclosed in the document described by paragraph (c)(3) of this section in immediate conjunction with such representation:

(i) The number and percentage of outlets of the named franchise business which are located in the geographic markets that form the basis for any such representation and which are known to the franchisor or franchise broker to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented; and

(ii) The beginning and ending dates for the corresponding time period referred to by subparagraph (c)(6), Provided, however, That any franchisor without prior franchising experience as to the named franchise business so indicate such lack of experience in the document described in paragraph (c)(3) of this section.

(d) To fail to provide the following information within the document(s) required by paragraphs (b)(3) and (c)(3) of this section whenever any representation is made to a prospective franchisee regarding its potential sales, income, or profits, or the sales, income, gross or net profits of existing outlets (whether franchised or company-owned) of the named franchise business:

(1) A cover sheet distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document and the following notice imprinted therein in upper and lower case boldface type of not less than twelve point size:

INFORMATION FOR PROSPECTIVE FRANCHISEES ABOUT FRANCHISE [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we've required the franchisor to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. Then take your time and think it over.

If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law.
Federal Trade Commission Rule

There may also be laws on franchising in your State. Ask your State agencies about them.

FEDERAL TRADE COMMISSION
Washington, D.C.

(2) A table of contents.

Provided, however, That each prospective franchisee to whom the representation is made shall be notified at the “time for making of disclosures” of any material change (about which the franchisor, franchise broker, or any of the agents, representatives, or employees thereof, knows or should know) in the information contained in the document(s) described by paragraphs (b)(3) and (c)(3) of this section.

(e) To make any oral, written, or visual representation for general dissemination (not otherwise covered by paragraphs (b) or (c) of this section) which states a specific level of sales, income, gross or net profits, either actual or potential, of existing or prospective outlets (whether franchised or company-owned) of the named franchise business or which states other facts which suggest such a specific level, unless:

(1) At the time such representation is made, a reasonable basis exists for such representation and the franchisor has in its possession material which constitutes a reasonable basis for such representation and which is made available to the Commission or its staff upon reasonable demand;

(2) The underlying data on which each representation of sales, income or profit for existing outlets is based have been prepared in accordance with generally accepted accounting principles;

(3) In immediate conjunction with such representation, there shall be clearly and conspicuously disclosed the number and percentage of outlets of the named franchise business which the franchisor or the franchise broker knows to have earned or made at least the same sales, income, or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(4) In immediate conjunction with each such representation of potential sales, income or profits, the following statement shall be clearly and conspicuously disclosed:

CAUTION

These figures are only estimates; there is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

Provided, however, That if such representation is not based on actual experience of existing outlets of the named franchise business, that fact also should be disclosed;

The Rule

(5) No later than the earlier of the first “personal meeting” or the “time for making of disclosures,” each prospective franchisee shall be given a single, legible written document which accurately, clearly and concisely sets forth the following information and materials (and none other that provided for by this part or by State law not preempted by this part):

(i) The representation, set forth in detail along with the material bases and assumptions therefor;

(ii) The number and percentage of outlets of the named franchise business which the franchisor or the franchise broker knows to have earned or made at least the same sales, income or profits during a period of corresponding length in the immediate past as those sales, income, or profits represented, and the beginning and ending dates for said time period;

(iii) With respect to each such representation of sales, income, or profits of existing outlets, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

Some outlets have [sold] [earned] this amount. There is no assurance you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(iv) With respect to each such representation of potential sales, income, or profits, the following statement shall be clearly and conspicuously disclosed in immediate conjunction therewith, printed in not less than 12 point upper and lower case boldface type:

CAUTION

These figures are only estimates. There is no assurance that you'll do as well. If you rely upon our figures, you must accept the risk of not doing as well.

(v) If applicable, a statement clearly and conspicuously disclosing that the franchisor lacks prior franchising experience as to the named franchise business;

(vi) If applicable, a statement clearly and conspicuously disclosing that the franchisor has not been in business long enough to have actual business data;

(vii) A cover sheet, distinctively and conspicuously showing the name of the franchisor, the date of issuance of the document, and the following notice printed thereon in not less than 12 point upper and lower case boldface type:

INFORMATION FOR PROSPECTIVE FRANCHISEES ABOUT FRANCHISE [SALES] [INCOME] [PROFIT] REQUIRED BY THE FEDERAL TRADE COMMISSION

To protect you, we've required the franchisor to give you this information. We haven't checked it and don't know if it's correct. Study these facts and figures carefully. If possible, show them to someone who can advise you, like a lawyer or an accountant. If you find anything you think may be wrong or anything important that's been left out, let us know about it. It may be against the law. There may also be laws about franchising in your State. Ask your State agencies about them.

FEDERAL TRADE COMMISSION
Washington, D.C.
Federal Trade Commission Rule

(viii) A table of contents:

(6) Each prospective franchisee shall be notified at the "time for making of disclosures" of any material changes that have occurred in the information contained in this document.

(i) To make any claim or representation which is contradictory to the information required to be disclosed by this part.

(g) To fail to furnish the prospective franchisee with a copy of the franchisor's franchise agreement and related agreements with the document, and a copy of the completed franchise and related agreements intended to be executed by the parties at least 5 business days prior to the date the agreements are to be executed.

Provided, however, That the obligations defined in paragraphs (b) through (g) of this section shall be deemed to have been met for both the franchisor and the franchisee if either such person furnishes the prospective franchisee with the written disclosures required thereby.

(b) To fail to return any funds or deposits in accordance with any conditions disclosed pursuant to paragraph (a)(7) of this section.

§ 436.2. As used in this part, the following definitions shall apply:

(a) The term "franchisee" means any continuing commercial relationship created by any arrangement or arrangements whereby:

(1)(A) a person (hereinafter "franchisee") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(1) Identified by a trademark, service mark, trade name, advertising or other commercial symbol designating another person (hereinafter "franchisor"); or

(2) Indirectly or directly required or advised to meet the quality standard prescribed by another person (hereinafter "franchisor") where the franchisee operates under a name using the trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor; and

(B)(1) The franchisor exerts or has authority to exert a significant degree of control over the franchisee's method of operation, including but not limited to, the franchisee's business organization, promotional activities, management, marketing plan or business affairs;

The Rule

(2) The franchisor gives significant assistance to the franchisee in the latter's method of operation, including, but not limited to, the franchisee's business organization, management, marketing plan, promotional activities, or business affairs. Provided, however, That assistance in the franchisee's promotional activities shall not, in the absence of assistance in other areas of the franchisee's method of operation, constitute significant assistance;

(ii)(A) A person (hereinafter "franchisor") offers, sells, or distributes to any person other than a "franchisor" (as hereinafter defined), goods, commodities, or services which are:

(1) Supplied by another person (hereinafter "franchisor"), or

(2) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly required to do business by another person (hereinafter "franchisor"); or

(3) Supplied by a third person (e.g., a supplier) with whom the franchisee is directly or indirectly advised to do business by another person (hereinafter "franchisor") where such third person is affiliated with the franchisor; and

(B) The franchisor:

(1) Secures the franchisee retail outlets or accounts for said goods, commodities, or services; or

(2) Secures for the franchisee locations or sites for vending machines, rack displays, or any other product sales display used by the franchisee in the offering, sale, or distribution of said goods, commodities, or services; or

(3) Provides to the franchisee the services of a person able to secure the retail outlets, accounts, sites or locations referred to in paragraph (a)(1)(B)(1) and (2) above; and

(2) The franchisee is required as a condition of obtaining or commencing the franchise operation to make a payment or a commitment to pay to the franchisor, or to a person affiliated with the franchisor.

(3) Exemptions. The provisions of this part shall not apply to a franchise:
Federal Trade Commission Rule

(i) Which is a "fractional franchise"; or

(ii) Where pursuant to a lease, license, or similar agreement, a person offers, sells, or distributes goods, commodities, or services on or about premises occupied by a retailer-grantee primarily for the retailer-grantee's own merchandising activities, which goods, commodities, or services are not purchased from the retailer-grantee or persons whom the leasee is directly or indirectly (A) required to do business with by the retailer-grantee or (B) advised to do business with by the retailer-grantee where such person is affiliated with the retailer-grantee; or

(iii) Where the total of the payments referred to in paragraph (a)(2) of this section made during a period from any time before to within 6 months after commencing operation of the franchisee's business, is less than $500; or

(iv) Where there is no writing which evidences any material term or aspect of the relationship or arrangement.

(4) Exclusions. The term "franchise" shall not be deemed to include any continuing commercial relationship created solely by:

(i) The relationship between an employer and an employee, or among general business partners; or

(ii) Membership in a bona fide "cooperative association"; or

(iii) An agreement for the use of a trademark, service mark, trade name, seal, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services;

(iv) An agreement between a licensor and a single licensee to license a trademark, trade name, service mark, advertising or other commercial symbol where such license is the only one of its general nature and type to be granted by the licensor with respect to that trademark, trade name, service mark, advertising, or other commercial symbol.

(5) Any relationship which is represented either orally or in writing to be a franchise (as defined in this paragraph (a)(1) and (2) of this section) is subject to the requirements of this part.

(b) The term "person" means any individual, group, association, limited or general partnership, corporation, or any other business entity.

The Rule

(c) The term "franchisor" means any person who participates in a franchise relationship as a franchisor, as denoted in paragraph (a) of this section.

(d) The term "franchisee" means any person (1) who participates in a franchise relationship as a franchisee, as denoted in paragraph (a) of this section, or (2) to whom an interest in a franchise is sold.

(e) The term "prospective franchisee" includes any person, including any representative, agent, or employee of that person, who approaches or is approached by a franchisor or franchise broker, or any representative, agent, or employee thereof, for the purpose of discussing the establishment, or possible establishment, of a franchise relationship involving such a person.

(f) The term "business day" means any day other than Saturday, Sunday, or the following national holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving, and Christmas.

(g) The term "time for making of disclosures" means ten (10) business days prior to the earlier of (1) the execution by a prospective franchisee of any franchise agreement or any other agreement imposing a binding legal obligation on such prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, in connection with the sale or proposed sale of a franchise, or (2) the payment by a prospective franchisee, about which the franchisor, franchise broker, or any agent, representative, or employee thereof, knows or should know, of any consideration in connection with the sale or proposed sale of a franchise.

(b) The term "fractional franchise" means any relationship, as denoted by paragraph (a) of this section, in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20 percent of the sales in dollar volume of the franchisee.

(i) The term "affiliated person" means a person (as defined in paragraph (b) of this section):

(1) Which directly or indirectly controls, is controlled by, or is under common control with, a franchisor; or
Federal Trade Commission Rule

(2) Which directly or indirectly owns, controls, or holds with power to vote, 10 percent or more of the outstanding voting securities of a franchisor; or

(3) Which has, in common with a franchisor, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

(j) The term "franchise broker" means any person other than a franchisor or a franchisee who sells, offers for sale, or arranges for the sale of a franchise.

(k) The term "sale of a franchise" includes a contract or agreement whereby a person obtains a franchise or interest in a franchise for value by purchase, license, or otherwise. This term shall not be deemed to include the renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business by the franchisee, unless the new contracts or agreements contain material changes from those in effect between the franchisor and franchisee prior thereto.

(1) A “cooperative association” is either (1) an association of producers of agricultural products authorized by section 1 of the Capper-Volstead Act, 7 U.S.C. 291; or (2) an organization operated on a cooperative basis by and for independent retailers which wholesales goods or furnishes services primarily to its member-retailers.

(m) The term "fiscal year" means the franchisor’s fiscal year.

(n) The terms "material," "material fact," and "material change" shall include any fact, circumstance, or set of conditions which has a substantial likelihood of influencing a reasonable franchisee or a reasonable prospective franchisee in the making of a significant decision relating to a named franchise business or which has any significant financial impact on a franchisee or prospective franchisee.

(o) The term “personal meeting” means a face-to-face meeting between a franchisor or franchisee broker (or any agent, representative, or employee thereof) and a prospective franchisee which is held for the purpose of discussing the sale or possible sale of a franchise.

§ 436.3. If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

The Rule

NOTE 1.—The Commission expresses no opinion as to the legality of any practice mentioned in this part. A provision for disclosure shall not be construed as condonation or approval with respect to the matter required to be disclosed, nor as an indication of the Commission’s intention not to enforce any applicable statute.

NOTE 2.—By taking action in this area, the Federal Trade Commission does not intend to annul, alter, or affect, or exempt any person subject to the provisions of this part from complying with the laws or regulations of any State, municipality, or other local government with respect to franchising practices, except to the extent that those laws or regulations are inconsistent with any provision of this part, and then only to the extent of the inconsistency. For the purposes of this part, a law or regulation of any State, municipality, or other local government is not inconsistent with this part if the protection such law or regulation affords any prospective franchisee is equal to or greater than that provided by this part. Examples of provisions which provide protection equal to or greater than that provided by this part include laws or regulations which require more complete record keeping by the franchisor or the disclosure of more complete information to the franchisee.

NOTE 3.—(As per § 436.1(a)(24) [¶ 6124] of this part):

Disclosure Statement

Pursuant to 15 CFR 436.1 et seq., a Trade Regulation Rule of the Federal Trade Commission regarding Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, the following information is set forth on [name of franchisor] for your examination:

1. Identifying information as to franchisor.
2. Business experience of franchisor’s directors and executive officers.
4. Litigation history.
5. Bankruptcy history.
6. Description of franchise.
7. Initial funds required to be paid by a franchisee.
8. Recurring funds required to be paid by a franchisee.
9. Affiliated persons the franchisee is required or advised to do business with by the franchisor.
10. Obligations to purchase.
11. Revenues received by the franchisor in consideration of purchases by a franchisee.
13. Restriction of sales.
14. Personal participation required of the franchisee in the operation of the franchise.
15. Termination, cancellation, and renewal of the franchise.
Federal Trade Commission Rule

16. Statistical information concerning the number of franchises (and company-owned outlets).
17. Site selection.
18. Training programs.
19. Public figure involvement in the franchise.
20. Financial information concerning the franchisor.
H.R. 1315

To strengthen current Federal law and regulation to protect consumers in connection with the representation and sale of franchise businesses; to facilitate increased public disclosure regarding franchise opportunities, to enhance common law remedies for purchasers of franchises, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. LaFALCE introduced the following bill; which was referred jointly to the Committee on Energy and Commerce and the Judiciary

A BILL

To strengthen current Federal law and regulation to protect consumers in connection with the representation and sale of franchise businesses; to facilitate increased public disclosure regarding franchise opportunities, to enhance common law remedies for purchasers of franchises, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

4 This Act may be cited as the “Federal Franchise Disclosure and Consumer Protection Act”.

5
SEC. 2. FINDINGS AND PURPOSE.

(a) The Congress makes the following findings:

(1) Franchise business relationships represent a large and growing segment of the nation's retail and service businesses and are replacing more traditional forms of small business ownership in the American economy.

(2) Because franchising remains a relatively new form of business relationship, existing law has not evolved sufficiently to protect prospective franchisees adequately from misrepresentation in the sale of franchise businesses or from fraudulent or inadequately structured franchise opportunities.

(3) Most prospective franchisees lack bargaining power and generally invest substantial amounts to obtain a franchise business when they are unfamiliar with operating a business, with the business being franchised and with industry practices in franchising.

(4) Franchisees may suffer substantial losses when the franchisor, or the franchisor's representative, do not provide truthful or complete information regarding the franchise opportunity, the prior business experience of the franchisor or the details of the franchisor-franchisee relationship.

(5) Traditional legal remedies have proven inadequate to protect the legitimate interests of purchasers of franchises due to the failure of some courts to recognize what inducements are material in the sale of a franchise and what contractual provisions are material in ongoing franchise relationships.

(b) It is the purpose of this Act to provide prospective franchisees with additional information necessary to help them make an informed decision about the purchase of a franchise opportunity, to protect prospective franchisees from fraudulent practices, to broaden the scope and enhance the availability and utility of common law remedies, and to promote more equitable franchise relationships.

SEC. 3. PROHIBITED ACTIONS.

(a) In connection with the advertising, offering, licensing, contracting, sale or other promotion in or affecting commerce of any franchise, or any relationship which is represented either orally or in writing to be a franchise, it shall be unlawful for any person, partnership or corporation—

(1) to employ a device, scheme, or artifice to defraud;

(2) to engage in an act, practice, course of business or pattern of conduct which operates or is in-

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tended to operate as a fraud or deceit upon any person;

(3) to obtain money or property, or assist others to obtain money or property, by means of any untrue statement of a material fact, any omission to state a material fact, or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or

(4) to discriminate among prospective franchisees on the basis of race, sex, religion, disability or national origin—

(A) in the solicitation, offering or sale of any franchise opportunity, except that, and then only to the extent that, any discrimination between franchisees is reasonable and is related to a program under which franchises are made available to a class of persons who may have been denied franchise opportunities in the past based on suspect classifications including race, sex, religion, disability or national origin; or

(B) in the selection of any site or location for a franchise business; or

(5) to represent or imply in any manner whatsoever that such franchise has been reviewed, endorsed, recommended or approved by the United States or any agency or officer thereof.

(b) In connection with any disclosure required by this Act, or any disclosure document, notice or report required by Federal law or regulation, it shall be unlawful for any franchisor, subfranchisor or franchise broker, either directly or indirectly through any officer, employee, agent, representative or attorney—

(1) to make or cause to be made an untrue statement of material fact, omit to state a material fact, or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;

(2) to fail to furnish any prospective franchisee with all information required to be disclosed by, and at the time and in the manner required by the Federal Trade Commission (hereafter "the Commission") in its Franchise Rule;

(3) to fail to furnish any prospective franchisee with information which is current as of the close of the franchisor’s most recent fiscal year, or within ninety days thereof, or which reflects any material changes since the close of such fiscal year;
(4) to fail to furnish any prospective franchisee at the time disclosure is made copies of all collateral documents, including manuals, memoranda, operating procedures and royalty schedules, where and to the extent that such documents are incorporated by reference into the franchise agreement, except that a franchisor may require a confidentiality agreement as a condition for reviewing confidential materials; or

(5) to make any claim or representation to a prospective franchisee, whether oral or in writing, which is inconsistent with or contradicts any information provided to the prospective franchisee in any required disclosure.

(c) No provision of subsection (b) imposing any liability shall apply to any action, statement or omission done or made in good faith in conformity with any rule, regulation or order of the Commission, notwithstanding that such rule, regulation or order may, after such act or omission, be amended or rescinded by the Commission.

(d) For purposes of this section, an untrue statement of material fact shall include any statement of fact which has the intent or effect of misrepresenting the profitability of a franchise opportunity, the rate of success of franchises or franchisees associated with a franchise opportunity, or the rate of success of franchises generally.

SEC. 4. MATERIAL OMISSIONS DEFINED.

(a) It shall be an omission of material fact for a franchisor, subfranchisor or franchise broker, either directly or indirectly through any officer, employee, agent, representative or attorney, to fail to furnish any prospective franchisee with the following information at the time and in the manner set forth by the Commission under the Franchise Rule:

(1) The name and principal place of business of the franchisor, its predecessor, parent firm, holding company or other controlling entity of the franchisor, if any, and the name under which the franchisor is doing or intends to do business;

(2) A statement identifying—

(A) any parent or affiliate of the franchisor or other related entity that is engaged in franchising or providing services or assistance to franchisees; and

(B) the name and position held of each of the franchisor’s current general partners or principal officers (including the chief executive and chief operating officer, financial, franchise marketing, training and service officers), as ap-
applicable, other executives or subfranchisors who
will have management responsibility in connec-
tion with the operation of the franchisor's busi-
ness relating to the franchise business offered,
and all franchise brokers.

(3) A statement disclosing whether the
franchisor or any person identified in subsection
(2)—

(A) has, at any time during the previous
ten fiscal years, been convicted of a felony or
pleaded nolo contendere to a felony charge if
the felony involved fraud, embezzlement, fraud-
ulent conversion, misappropriation of property,
restraint of trade, violation of a Federal or
State tax law or violation of a State franchise
statute;

(B) has, at any time during the previous
ten years, been held liable in a civil action re-
sulting in a final judgment, or has settled out
of court any claim, including complaints, cross
claims, counterclaims, and third party com-
plaints, in a judicial proceeding and their
equivalents in an arbitration proceeding—

(i) involving allegations of fraud, em-
bezzlement, fraudulent conversion, mis-

appropriation of property, restraint of
trade or comparable allegations; or

(ii) involving a present or former
franchisee and which involved or involves
the franchisor-franchisee relationship; ex-
cept that such statement may omit ref-
ence to such actions which were dis-
missed by final judgment or settlement
without payment or liability by the
franchisor or entry of an adverse order
against the franchisor in which the
franchisor is bound to obligations which
are material either to the franchisor or
franchisee; and

(C) is subject to any currently effective
State or Federal agency or court injunctive or
restrictive order, has been subject to any such
order during the previous ten years, relating to
or affecting franchise activities or the
franchisor-franchisee relationship or involving
fraud, embezzlement, fraudulent conversion
misappropriation of property, restraint of trade
or violation of a Federal or State tax law.

Such statement shall set forth the identity and loca-
tion of the court or agency; a description of the na-
ture of the claim; the date of conviction, judgment or decision; the penalty imposed or the damages assessed; any payments made; the terms of settlement, order or arbitrator’s decision; and the date, nature and issuer of each such order or ruling.

(4) A statement disclosing whether the franchisor or any person identified in subsection (2) is a party to any pending administrative, criminal or material civil action or arbitration involving allegations of fraud, embezzlement, fraudulent conversion, misappropriation of property, restraint of trade or comparable allegations, or complaints or counterclaims involving franchise sales or the franchise relationship. Such statement shall set forth the identity and location of the court or forum in which each administrative action, civil action or arbitration is filed, the date of such filing and a summary of the nature of the allegations. For purposes of this subsection, a civil action or arbitration is material if such action or arbitration involves—

(A) a significant financial impact on a franchisee or a former franchisee;

(B) any group of civil actions, irrespective of the financial impact of any single action, which in the aggregate have a significant im-

 pact on the franchise system in seeking fifteen percent or more of the current assets of the franchisor or any affiliate of the franchisor;

(C) a current or former supplier or lessor who supplied more than 5 percent of an item to the franchise system; and

(D) claims or counterclaims which a reasonable prospective franchisee would consider important in making a decision regarding entering into a franchise relationship.

(5) A statement disclosing whether the franchisor or any person identified in subsection (2) have at any time during the previous seven fiscal years filed in bankruptcy, been adjudged bankrupt, been reorganized due to insolvency, or been a principal, director, executive officer, or partner of any other person that has so filed or was so adjudged or reorganized, during or within one year after the period that such person held such position in such other person.

(6) A statement of the total funds which must be paid by the franchisee to the franchisor or to any person affiliated with the franchisor, or which the franchisor or such affiliated person imposes or col-
lects in whole or in part on behalf of a third party.

Such statement shall include:

(A) a description of all funds which must be paid—

(i) to obtain or commence the franchise operation, including, but not limited to, franchise fees, deposits, down payments, prepaid rent, and equipment and inventory purchases, and

(ii) to carry on the franchise business, including, but not limited to, royalty, lease, advertising, training, insurance, sign rental fees, and equipment or inventory purchases;

(B) a description of any real estate, services, supplies, products, inventories, signs, fixtures, or equipment relating to the establishment or the operation of the franchise business which the franchisee is directly or indirectly required by the franchisor to purchase, lease or rent, and, if such purchases, leases or rentals are required from specific persons (including the franchisor), the names and address of each such person;

(C) a description of the basis for calculating, and actual amounts, where available, of any revenue or other consideration to be received by the franchisor, the franchisor's parent firm, if any, or any person affiliated with the franchisor, from each such person with whom the franchisee is required to make such purchases, leases or rentals; and

(D) an estimate of the total investment to be paid by the franchisee, irrespective of the type of expenditure and to whether payment is made to the franchisor, to any person affiliated with the franchisor, or to any third party—

(i) to obtain and commence operations of the franchise business; and

(ii) to carry on the franchise business during the initial twelve-month period following the opening of the franchise business, including an estimate of loan repayments, including interest, if part of the franchisee's initial investment may be financed.

(7) A statement describing the services and assistance which the franchisor, persons affiliated with the franchisor, or third parties designated by the
franchisor, are obligated to provide to the franchisee, under the terms of the franchise agreement or any agreement ancillary or collateral to a franchise:

(A) to obtain or commence the franchise operation; and

(B) to carry on the franchise business.

Such statement shall include cautionary language stating that the franchisor is not obligated under the franchise agreement, or any other agreement, to provide any additional services or assistance to the franchisee other than the services disclosed.

(8) A statement describing the trade names, trademarks, service marks, logotypes, advertising or other commercial symbols (hereinafter "trade names and trademarks") which are to be licensed to the prospective franchisee, or which are owned or used by the franchisor to identify the goods or services to be offered, sold, or distributed by the prospective franchisee. Such statement shall indicate whether—

(A) such trade names or trademarks have been registered with the United States Patent and Trademark Office, or registered with the State in which the franchise business is located or is to be located, and the date and number of any such registrations;

(B) there are any material restrictions on the franchisor’s right to license or the franchisee’s right to use such trade names or trademarks;

(C) there are any pending interference, opposition or cancellation proceeding, or any pending material litigation involving such trade names or trademarks of relevance to the state in which a franchise is located or will be located; and

(D) the franchisor is obligated by the franchise agreement to protect the franchisee’s right to use such trade names or trademarks and to protect the franchisee against claims of infringement or unfair competition with respect to such trade names and trademarks.

(9) A statement disclosing whether, by the terms of the franchise agreement, any agreement ancillary or corollary to the franchise, or any other device or practice—

(A) the franchisee is to be limited in any manner—
(i) in the goods or services he or she may offer for sale;

(ii) in the customers to whom he or she may sell such goods or services; or

(iii) in the geographic areas in which he or she may offer for sale or sell goods or services;

(B) the franchisee is granted territorial protection by the franchisor, by which, with respect to such territory or area, the franchisor—

(i) will not establish another, or more than a fixed number of, franchises or company-owned outlets either operating under, or selling, offering, or distributing goods or services, identified by any trade name or trademark set forth in subsection (8) of this section;

(ii) will not establish other franchises or company-owned outlets selling or leasing the same or similar products or services under a different trade name or trademark; or

(iii) will not otherwise market the same or similar products or services under the same, similar or different trade name or trademark; and

(C) the franchisor is marketing, intends to market, reserves the right to market, or is contractually precluded from marketing, through arrangements other than a franchise or a company-owned outlet, the same or similar products or services to be offered for sale by the franchisee, whether under the trade name or trademark set forth in subsection (8) or a different trademark or trade name, in the protected territory granted to the franchisee or, if no such territory is granted, within a market area defined as the larger of—

(i) the area in which the franchise is expected to draw 80 percent of its business, or

(ii) the area defined in the franchise agreement for purposes of a noncompetition covenant.

(10) A statement disclosing the existence of any written agreement or commitment, or any public expression of intention, made by the franchisor, any officer of the franchisor, or the franchisor's parent firm or ultimate controlling person, if any, to dis-
pose of the corporation or partnership, or the majority (controlling) interest of such corporation or partnership, which is identified in subsection (1) of this section as the franchisor of the business being offered for sale. Where an agreement or commitment has been made, such statement shall include the name and address of the person(s) or corporation which has committed to purchase the franchisor company or a majority interest in such company.

(11) A statement of a specific level, average or range of sales, earnings, profit or loss for franchises of the franchisor, which shall—

(A) have a factual basis in operating data for sales, earnings, profits or losses from franchise or nonfranchise outlets of the franchisor and/or of its affiliates which offer for sale the same or similar products and services, and which are operated under the same trade name or trademark as set forth in subsection (8), except that—

(i) a franchisor which has offered/sold franchises for less than two years, a franchisor which has not more than ten franchise and nonfranchise outlets, or no more than five franchise outlets, to provide a basis for such operating data, or an established franchisor offering a new, separate franchise concept, for which there are no more than ten franchise or nonfranchise outlets to provide a basis for such operating data, is not required to make such a statement; and

(ii) a franchisor providing representations limited solely to the actual operating results of a specific outlet offered for sale is not required to make such a statement, provided such representation is in writing, is given only to potential purchasers of such outlet, and is accompanied by the names and last known addresses of each owner of such outlet during the previous five years;

(B) be derived from the most current information available to the franchisor, and/or to its affiliates, pertaining to—

(i) gross sales of franchise and nonfranchise outlets;

(ii) operating costs of franchise and nonfranchise outlets, to the extent that such costs are known to the franchisor,
can be estimated reasonably by the franchisor or are discoverable by the franchisor through exercise of reasonable diligence, provided that where information on operating costs of nonfranchise outlets is used, appropriate adjustment shall be made to reflect additional costs that will be incurred by franchisees, to the extent that such additional costs are known; and

(iii) the net profit or net loss of franchisees and nonfranchise outlets. At minimum, a franchisor may identify the fiscal year of such data and whether, on average, a profit or loss occurred for franchise and nonfranchised outlets, where such information is known to the franchisor, can reasonably be estimated by the franchisor or is discoverable by the franchisor through exercise of reasonable diligence; except that the franchisor must include a statement describing net losses or average net losses of franchise and nonfranchised outlets where the franchisor knows or should know that such losses have occurred.

Where information relating to costs and net profit or loss are not known to the franchisor or can not be estimated or discovered through reasonable diligence, the franchisor shall include a conspicuous statement that such information cannot be provided to prospective franchisees and shall describe in detail the information that is not disclosed, the reasons why such information is not known or can not be obtained by the franchisor, and the actions or procedures undertaken by the franchisor, where applicable, to obtain such information;

(C) have a reasonable basis for all claims or representations, for which the burden shall be upon the franchisor to show that it had a reasonable basis at the time such representations were made;

(D) be included in full in the written disclosure document which is provided by the franchisor to the prospective franchisee at the time of making disclosure. A franchisor shall make no additional information or representations regarding actual or potential sales, costs, income or profits available to the potential franchisee, or to any agent, attorney or lender
of the prospective franchisee, other than that contained in such statement or elsewhere in the disclosure document, except that a supplemental statement of actual operating results relating to a specific outlet, or a statement directed to the particular circumstances of a specific location may be made available to a prospective franchisee interested in such outlet or location, provided any supplemental statement be made in writing and explain any departure from the statement provided in the disclosure document and the reasons for such departure;

(E) include a concise description of the factual basis and the material assumptions underlying its preparation and presentation. Such description shall include a statement of whether the representations made are based on operating data of franchised or nonfranchised outlets of the franchisor, the number of such outlets constituting the basis for such data, and the number and percentage of franchised outlets of the franchisor in operation during the period covered by such representation that are known to have attained or surpassed the results stated;

(F) be updated at least annually by the franchisor and amended as necessary to reflect changed material facts or to incorporate changes which the franchisor knows, or should have known, make such statement no longer accurate or reflective of the operating experience of franchised units; and

(G) include a statement that substantiation of the data used in preparing the statement shall be made available to the prospective franchisee upon request.

(12) A statement disclosing, with respect to the franchisor and as to the particular named business being offered:

(A) the names, addresses, and telephone numbers of—

(i) all franchisees in the State in which the proposed franchise is to be located, provided that there are at least twenty-five such franchisees;

(ii) all franchisees in the State in which the proposed franchise is to be located and all franchisees in States geographically contiguous to such State, pro-
vided that there are at least twenty-five franchisees in such States; or

(iii) all franchisees of the franchisor.

Where the number of franchisees to be disclosed under this subparagraph exceeds fifty, such listing may be in a separate document presented to the franchisee with the disclosure document, provided that the existence of such separate document is disclosed in the disclosure docu-
ment.

(B) the number of franchisees with outlets in the following categories that, within the three-year period immediately before the close of the franchisor's most recent fiscal year, have—

(i) been canceled or terminated by the franchisor;

(ii) not been renewed by the franchisor;

(iii) been reacquired through purchase by the franchisor;

(iv) been otherwise reacquired by the franchisor; and

(v) left the franchise system or ceased to do business under the franchise agreement;

(C) the name, last known address and telephone number and location of franchise(s) of every franchisee who voluntarily or involuntarily left the franchise system or ceased doing business under the franchise agreement during the five-year period immediately before the close of the franchisor's most recent fiscal year.

Franchisors subject to the requirements of this section upon the effective date of this Act, and franchisors which shall commence franchising after such date, may make disclosure pursuant to this paragraph for the franchisor's most recent fiscal year only, or for the franchisor's first complete fiscal year only, and shall make appropriate disclosure following each succeeding fiscal year so that, after the close of the franchisor's fourth fiscal year following such date of enactment, or after the close of a franchisor's fifth fiscal year of operation, disclosure shall be provided for not less than five years thereafter;
(D) the number of all previous owners of a specific franchise outlet to be resold, or the number of previous owners of franchise businesses or outlets of the same franchise system who conducted business during the previous seven years in the protected market area to be granted to a franchise, or within the same market area in which a franchise business is to be located. The franchisor shall—

(i) provide such number in a supplemental written statement to potential purchasers of such outlet, or to potential purchasers of franchises in such market area;

(ii) maintain updated listings of all such previous owners, which shall include the name, last known addresses, business locations, dates of ownership and reasons for terminating the franchise relationship for each owner; and

(iii) disclose that such listing shall be made available to prospective franchisees upon request; and

(E) the identity of any association, associations, advisory councils or other organizations of franchise owners of the business being offered that are organized to promote the interests of franchises in their relationship with the franchisor, and the name, current address and telephone number of any officer or designated contact person for such association, associations, advisory council or other organizations from whom a prospective franchisee may seek additional information. The franchisor shall identify all such organizations affiliated with, or recognized by the franchisor and independent associations or organizations not affiliated with, or directed in any manner by the franchisor, and shall indicate for each such association or organization whether it is affiliated with, or independent of the franchisor, except that, the franchisor shall identify only organizations which have identified themselves to the franchisor and which—

(i) have been in operation not less than one hundred eighty days prior to the time disclosure is made; and

(ii) represent not less than the lesser of either fifty franchisees, or 25 percent of the franchise outlets of the franchise system.
(13) A balance sheet for the franchisor for the most recent fiscal year, and an income statement and statement of changes in financial position for the franchisor for the most recent three fiscal years, which shall:

(A) have been examined in accordance with generally accepted auditing standards by an independent certified or licensed public accountant, except that, unaudited statements may be used only to the extent that audited statements cannot be prepared under generally accepted auditing standards, are prepared by an independent certified or licensed public accountant, and are accompanied by a clear and conspicuous disclosure that they are unaudited; and

(B) include a separate, concise and conspicuous summary, prepared by an independent certified or licensed public accountant, of the sources of revenues of the franchisor for each the franchisor’s most recent three fiscal years, stated in terms of the percentage of total annual revenues of such franchisor attributed to each of the following categories or sources of revenue—

(i) pre-opening fees;

(ii) royalty payments;

(iii) pre-opening purchases by franchisees of equipment, inventory or supplies;

(iv) net rental income from real estate leases or rental of real estate, fixtures or equipment;

(v) post-opening purchases by franchisees of equipment, inventory of supplies, including goods and services sold to franchisees for resale and payments to the franchisor by suppliers with whom franchisees are required to purchase goods or services;

(vi) nonfranchised or company-owned outlets; and

(vii) sales of goods and services to the public through means of distribution other than franchise and nonfranchised outlets, whether under the same, similar or different trade name or trademark.

A franchisor may substitute, in lieu of the balance sheet and income statements under subparagraph (A), the consolidated financial statements of the franchisor’s parent company which
include the franchisor's financial results, provided such parent company guarantees the franchisor's financial performance and, provided further, that such financial statement shall include a separate summary of the revenue sources of the franchisor pursuant to subparagraph (B).

(b) Standards of material omissions set forth in subsection (a) are in addition to other facts, circumstances, or sets of conditions which may be material under Federal or State law or regulation.

(c) Each disclosure required in paragraphs (1) through (13) of subsection (a) shall be commented upon either positively or negatively in required disclosure documents by use of a clearly and concisely written statement which fully incorporates all information required to be disclosed.

(d) Information required to be disclosed in supplemental statements in subsections (a)(11)(A)(ii) and (a)(12)(D) of this section, and which relate to specific franchise outlets or market areas offered for sale, shall be presented to the prospective franchisee at the time of making disclosure, as defined by the Commission in subsection 436.2(g) of the Franchise Rule.

(e) Information required to be presented to prospective franchisees upon request, pursuant to subsections (a)(11)(F) and (a)(12)(C)(iii) of this section, where such request is made in timely fashion, shall be made available at the time the prospective franchisee is presented with a copy of the franchisor's completed franchise and related agreements to be executed by the parties, or not later than five business days prior to the date that such agreements are to be executed and the prospective franchisee is required to pay any consideration in connection with the sale or proposed sale of the franchise.

(f) The franchisor shall exercise diligent efforts to collect all relevant information relating to sales, costs and operating profits and/or losses of franchise and/or nonfranchise outlets from its own files and databases, franchisees, subsidiaries, affiliates, employees, suppliers and any other source from which such information is available to permit disclosure pursuant to subsection (a)(11) of this section and to establish procedures for timely collection of such information. The Commission shall set forth in regulation the criteria with which it may consider granting full or partial exemption from disclosure under this subsection. Except where exempted under subsection (a)(11)(A), or otherwise exempted by the Commission, a franchisor shall be deemed to have made an omission of
material fact under this Act where disclosure pursuant to
subsection (a)(11) is not provided to prospective
franchisees, either in full or in part with appropriate ex-
planations relating to required disclosures under sub-
sections (a)(11)(B)(ii) and (a)(11)(B)(iii), within two hun-
dred and forty days following the date of enactment of
this section. Not later than ninety days after the end of
the franchisor's first complete fiscal year following the ef-
factive date of this Act, the franchisor, except as otherwise
exempted, shall comply fully with subsection (a)(11) and
shall be required to exercise reasonable diligence to obtain
and/or discover the information relating to sales, costs,
profits or losses of franchise and/or nonfranchise outlets
necessary to establish a reasonable basis for disclosure
under such subsection.
SEC. 5. ACCOUNTS AND RECORDS.
(a) It shall be unlawful for any franchisor or
subfranchisor, either directly or indirectly through any of-
fer, employee, broker, agent or attorney, except as per-
mitted by rule, regulation or order of the Commission,
willfully to destroy, mutilate or alter any disclosure doc-
ument, account, book, record, receipt or other document re-
quired to be maintained and preserved pursuant to sub-
section (b) of this section.
(b) A franchisor, subfranchisor or franchise broker,
where applicable, shall maintain and preserve for such pe-
period or periods as the Commission may prescribe by rule
or regulation, such disclosure documents, account, books,
records, receipts or other documents pertaining to any in-
formation required to be disclosed pursuant to section 4
of this Act, or which are necessary and appropriate to
constitute—
(1) the record of any transaction involving the
offering, negotiation, sale or resale of a franchise, or
of any relationship which is represented by the
franchisor to be a franchise; and
(2) the record forming the basis for any finan-
cial statement and any earnings representation re-
quired to be disclosed under section 4.
(c) The Commission shall set forth by regulation, as
appropriate, the manner in which all documents, accounts
and records are to be maintained and the period or periods
for which such documents, accounts and records are to
be preserved, except that no account, record or document
required to be maintained and preserved pursuant to this
section shall be preserved for a period of less than seven
years.
(d) All accounts, books, records and other documents
required to be maintained and preserved by any person
pursuant to subsection (b) shall be subject to examination
by the Commission, or any member or representative
thereof, either upon written request of the Commission or
upon subpoena as part of any enforcement action under-
taken by the Commission pursuant to section 6 of this
Act.

SEC. 6. ENFORCEMENT.

(a) Enforcement by Federal Trade Commission:

(1) The Commission is authorized and directed
to prevent any person from violating the provisions
of this Act in the same manner, by the same means,
and with the same jurisdiction, powers, and duties
as though all applicable terms and provisions of the
seq.) were incorporated into and made a part of this
Act.

(2) Any person who violates the provisions of
this Act, or any rule of the Commission under this
Act, shall be subject to the penalties and entitled to
the privileges and immunities provided in the Fed-
eral Trade Commission Act in the same manner, by
the same means, and with the same jurisdiction,
power and duties as though all applicable terms and
provisions of the Federal Trade Commission Act
were incorporated into and made a part of this Act.

(3)(A) For purposes of section 3(b) of this Act,
the Commission shall have the authority to enforce
compliance with disclosure standards by means of
the disclosure statement required by the Commission
in its Franchise Rule or the Uniform Franchise Of-
fering Circular of the North American Securities Ad-
ministrators Association, Inc.

(B) Where the guidelines for preparation of the
Uniform Franchise Offering Circular are amended
by the North American Securities Administrators'
Association, or its successor, disclosures prepared in
compliance with the amended guidelines shall be pre-
sumed to comply with the requirements of the Com-
mmission’s Franchise Rule unless, within one hundred
and eighty days of formal notification of such
amendments by the North American Securities Ad-
ministrators’ Association, or its successor, the Com-
mmission responds in writing that it has determined
that the amended requirements do not provide equal
or greater protection to prospective franchisees than
the Commission’s Franchise Rule.

(b) Civil actions by the Commission:

(1) Except as otherwise provided in subsection
(2), the Commission may commence a civil action in
a district court of the United States or in any court
of competent jurisdiction of a State to recover a civil penalty or obtain appropriate relief against any person, partnership, or corporation which violates any provision of this Act, or any rule of the Commission under this Act, in the same manner, by the same means, and with the same jurisdiction, powers, and duties as provided in sections 5(m), 13(b) and 19 of the Federal Trade Commission Act (15 U.S.C. 45(m), 53(b) and 57b).

(2) Notwithstanding the three-year statute of limitations provisions of section 19(b) of the Federal Trade Commission Act (15 U.S.C. 57b(d)), any civil action arising from a violation of this Act, or any rule of the Commission under this Act, shall be brought by the Commission before the later of—

(A) five years after the date on which such violation occurred; or

(B) three years after the date on which the violation was discovered or should have been discovered through exercise of reasonable diligence.

(c) The powers, duties, remedies and procedures set forth in this section shall be in addition to, and not in limitation of, any other powers, duties, remedies and pro-

ceedures otherwise provided the Commission by the Federal Trade Commission Act and other laws.

(d) The Commission is authorized to make such rules and regulations as are necessary and appropriate to implement the provisions of this Act.

SEC. 7. ACTIONS BY PRIVATE PERSONS.

(a)(1) Any person injured by a violation of any provision of this Act, or any rule or order of the Commission under this Act, shall have a right of action for all damages caused by the violation, including costs of litigation and reasonable attorney’s fees, against any person found to be liable for such violation.

(2) An action may be brought, without regard to the amount in controversy, in any United States district court or in any other court of competent jurisdiction before the later of—

(A) five years after the date on which the violation occurred; or

(B) three years after the date on which the violation was discovered or should have been discovered through exercise of reasonable diligence.

(3) Nothing in this Act or the Federal Trade Commission Act shall be construed as creating any obligation on the part of any injured person to seek relief from the Commission prior to bringing an action under this section.
(b) Any person injured by a violation of this Act, or threatened with injury by an impending violation of this Act, may bring an action in a United States district court to obtain a declaratory judgment that an act, omission or conduct constitutes or would constitute a violation of this Act and to enjoin a person who has violated, is violating, or who is otherwise likely to violate any provision of this Act. In such actions, the court may issue a temporary restraining order or preliminary injunction to protect the public interest by halting a recurring or likely violation of this Act, prior to a final determination on the merits, in conformity with the principles governing the granting of preliminary relief in other civil actions, except that no showing of special or irreparable damage to such person shall have to be made.

(c) In any action brought under subsections (a) or (b) of this section, a court shall have the power to interpret any benefit conferred, duty imposed, or restriction applied in favor of or against any party to a franchise agreement as reciprocal and equally applicable to the other party to the agreement and to provide an identical or similar benefit, impose an identical or similar duty, or apply an identical or similar restriction on such other party, provided that such reciprocal application is consistent with the laws of the State in which the franchise business is located.

(d) Except as otherwise provided in paragraph (2) of this subsection, nothing contained in this Act shall limit the right of a franchisor and a franchisee to agree to arbitration, mediation, or other nonjudicial resolution of a dispute, either in advance or after a dispute arises, provided that the standards and protections applied in any binding nonjudicial procedure agreed to by the parties are not less than the requirements set forth in this Act; and

(2) Any stipulation or provision of a franchise agreement requiring use of arbitration to resolve disputes arising under the agreement shall not apply to bar any action brought in a United States district court or in any other court of competent jurisdiction pursuant to this section involving a request for damages and/or equitable relief caused by a violation of section 3 of this Act.

(e) The private rights provided in this section are in addition to, and not in lieu of other rights or remedies created by Federal or State law or regulation.

SEC. 8. PROHIBITION ON WAIVER OF RIGHTS AND LIABILITY.

(a) It shall be unlawful for any franchisor or subfranchisor, either directly or indirectly through any officer, employee, agent, representative or attorney to—
(1) Require any term or condition in a franchise agreement, or in any agreement ancillary or collateral to a franchise, which directly or indirectly violates any provision of this Act, and rule of the Commission under this Act, or any provision of the Franchise Rule; or

(2) Require a franchisee to assent to any disclaimer, waiver, release or other provision of a franchise agreement, or in any document relating to the sale of a franchise, which would purport—

(A) to relieve any person from a duty imposed by this Act, any rule of the Commission under this Act, or any provision of the Franchise Rule; or

(B) to protect any person against any liability to which he would otherwise be subject under the Act, or any rule of the Commission under the Act, either by reason of willful misfeasance, bad faith, or gross negligence in the performance of disclosure and other duties, or by reason of reckless disregard of obligation and duties under the franchise agreement.

(b) Any condition, stipulation, provision, or term of any franchise agreement, or any agreement ancillary or collateral to a franchise, which would purport to waive or restrict any right granted under this Act shall be void and unenforceable.

(c) No stipulation or provision of a franchise agreement or of an agreement ancillary or collateral to a franchise shall—

(1) deprive a franchisee of the right to commence an action against the franchisor for violation of this Act, any rule of the Commission under this Act, in a court or forum in the state of the franchisee’s principal place of business; and

(2) deprive a franchisee of the right to settle like disputes arising from violations of this Act, or any rule of the Commission under this Act.

(d) Compliance with this Act is not waived, excused or avoided, and evidence of a violation of this Act or of any rule of the Commission under this Act shall not be excluded, by virtue of an integration clause, any provision of a franchise agreement or an agreement ancillary or collateral to a franchise, the parol evidence rule, or any other
rule of evidence purporting to exclude consideration of matters outside the franchise agreement.

SEC. 9. EFFECT ON STATE LAW.

(a) This Act preempts State law only to the extent that State law is inconsistent with any provision of this Act, in terms of providing less protection to prospective franchisees than provided by this Act, and then only to the extent of such inconsistency.

(b) Nothing in this Act shall—

(1) alter or relieve any franchisor or other person subject to the provisions of this Act from the obligation to comply with the laws of any State with respect to franchise disclosure and registration, except to the extent that such laws are inconsistent with any provision of this Act; and

(2) preclude a State from enacting any law or regulation that affords a greater level or broader range of protections to franchisees and prospective franchisees.

SEC. 10. STUDY OF NEED FOR ADDITIONAL PROTECTIONS.

(a) The Commission shall conduct an ongoing study of the need to develop and implement additional provisions to prevent evasions or violations of the requirements of this Act or to strengthen disclosure of pertinent information to prospective franchisees. In examining such additional provisions, the Commission shall consider the extent to which such additional provisions may be implemented under the Commission's rulemaking authority.

(b) The Commission shall submit to the Congress, not later than eighteen months after the date of enactment of this Act, a report reviewing the implementation of this Act, which shall include the results of the study required by subsection (a). The Commission shall submit such additional reports to the Congress as are merited by later findings of such study.

SEC. 11. EFFECTIVE DATE.

Except as otherwise provided, the provisions of this Act shall take effect one hundred and eighty days after the date of enactment of this Act.

SEC. 12. DEFINITIONS.

For purposes of this Act—

(1) the term "affiliate" means a person controlling, controlled by, or under common control with a franchisor;

(2) the term "advertisement" means a communication circulated generally by mail, or print media or electronic media, or otherwise disseminated gen-
erally to the public, in connection with an offer or
sale of a franchise;

(3) the term “commerce” has the same mean-
ing as in section 4 of the Federal Trade Commission
Act (15 U.S.C. 44);

(4) the term “Commission” means the Federal
Trade Commission; and

(5) the term “disclosure document” means ei-
ther the disclosure statement required by the Com-
mission in Trade Regulation Rule 436 (16 CFR s
436) as it may be amended, or an offering circular
prepared in accordance with Uniform Franchise Of-
fering Circular guidelines as adopted and amended
by the North American Securities Administrators
Association, Inc., or its successor.

(6) The term “franchise” means—

(A) any continuing commercial relationship
created by a contract or agreement, whether ex-
press or implied, oral or written, where—

(i) one person (the franchisor) grants
to another person (the franchisee) the
right to engage in the business of offering,
selling or distributing goods or services, in
which—

(I) the goods or services offered,
sold or distributed by the franchisee
are substantially associated with the
trademark, service mark, trade name,
logotype, advertising, or other com-
mercial symbol owned or used by the
franchisor; or

(II) the franchisee must conform
to quality standards established by
the franchisor for the goods or serv-
ces to be offered, sold or distributed,
and operate under a name that in-
cudes, in whole or in part, the
franchisor’s trademark, service mark,
trade name, logotype, advertising, or
other commercial symbol;

(ii) the franchisor—

(I) communicates to the
franchisee knowledge, experience, ex-
pertise, know-how, trade secrets or
other nonpatented information, re-
gardless of whether it is proprietary
or confidential;
(II) provides significant assistance in the franchisee’s method of operation; or

(III) exercises significant controls over the franchisee’s method of operation of the business; and

(iii) the franchisee, as a condition for obtaining or commencing operation of a franchise, is required to make, or to commit to make, payment or other consideration to the franchisor, or an affiliate of the franchisor, other than payment for commercially reasonable quantities of goods for resale at a bona fide wholesale price.

(B) a subfranchise; or

(C) any commercial relationship entered into in reasonable reliance on representations, whether oral or written, that the criteria of subsection (A) will be met.

(7) The term “franchise broker” means a person, other than a franchisor or franchisee, who sells, offers for sale or arranges for the sale of a franchise.

(8) The term “franchisee” means a person to whom a franchise is granted.

(9) The term “Franchise Rule” means Trade Regulation Rule 436 (16 CFR 436) as promulgated and amended by the Federal Trade Commission.

(10) The term “franchisor” means a person who grants a franchise or a subfranchise.

(11) The terms “material” and “material fact” includes—

(A) any fact, circumstance, or set of conditions which a reasonable franchisee or a reasonable prospective franchisee would consider important in making a significant decision relating to entering into, remaining in, or abandoning a franchise relationship; and

(B) any fact, circumstance, or set of conditions which has, or may have, any significant financial impact on a franchisor, franchisee or a prospective franchisee.

(12) The term “offer” or “offering” means any effort to offer or to dispose of, or solicitation of an offer to buy, a franchise or interest in a franchise for value.
(13) The term "outlet" means a place of business, temporary or permanent, fixed or mobile, from which products or services are offered for sale.

(14) The term "person" means a natural person or any legal entity recognized in law.

(15) The term "State" means a State, the District of Columbia, and any territory or possession of the United States.

(16) The term "subfranchise" means a contract or an agreement by which a person pays a franchisor for the right to sell, offer for sale or arrange the sale of franchises, or to provide goods or services to franchisees.

(17) The term "subfranchisor" means a person who is granted a subfranchise.
H. R. 1316

To establish minimum standards of fair conduct in franchise business relationships, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. LaFalce introduced the following bill, which was referred to the Committee on the Judiciary

A BILL

To establish minimum standards of fair conduct in franchise business relationships, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Federal Fair Franchise Practices Act".

6 SEC. 2. FINDINGS AND PURPOSE.

7 (a) The Congress makes the following findings:

8 (1) Franchise business relationships represent a large and growing segment of the Nation's retail and service businesses and are rapidly replacing more
traditional forms of small business ownership in the American economy.

(2) Franchise relationships involve a joint enterprise between the franchisor and franchisees and each party has a vested interest in the franchised business.

(3) Many franchises reflect a profound imbalance of contractual power in favor of the franchisor, and fail to give due regard to the legitimate business interests of the franchisee, as a result of the franchisor reserving pervasive contractual rights over the franchise relationship.

(4) Franchisees may suffer substantial financial losses where the franchisor does not act in good faith, or with due care.

(5) Traditional common law doctrines have not evolved sufficiently to protect franchisees adequately from fraudulent or unfair practices, and significant contractual and procedural restrictions have denied franchisees viable legal recourse against franchisors.

(b) It is the purpose of this Act to promote greater fairness and equity in franchise relationships, to establish minimum standards of conduct in franchise practices, to strengthen private remedies against fraudulent or unlawful actions, and to provide to consumers the greater bene-
based on suspect classifications including race, sex, 
religion or national origin;
(b) It shall be unlawful for any franchisor or 
subfranchisor, either directly or indirectly through any of-
fee, employee, agent, representative or attorney:
(1) to prohibit a franchisee from obtaining 
equipment, fixtures, supplies or services used in the 
establishment or operation of the franchised business 
from sources of the franchisee’s choosing, except 
that such goods or services may be required to meet 
uniform system-wide quality standards which are not 
arbitrarily promulgated or enforced by the 
franchisor. This paragraph shall not apply to reason-
able quantities of inventory of goods or services (in-
cluding display and sample items) that the 
franchisee is required to obtain from the franchisor 
and/or its affiliate(s), where such goods or services 
are integrally related to a trademark, trade name, 
trade secret or patent owned by or licensed to the 
franchisor or its affiliate(s), provided the franchisor 
shall not withhold a franchisee’s right to obtain such 
goods and services without providing a notice of de-
fault and a thirty-day period to cure the default;
(2) to terminate or otherwise cancel a franchise 
prior to its expiration without good cause for such 
termination or cancellation. For purposes of this 
paragraph, good cause shall exist only where:
(A) the franchisee fails to comply with a 
material provision of the franchise agreement 
after notice specifying the default and a thirty-
day period to cure the default, or if the default 
can not be cured within thirty days, the 
franchisee fails to initiate within thirty days 
and diligently pursue substantial continuing ac-
tion to cure the default;
(B) the franchisee, without the require-
ment of notice and opportunity to cure—
(i) voluntarily abandons the franchise 
business, except that loss or termination of 
a leasehold for the franchise business prior 
to the term of a franchise agreement by 
reason of eminent domain, foreclosure sale, 
natural disaster or other termination not 
the fault of the franchisee shall not be con-
sidered abandonment by the franchisee;
(ii) is convicted of a crime that sub-
stantially impairs the good will associated 
with the franchisor’s trade mark, service 
mark, trade name, logotype, advertising or 
other commercial symbol;
(iii) repeatedly fails to comply with
the same material provision of the fran-
chise agreement, where the enforcement of
such provision is substantially similar to
enforcement of that provision with other
franchises; or
(iv) operates the franchised business
in a manner that creates an imminent dan-
ger to public health or safety; and
(C) the franchisor, whether or not as a re-
sult of bankruptcy or reorganization, withdraws
from a marketing area, provided the franchisor
pays the franchisee reasonable compensation for
damages incurred from the shortened term of
the franchise, or agrees not to enforce any con-
tractual prohibition against the franchisee con-
tinuing to engage in the business at the licensed
location, except as provided in subsection
(3)(B) of this section.
(3) to prohibit, or enforce a prohibition against,
any franchisee from engaging in any business at any
location after expiration of a franchise or after ter-
mination of the franchise prior to its expiration for
good cause. This paragraph shall not:

(A) apply to enforcement of any such pro-
hibition where the franchisor, not less than ten
days before the effective date of such termina-
tion or expiration, offers in writing to pur-
chase the assets of the franchised business for
its fair market value as a going concern, pro-
vided that:

(i) the fair market value of such busi-
ness be determined as if it were to be re-
sold or renewed for a period of years equal
to the contract term being offered by the
franchisor for new or renewed franchises;

(ii) the fair market value of such busi-
ness is ascertained by an impartial appraiser, whose appointment is acceptable to
both parties; and

(iii) forgiveness of debt shall not be
considered a purchase of assets by the
franchisor for purposes of this section.

(B) prohibit enforcement of any provisions
of a franchise obligating a franchisee after expi-
ration or termination of a franchise—

(i) to cease or refrain from using a
trademark, trade secret or other intellec-
tual property owned by the franchisor or
its affiliate, except that the existence of
language in the franchise agreement pur-
porting to determine ownership of a trade-
mark, trade secret or other intellectual
property shall not be binding upon any
court or forum for purposes of this para-
graph, but may be considered by such
court or forum as evidence of such own-
ship; or
(ii) to alter the appearance of the
premises and the manner of operation of
the franchised business to avoid any likely-
hood of confusion as to the affiliation of
the business with its former franchisor.

(4) to hinder or prohibit, directly or indirectly,
the free association of franchisees for any lawful
purpose, including the formation of or participation
in any trade association made up of franchisees, or
to discriminate by imposing requirements not im-
posed on other similarly situated franchisees, or re-
taliate, directly or indirectly, against any franchisee
for membership or participation in a franchisee asso-
ciation.

SEC. 4. ENROACHMENT.

(a) A franchisor shall not establish a new outlet or
point of sale of goods or services similar to that offered
by a franchisee and identified by the same trade name
or trademark or advertising used by a franchisee, in such
unreasonable proximity to an outlet or business owned or
licensed to such franchisee that the effect or probable ef-
fect of establishing such new outlet or point of sale is to
to cause a reduction in gross sales of the existing franchise
of more than 10 percent during the twelve month period
immediately following establishment of the new outlet or
point of sale.

(b) Where a franchisor has established a new outlet
or point of sale in such unreasonable proximity to an exist-
ing franchise, the franchisor shall—

(1) compensate the franchisee for lost sales
carried by the new outlet or point of sale in an
amount equal to the loss of sales in excess of 10 per-
cent for any period in which the new outlet or point
of sale has been open for business and remains open
for business;

(2) change the location or manner of operation
of the new outlet or point of sale to mitigate its im-
pact upon the franchise business to diminish the di-
version of sales to less than 10 percent during any
period in which the new outlet or point of sale is
open for business; or
(3) close the new outlet or point of sale.
(c) This section shall not apply if, before a new outlet
or point of sale is opened for business, a franchisor offers
in writing to each franchisee which owns or licenses a
franchise in close proximity to the site of such new outlet
or point of sale to pay to such franchisee or franchisees
an amount equal to 10 percent of the gross sales (net of
sales taxes, returns and allowances) of the new outlet or
point of sale for the first twenty-four months of operation
of such new outlet or point of sale, if the sales of such
existing franchises are reduced by more than 10 percent
during the twelve month period immediately following es-
establishment of the new outlet or point of sale as a con-
sequence of the opening of such outlet or point of sale.
(d) A franchisor shall have the burden of proof to
show that, or the extent to which, a decline in sales of
an existing franchise occurred for reason other than the
establishment in close proximity to the franchise of the
new outlet or point of sale.

SEC. 8. STANDARDS OF CONDUCT.
(a) DUTY OF GOOD FAITH.—A franchise contract
imposes on each party thereto a duty to act in good faith
in its performance and enforcement. This duty of good
faith obligates a party to a franchise to do nothing that
will have the effect of destroying or injuring the right of
the other party to receive the fruits of the contract and
to do everything required under the contract to accomplish
such purpose.

(b) DUTY OF DUE CARE.—A franchise relationship
imposes on the franchisor a duty of due care. Unless a
franchisor represents that it has greater skill or knowledge
in its undertaking with its franchisees, or conspicuously
disclaims that it has skill or knowledge, the franchisor is
required to exercise the skill and knowledge normally pos-
sessed by franchisors in good standing in the same or simi-
lar types of business. For purposes of this subsection—
(1) the phrase "skill or knowledge" means
something more than the mere minimum level of
skill or knowledge required of any person engaging
in a service or business and involves a special level
of expertise—

(A) which is the result of acquired learning
and aptitude developed by special training and
experience in the business to be conducted
under the franchise, or the result of extensive
use and experience with the products or services
or the operating system of the franchise;
(B) which is the result of experience in organizing a franchise system and in providing training, assistance and services to franchisees; and

(C) which a prospective franchisee would expect in reasonable reliance on the written and oral commitments and representations of the franchisor; and

(2) a franchisor shall be permitted to show that it contracted for, hired or purchased the expertise necessary to comply with the requirements of this subsection and that such expertise was incorporated in the franchise or communicated or provided to the franchisee.

The requirement of this subsection may not be waived by agreement or by conduct, but the franchisor may limit in writing the nature and scope of its skill and knowledge, and of its undertaking with a prospective franchisee. Provided, That no inconsistent representation, whether written or oral, is made to the prospective franchisee.

(c) LIMITED FIDUCIARY DUTY.—Without regard to whether a fiduciary duty is imposed generally on the franchisor by virtue of a franchise relationship, the franchisor owes a fiduciary duty to its franchisees and is obligated to exercise the highest standard of care for franchise interests where the franchisor:

(1) undertakes to perform bookkeeping, collection, payroll or accounting services on behalf of the franchisees; or

(2) requires franchisees to make contributions to any pooled advertising or promotional fund to be administered or supervised by the franchisor.

While not limiting the ability of any court to identify other circumstances for which a fiduciary duty may also exist, this subsection does not create or extend a fiduciary duty by implication to other aspects of a franchise.

SEC. 6. PROCEDURAL FAIRNESS.

(a) It shall be unlawful for any franchisor or subfranchisor, either directly or indirectly through any officer, employee, agent, representative or attorney to:

(1) Require any term or condition in a franchise agreement, or in any agreement ancillary or collateral to a franchise, which directly or indirectly violates any provision of this Act; or

(2) Require a franchisee to assent to any disclaimer, waiver, release, stipulation or other provision which would purport—
(A) to relieve any person from a duty imposed by this Act, except as part of a settlement of a bona fide dispute; or

(B) to protect any person against any liability to which he would otherwise be subject under the Act by reason of willful misfeasance, bad faith, or gross negligence in the performance of duties, or by reason of reckless disregard of obligations and duties under the franchise agreement.

(b) Any condition, stipulation, provision, or term of any franchise agreement, or any agreement ancillary or collateral to a franchise, which would purport to waive or restrict any right granted under this Act shall be void and unenforceable.

(c) No stipulation or provision of a franchise agreement or of an agreement ancillary or collateral to a franchise shall—

(1) deprive a franchisee of the application and benefits of this Act or of any Federal law or the law of the State in which the franchisee's principal place of business is located;

(2) deprive a franchisee of the right to commence an action (or, if the franchise provides for arbitration, initiate an arbitration) against the franchisor for violation of the Act, or for breach of the franchise agreement or of any agreement or stipulation ancillary or collateral to the franchise, in a court (or arbitration forum) in the state of the franchisee's principal place of business; or

(3) exclude collective action by franchisees to settle like disputes arising from violation of this Act either by civil action or arbitration.

(d) Compliance with this Act or with an applicable State franchise law is not waived, excused or avoided, and evidence of violation of this Act or of such State law shall not be excluded, by virtue of an integration clause, any provision of a franchise agreement or an agreement ancillary or collateral to a franchise, the parol evidence rule, or any other rule of evidence purporting to exclude consideration of matters outside the franchise agreement.

SECT. 7. ACTIONS BY PRIVATE PERSONS.

(a)(1) Any person injured by a violation of any provision or standard of this Act shall have a right of action for all damages caused by the violation, including costs of litigation and reasonable attorney's fees, against any person found to be liable for such violation.

(2) An action may be brought, without regard to the amount in controversy, in any United States district court
or in any other court of competent jurisdiction, before the
later of:

(A) Five years after the date on which the viol-
ation occurred; or

(B) Three years after the date on which the
violation was discovered or should have been discov-
ered through exercise of reasonable diligence.

(b) Any person injured by a violation of this Act, or
threatened with injury by an impending violation of this
Act, may bring an action in a United States district court
to obtain a declaratory judgement that an act or conduct
constitutes or would constitute a violation of this Act and
to enjoin a person who has violated, is violating, or who
is otherwise likely to violate any provision of this Act. In
such actions, the court may issue a temporary restraining
order or preliminary injunction to protect the public inter-
est by halting a recurring or likely violation of this Act,
prior to a final determination on the merits, in conformity
with the principles governing the granting of preliminary
relief in other civil actions, except that no showing of spe-
cial or irreparable damage to such person shall have to
be made.

(c)(1) In any action brought under subsection (a) or
(b) of this section, a court shall have the power to inter-
pret any benefit conferred, duty imposed, or restriction ap-
plied in favor of or against any party to a franchise agree-
ment as reciprocal and equally applicable to the other
party to the agreement and to provide an identical or simi-
lar benefit, impose an identical or similar duty, or apply
an identical or similar restriction on such other party to
the agreement, provided that such reciprocal application
is consistent with the laws of the State in which the fran-
chise business is located.

(2) A court shall apply any provision contained in a
franchise agreement which purports to restrict the ability
of one party to compete with the other party during the
term of the franchise agreement reciprocally to the extent
deemed fair and appropriate.

(d)(1) Except as otherwise provided in paragraph (2)
of this subsection, nothing contained in this Act shall limit
the right of a franchisor and a franchisee to agree to arbi-
tration, mediation or other nonjudicial resolution of a dis-
pute, either in advance or after a dispute arises: Provided,
That the standards and protections applied in any binding
nonjudicial procedure agreed to by the parties are not less
than the requirements set forth in this Act.

(2) Any stipulation or provision of a franchise agree-
ment requiring use of arbitration or other nonjudicial res-
olution to resolve disputes arising under the agreement
shall not apply to bar an action brought in a United States
district court or in any other court of competent jurisdiction pursuant to this section involving a request for damages and/or equitable relief for an alleged violation of any provision of this Act, except where such request is frivolous or insubstantial. A determination of whether a request for damages and/or equitable relief is frivolous or insubstantial shall be made by the court in which the action is filed at any hearing at which all parties are present or represented by counsel.

SEC. 8. EFFECT ON OTHER LAW.
(a) This Act preempts State law only to the extent that State law is inconsistent with any provision of this Act, in terms of providing less protection to the franchisee than provided by this Act, and then only to the extent of such inconsistency.
(b) Nothing in this Act shall be interpreted—
(1) to alter or relieve any franchisor or subfranchisor from the obligation to comply with the laws of any State, except to the extent that such laws are inconsistent with any provision of this Act; or
(2) to preclude a State from enacting any law or regulation that affords a greater level or broader range of protections to franchisees.

SEC. 9. SCOPE AND APPLICABILITY.
The requirements of this Act shall apply to franchise agreements entered into, amended, exchanged or renewed after the date of enactment of this Act.

SEC. 10. DEFINITIONS.
For purposes of this Act:
(1) The term "affiliate" means a natural or legal person controlling, controlled by, or under common control with a franchisor.
(2) The term "franchise" means—
(A) any continuing commercial relationship created by a contract or agreement, either expressed or implied, whether oral or written, where—
(i) one person (the franchisor) grants to another person (the franchisee) the right to engage in the business of offering, selling or distributing goods or services, in which—
(I) the goods and services offered, sold or distributed by the franchisee are substantially associated with the trademark, service mark, trade name, logotype, advertising, or other commercial symbol owned or
used by the franchisor (hereafter "the franchisor's mark"); or

(II) the franchisee must conform to quality standards established by the franchisor with respect to the goods and services being distributed, and operate under a name that includes, in whole or in part, the franchisor's mark;

(ii) the franchisor—

(I) communicates to the franchisee knowledge, experience, expertise, know-how, trade secrets or other non-patented information, regardless of whether it is proprietary or confidential;

(II) provides significant assistance to the franchisee in areas relating to the franchisee's method of operation; or

(III) exercises significant controls over the franchisee's method of operation of the business; and

(iii) the franchisee, as a condition for obtaining or commencing operation of a franchise, is required to make, or to commit to make, payment or other consideration to the franchisor, or an affiliate of the franchisor, other than payment for commercially reasonable quantities of goods for resale at a bona fide wholesale price.

(B) a subfranchise; or

(C) any commercial relationship entered into in reasonable reliance on representations, either oral or written, that the criteria of paragraph (A) of this subsection will be met.

(3) The term "franchisee" means a person to whom a franchise is granted.

(4) The term "franchisor" means a person who grants a franchise or a subfranchise.

(5) The term "good faith" means honesty in fact and the observance of reasonable standards of fair dealing in the trade.

(6) The term "person" means an individual or any other legal or commercial entity.

(7) The term "State" means a State, the District of Columbia, and any territory or possession of the United States.
(8) The term "subfranchise" means a contract
or an agreement by which a person pays a
franchisor for the right to sell, negotiate the sale, or
provide services franchises.

(9) The term "subfranchisor" means a person
who is granted a subfranchise.

(10) The term "trade secret" means informa-
tion, including a formula, pattern, compilation, pro-
gram, device, method, technique, or process, that:

(i) derives independent economic value, ac-

tual or potential, from not being generally

known to, and not being readily ascertainable

by proper means by, other persons who can ob-
tain economic value from its disclosure or use,

and

(ii) is the subject of efforts that are rea-

sonable under the circumstances to maintain its

secrecy.
H. R. 1317

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 11, 1993

Mr. LAFAUCI introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Post Office and Civil Service

A BILL

To revise current Federal law and procedure to provide consumers with comprehensive and accurate statistical information about franchising and franchise practices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Franchise Data and Public Information Act".

SEC. 2. FINDINGS AND PURPOSE.

(a) The Congress makes the following findings:
(1) Franchise business relationships represent a large and growing segment of the Nation's retail and service businesses and are replacing more traditional forms of small business ownership in the American economy.

(2) Despite the growing importance of franchising in the American marketplace, there is little objective or reliable statistical information available to the public on the number, ownership, and operation of franchise businesses; and broad-based, objective data or investigations of franchise failures are virtually non-existent.

(3) While there is a void of reliable statistics, a large amount of statistical information is routinely provided in articles and talks about franchising and in promotional material for franchise opportunities that seek to represent franchises as uniformly successful and virtually risk free.

(4) Inaccurate or misleading statistical information is routinely attributed to Federal Government agencies and reports, and data on franchise business compiled prior to 1987 by the United States Department of Commerce continue to be widely cited, misrepresented or misused.

(5) Franchisees may suffer substantial losses from investment in a franchise business without accurate or reliable information or with expectations based on false or misleading statistical information regarding the operation and success of franchise businesses.

(b) It is the purpose of this Act to provide the public with comprehensive statistical information about franchising and the performance of franchise systems, to enhance the reliability of information made available to the public regarding franchise practices, and to assure that prospective investors have the information necessary to make an informed decision on whether to invest in a franchise business.

SEC. 3. NATIONAL FILING AND DATA COLLECTION.

(a) Filing of Franchise Disclosure Documents—

(1) All persons, partnerships or corporations engaged in selling or offering for sale any franchise, or any relationship which is represented either orally or in writing to be a franchise, whether within a state or in interstate commerce, shall file with the United States Department of Commerce (hereafter, the "Commerce Department") a copy of the franchise disclosure document or circular for such franchise; and
(2) The disclosure document or circular to be filed under this subsection shall be:

(A) the most recent version of such document or circular which incorporates information that is current as of the close of the franchisor’s most recent fiscal year; and

(B) the most restrictive version of such document or circular, and of the franchise agreement, provided by the franchisor to any prospective franchisee, in terms of the requirements imposed on franchisees and the limitations on the rights and remedies available to franchisees in the franchise agreement;

(3) The disclosure document or circular described in paragraph (2) shall be filed annually at a time and in a manner set forth in regulation by the Commerce Department;

(4) The Commerce Department shall make available to the Congress, the Federal Trade Commission and other Federal agencies, as requested, copies of any disclosure documents filed under this subsection, and shall establish procedures under which such documents may be viewed by the public; and

(5) It shall be unlawful for a franchisor, subfranchisor or franchise broker to make any statement or reference in connection with any advertisement or disclosure document, or in any oral or written statement or other representation to a prospective franchisee, that a disclosure document has been filed with the Commerce Department, or to make any statement or representation that suggests or implies that the Commerce Department or any other Federal agency has in any way reviewed the content of the disclosure document, made any finding with regard to the content of such document, or has in any way passed upon the merits of, or given approval to, the franchise opportunity.

(b) Data Collection and Publication—

(1) The Commerce Department shall, not later than two hundred and forty days after the date of enactment of this section, establish procedures for the compilation, analysis and publication of statistical information on franchise ownership and national franchising practices. For purposes of such procedures, the Commerce Department shall:

(A) use as the principal source of statistical information on franchise ownership and practices the disclosure documents for franchise
opportunities required to be filed annually under subsection (a);

(B) establish categories of statistical information for annual data compilation and analysis, including but not limited to: total numbers of franchisors and franchise businesses, types of franchise businesses, number of foreign franchisors, annual growth in franchisors and franchise businesses, turnover in franchise ownership and numbers of franchise failures;

(C) consult with Congress, the Federal Trade Commission, the North American Securities Administrators Association and other interested organizations in identifying additional categories of statistical information for purposes of data compilation and analysis that:

(i) involve issues or information of potential interest to the public, or of specific concern to Federal and State regulatory agencies; and

(ii) are obtainable from disclosure materials filed in accordance with subsection (a) and from other public sources of information; and

(D) initiate periodic questionnaires of franchisors or franchisees to obtain statistical information to supplement information obtainable in disclosure documents filed under subsection (a), or information in connection with topics or categories of statistical information identified under paragraph (C) for which additional sources of information may be required, except that no information obtained from such questionnaires may be used in lieu of information otherwise obtainable in a disclosure document filed under subsection (a) of this section or in data available in the Business Census pursuant to section 4 of this Act.

(2) The Commerce Department shall, not later than eighteen months after the date of enactment of this section, and then not less than annually thereafter, publish a report on the information and findings relating to franchise ownership and national franchising practices required to be compiled under this subsection. Such report shall be transmitted to the appropriate Committees of the Congress and shall be made available to the public through the Superintendent of Documents.
SEC. 4. CENSUS DATA ON FRANCHISE BUSINESSES.

(a) The Bureau of the Census of the Department of Commerce (hereafter, the "Bureau of the Census") shall include in its Business Census for 1997, and in each such succeeding census, statistical information on the number, ownership and operation of franchise businesses.

(b) The Bureau of the Census shall—

(1) consult with the Federal Trade Commission to establish criteria and procedures to identify franchise businesses to be included in the Business Census; and

(2) consult with the Congress, the Federal Trade Commission and other interested organizations in establishing categories of statistical information to be collected in the Business Census relating to the number, ownership and operation of franchise businesses.

(c) Not later than two hundred and eighty days after the date of enactment of this section, the Bureau of Census shall submit a report to the Congress which shall describe the most cost effective and accurate means to gather and present the statistical information required to be collected pursuant to this section and identify the categories of data relating to franchise businesses to be included in the Business Census.

SEC. 5. RULES, REGULATIONS AND FEES.

(a) The Secretary of Commerce (hereafter, the "Secretary") is authorized to make such rules and regulations as are necessary and appropriate to implement the provisions of this Act. Any rules, regulations, or orders issued pursuant to this authority may be established in such form or manner, may contain such classifications or differentiations, and may provide for such adjustments and reasonable exceptions as in the judgement of the Secretary are necessary or proper to effectuate the purposes of this Act, or to prevent circumvention or evasion of any rule, regulation, or order issued hereunder.

(b) The Secretary is further authorized to collect a filing fee or other reasonable charge from any person, partnership or corporation subject to the filing requirement of section 3(a) of this Act for purposes of defraying costs incurred by the Commerce Department in connection with such filing.

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) The term "advertisement" means a communication circulated generally by mail, or print media or electronic media, or otherwise disseminated generally to the public, in connection with an offer or sale of a franchise.
(2) The term "disclosure document" means either the disclosure statement required by the Commission in Trade Regulation Rule 436 (16 CFR 436) as it may be amended, or an offering circular prepared in accordance with Uniform Franchise Offering Circular guidelines as adopted and amended by the North American Securities Administrators Association, Inc., or its successor.

(3) The term "franchise" means—

(A) any continuing commercial relationship created by a contract or agreement, whether express or implied, oral or written, where—

(i) one person (the franchisor) grants to another person (the franchisee) the right to engage in the business of offering, selling or distributing goods or services, in which—

(a) the goods or services offered, sold or distributed by the franchisee are substantially associated with the trademark, service mark, trade name, logotype, advertising, or other commercial symbol owned or used by the franchisor; or

(b) the franchisee must conform to quality standards established by the franchisor for the goods or services to be offered, sold or distributed, and operate under a name that includes, in whole or in part, the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol;

(ii) the franchisor—

(a) communicates to the franchisee knowledge, experience, expertise, knowhow, trade secrets or other non-patented information, regardless of whether it is proprietary or confidential;

(b) provides significant assistance in the franchisee's method of operation; or

(c) exercise significant controls over the franchisee's method of operation of the business; and

(iii) the franchisee, as a condition for obtaining or commencing operation of a franchise, is required to make, or to com-
mit to make, payment or other consideration to the franchisor, or an affiliate of the franchisor, other than payment for commercially reasonable quantities of goods for resale at a bona fide wholesale price.

(B) a subfranchise; or

(C) any commercial relationship entered into in reasonable reliance on representations, whether oral or written, that the criteria of subsection (A) will be met.

(4) The term “franchisee” means a person to whom a franchise is granted.

(5) The term “franchisor” means a person who grants a franchise or a subfranchise.

(6) The term “person” means a natural person or any legal entity recognized in law.

(7) The term “subfranchise” means a contract or an agreement by which a person pays a franchisor for the right to sell, offer for sale or arrange the sale of franchises, or to provide goods or services to franchisees.
THE UNIFORM FRANCHISE OFFERING CIRCULAR

GUIDELINES

GENERAL INSTRUCTIONS

90. Introduction: The Uniform Franchise Offering Circular ("UFOC") Guidelines consist of the Requirements, the Instructions and the Sample Answers. The UFOC Guidelines were prepared and adopted by the North American Securities Administrators Association ("NASAA") and its predecessor, the Midwest Securities Commissioners Association. The members of NASAA cannot create statutes since that is the constitutional province of state legislatures, but NASAA intends for the UFOC Guidelines to facilitate compliance with disclosure requirements under state franchise investment laws. Where possible, NASAA has developed uniform disclosure requirements, but differences in state laws bearing on the franchise relationship may necessitate changes. In addition, state administrators will continue to review the application for deficient disclosure and additional disclosure necessitated by special problems or risks in the proposed offering.

100. Follow these General Instructions and the Requirement and Instruction for each Item in franchise registration applications and disclosures in the Uniform Franchise Offering Circular.

110. Original Registration Application - Documents to File:

(a) Uniform Franchise Registration Application Page (also known as "Facing Page");

(b) Supplemental Information page(s);

(c) Certification page;

(d) Uniform Consent to Service of Process;

(e) Sales Agent Disclosure Form;

(f) If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;

(g) Uniform Franchise Offering Circular;

(h) Application Fee;

(i) Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular; and

Adopted by NASAA on April 25, 1993
Examples of forms (a) through (f) are printed at the end of these Guidelines.

120. Renewal Application: When state law requires renewal, mark "renewal" on the application page. Submit all documents required for an initial application with additions to the previously filed documents underlined. Changes must be clearly marked so that the change is noticed easily. File a renewal application before the prior registration has expired. If the prior registration has expired, mark "Registration of an Offer or Sale of Franchise" on the facing page and pay the fee charged for initial registrations. Redlining and bracketing changes from the last filing will speed a re-registration. Do not mark the amendment boxes on the application page on the first renewal filing even if documents are revised.

150. "Disclose" means to state all material facts in an accurate and unambiguous manner. Disclose clearly, concisely and in a narrative form that is understandable by a person unfamiliar with the franchise business. For clear and concise disclosure avoid legal antiquities and repetitive phrases. When possible, use active, not passive voice. Limit the length and complexity of disclosure through careful organization of information in the offering circular. Make the format and chronological order consistent within each item.

160. Since prospective franchisees must have sufficient disclosure to understand economic commitments and to develop a business plan, it's necessary to disclose any information that is non-essential or that has been presented. The franchisee should provide reasonably available information to allow franchisees to forecast future charges listed in the Item that are required to be paid to persons who are independent of the franchisor. Failure to pay the franchisee is specific as is required by individual items.

170. The disclosure for each UFOC Item should be separately titled and in the required order. Do not repeat the UFOC question in the offering circular. Respond to each question fully. If the disclosure is not applicable, respond in the negative. If an answer is required "if applicable," respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

180. For each item in the UFOC, type the Requirement's Item title and number. Sub-items may be designated by descriptive headings, but do not use sub-item letters and numbers.

190. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the offering circular.

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Adopted by NASA on April 25, 1993

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Adopted by NASA on April 25, 1993
200. Use 8½ by 11 inch paper for the entire application.

210. When the applicant is a master franchisor seeking to sell subfranchises, references in these requirements and instructions to "franchises" include the subfranchise unless the language context requires a different meaning.

220. The offer of subfranchises is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application may register the sale of single unit and multi-unit franchises if the offering circular is not confusing.

230. When the applicant is a subfranchisor, disclose to the extent applicable the same information concerning the subfranchisor that is required about the franchisor.

240. In offerings by a subfranchisor, "franchisor" means both the franchisor and subfranchisor.

250. When state requirements conflict with these Guidelines, the state requirements control. The State Administrator may modify or waive these Guidelines or may require additional documentation or information.

260. Grossly deficient applications may be rejected summarily by the administrator as incomplete for filing. It is not the function of an administrator to prepare, in effect, an applicant's application. The additional examiner time reviewing the grossly deficient product delays the processing of diligently prepared and pursued applications.

265. These Guidelines are effective six months after the Federal Trade Commission and each NASAA member whose jurisdiction requires presale registration of a franchise adopts them. In any event, these Guidelines will be effective no earlier than January 1, 1994 and no later than January 1, 1995. After the effective date of these Guidelines, all initial franchise applications, renewals and re-registrations must comply with these Guidelines.

270. The Guidelines that continue after these instructions use the following format:

(a) The title of the item follows the Item number. It is capitalized and centered on the page.
(b) The "Item" is a restatement of the Uniform Franchise Offering Circular (UFOC) Item Requirement. It is capitalized and follows the title of the Item.
(c) The "Instruction" appears beneath the item. It explains portions of the Item Requirements.
(d) The "Sample Answer" at the end of each Item provides sample disclosures. Double horizontal lines divide the Sample Answer from the Instructions.

-4-

Adopted by NASAA on April 28, 1989

-5-

Adopted by NASAA on April 25, 1993
franchises' right to use the trademark. Exclude non-required
information unless necessary as a risk factor or required by a
state regulator.

iv. If applicable, disclose the following risk factors using the
following language on the cover:

1. THE FRANCHISE AGREEMENT PERMITS THE FRANCHISEE (TO
   FRANCHISE TO SUB) (TO ARBITRATE WITH) ______ IN
   OUT OF STATE (ARBITRATION) (LITIGATION) MAY
   FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR
   DISPUTES. IT MAY ALSO COST MORE (TO SUB) (TO ARBITRATE
   WITH) ______ IN ______ THAN IN YOUR HOME STATE.

2. THE FRANCHISE AGREEMENT STATES THAT ______ LAW
   GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE
   SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY
   WANT TO COMPARE THESE LAWS.

3. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

v. In addition to the above language, disclose other risk
factors required by a state regulator.

vi. Use capital letters for risk factor disclosure.

vii. In multistate offerings in which the franchisor uses a
single offering circular, refer to an exhibit to the offering
 circular for a list of State or Provincial authority.

Sample Cover Page:

(Logo) Franchise Offering Circular

Belmont Mufflers, Inc.
A Minnesota Corporation
First Street
Jackson, Minnesota 55000
(612) 266-3430

The franchisee will repair and install motor vehicle exhaust
systems.

The initial franchise fee is $10,000. The estimated initial
investment required ranges from $132,700 to $160,200. This sum
does not include rent for the business location.

Risk Factors:

THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS BE
SETTLED BY ARBITRATION IN MINNESOTA. OUT OF STATE
ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE
SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO
ARBITRATE WITH US IN MINNESOTA THAN IN YOUR HOME STATE.

Information about comparisons of franchisors is available. Call
the state administrators listed in Exhibit ______ or your public
library for sources of information.

Registration of this franchise with the state does not mean that
the state recommends it or has verified the information in this
offering circular. If you learn that anything in this offering
circular is untrue, contact the Federal Trade Commission and
(State or Provincial authority).

Effective Date:

-6- Adopted by NASAA on April 25, 1993

-7- Adopted by NASAA on April 25, 1993
TABLE OF CONTENTS:

1. Refer to UDOC Item and state the page where each UDOC Item disclosure begins. List exhibits by letter. Use the following format:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
</table>

SAMPLE TABLE OF CONTENTS:

<table>
<thead>
<tr>
<th>ITEM</th>
<th>PAGE</th>
</tr>
</thead>
</table>

Exhibits

A. Franchise Agreement
B. Equipment Lease
C. Lease for Premises
D. Loan Agreement

Adopted by NASAA on April 25, 1993
Item 1
THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES

Item 1 Instruction:
1. Use the word “we,” initials or one or two words to refer to the franchisor. Use different initials or a different one or two words to refer to other persons contracting with the franchise under the franchise agreement. Except in the 21 Item titles, use these initials or the word(s) to describe these persons or entities throughout the offering circular.
2. Define the franchisee as “you” and use this description throughout the offering circular. If the franchisee could be a corporation, partnership or other entity, disclose whether “you” includes the franchisee’s owners.
3. “Predecessor” in Item 1 means a person from whom the franchisor acquired directly or indirectly the major portion of the franchisor’s assets.
4. The disclosure regarding predecessors need only cover the 10 year period immediately before the close of the franchisor’s most recent fiscal year.
5. Affiliate in Item 1 means a person (other than a natural person) controlled by, controlling or under common control with the franchisor, which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor.

DISCLOSE IN SUMMARY FORM:
A. THE NAME OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES.
B. THE NAME UNDER WHICH THE FRANCHISOR DOES OR INTENDS TO DO BUSINESS.

Item 1A Instruction:
If the franchisor does business under a name different from the name disclosed in Item 1A, state that other name. If not, state that the franchisor does not do business under another name.

C. THE PRINCIPAL BUSINESS ADDRESS OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES, AND THE FRANCHISOR’S AGENT FOR SERVICE OF PROCESS.

Item 1C Instruction:
1. Principal business address means “home office” in the United States, not in the state for which the offering circular was prepared. If appropriate, also disclose the location of an international “home office.” The business address can not be a post office box.
2. In a multi-state offering in which the agent for service of process is required, the franchisor may use an exhibit or the acknowledgement of receipt to disclose this agent.

D. THE BUSINESS FORM OF THE FRANCHISOR

Item 1D Instruction:
1. Disclose the state of incorporation or business organization and the type of business organization.

E. THE FRANCHISOR’S BUSINESS AND THE FRANCHISES TO BE OFFERED IN THIS STATE.

Item 1E Instruction:
Disclose the following:
1. That the franchisor sells or grants franchises;
2. Whether the franchisor operates businesses of the type being franchised;
3. The franchisor’s other business activities;
4. The business to be conducted by the franchisees;
5. The general market for the product or service to be offered by the franchisees. (For example, is the market developed or developing? Will the goods be sold primarily to a certain group? Are sales seasonal?)
6. In general terms any regulations specific to the industry in which the franchise business operates. It is not necessary to include laws or regulations that apply to businesses generally.
7. A general description of the competition.

-10- Adopted by NASAA on April 26, 1993

-11- Adopted by NASAA on April 26, 1993
F. THE PRIOR BUSINESS EXPERIENCE OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES INCLUDING:

(1) THE LENGTH OF TIME THE FRANCHISOR HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(2) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.

(3) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(4) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.

(5) WHETHER THE FRANCHISOR HAS OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS;

(C) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED EACH OTHER FRANCHISE.

(6) WHETHER EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:

(A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

(B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS;

(C) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED EACH OTHER FRANCHISE.

**Sample Answer**

To simplify the language in this offering circular "Belmont" means Belmont Mufflers Inc., the franchisor. "You" means the person who buys the franchise. Belmont is a Minnesota corporation that was incorporated on September 3, 1961. Belmont does business as Belmont Muffler Shops. Our principal business address is 111 First Street, Jackson, Minnesota 55555.

Belmont's agent for service of process is disclosed in Exhibit _._.

Belmont currently operates 12 Belmont Muffler Shops and sells pipe bending machines and mufflers to various muffler shops.

Belmont franchises the right to sell and install mufflers for the public. You must honor our guarantee to replace mufflers or exhaust pipes that wear out if the vehicle ownership has not changed. Belmont's franchisees often operate their muffler shop franchise with their service stations or tire center. Your competitors include department store service departments, service stations and other national chains of muffler shops. Exhibit _._ is attached to this offering circular and contains a summary of the special regulations for muffler installation in your state.

During the past 5 years Belmont has operated 7 muffler shops that are similar to the franchised shops being offered. All these shops are located in urban areas, have approximately xxxxx square feet of floor space and are located on busy streets. An additional 3 muffler shops were opened in 1990. From 1968 to 1971, Belmont offered franchises for "Repair-All Transmission Shops." "Repair-All" franchises repaired and replaced motor vehicle transmissions under a marketing plan similar to the franchise in this offering circular. Belmont sold 40 of these franchises primarily in the states of Minnesota, Michigan, Wisconsin and Illinois. In 1973, Belmont sold this transmission repair company to CFW Inc.

Item 1F Instruction:

Limit disclosure about predecessors to the time before the franchisor acquired the predecessor's assets. Thus, under the 10 year limitation, if a franchisor acquired the assets of a predecessor 8 years ago, the disclosure about the predecessor should cover only the 2 year period before the acquisition.

Adopted by NASAA on April 25, 1993

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Adopted by NASAA on April 25, 1993

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ITEM 2
BUSINESS EXPERIENCE
LIST BY NAME AND POSITION THE DIRECTORS, TRUSTEES AND/OR GENERAL PARTNERS, THE PRINCIPAL OFFICERS AND OTHER EXECUTIVES OR SUBFRANCHISES WHO WILL HAVE MANAGEMENT RESPONSIBILITY RELATING TO THE FRANCHISE OFFERED BY THIS OFFERING CIRCULAR. LIST ALL FRANCHISE BROKERS. STATE EACH PERSON'S PRINCIPAL OCCUPATIONS AND EMPLOYERS DURING THE PAST FIVE YEARS.

Item 2 Instructions:

I. Principal officers include the chief executive and chief operating officer, the president, financial, franchise marketing, training and franchise operations officers.

II. First disclose the position and the name of the person holding it. Underline this information: then skip one line.

III. Disclose the beginning date and departure date (if any) for each job held in the five year period whether or not this date is within the past five years. Disclose the location of the job.

IV. Do not disclose home addresses, home telephones, social security numbers or birth dates in this item.

V. Disclose the required information concerning the franchise broker's directors, principal officers and executives with management responsibility to market or service the franchises.

VI. In a multi-state offering in which the franchisor uses a single offering circular and franchise brokers and executives with direct management responsibility to the franchisees differ from state to state, use an exhibit to refer to these personnel.

Sample Answer

President: Jane J. Doe

From June, 1978, until April, 1986, Ms. Doe was Vice-President of Atlas Inc., a Houston, Texas based manufacturer of automobile wheels. In April, 1986, she joined Belmont as a Director and Vice President. She was promoted to president in June, 1987.

ADOPTED BY NASAA ON April 25, 1993

ITEM 3
LITIGATION
DISCLOSE WHETHER THE FRANCHISOR, ITS PREDECESSOR, A PERSON IDENTIFIED IN ITEM 2 OR AN AFFILIATE OFFERING FRANCHISES UNDER THE FRANCHISOR'S PRINCIPAL TRADEMARK:

A. HAS AN ADMINISTRATIVE, CRIMINAL OR MATERIAL CIVIL ACTION PENDING AGAINST THAT PERSON ALLEGING A VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IN ADDITION, INCLUDE ACTIONS OTHER THAN ORDINARY ROUTINE LITIGATION INCIDENTIAL TO THE BUSINESS WHICH ARE SIGNIFICANT IN THE CONTEXT OF THE NUMBER OF FRANCHISEES AND THE SIZE, NATURE OR FINANCIAL CONDITION OF THE FRANCHISE SYSTEM OR ITS BUSINESS OPERATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM, NATURE, AND CURRENT STATUS OF THE PENDING ACTION. FRANCHISOR MAY INCLUDE A SUMMARY OPINION OF COUNSEL CONCERNING THE ACTION IF A CONSENT TO USE OF THE SUMMARY OPINION IS INCLUDED AS PART OF THIS OFFERING CIRCULAR.

B. HAS DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR BEEN CONVICTED OF A FELONY OR PLEASED NOLO CONTENDERE TO A FELONY CHARGE OR BEEN HELD LIABLE IN A CIVIL ACTION BY FINAL JUDGMENT OR BEEN THE SUBJECT OF A MATERIAL ACTION INVOLVING VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM AND DATE OF CONVICTION OR DATE JUDGMENT WAS ENTERED, PENALTY OR DAMAGES ASSESSED AND/OR TERMS OF SETTLEMENT.

C. IS SUBJECT TO A CURRENTLY EFFECTIVE INJUNCTIVE OR RESTRICTIVE ORDER OR DECREE RELATING TO THE FRANCHISE OR UNDER A FEDERAL, STATE OR CANADIAN FRANCHISE, SECURITIES, ANTITRUST, TRADE REGULATION OR TRADE PRACTICE LAW RESULTING FROM A CONCLUDED OR PENDING ACTION OR PROCEEDING BROUGHT BY A PUBLIC AGENCY. IF SO, DISCLOSE THE NAME OF THE PERSON, THE PUBLIC AGENCY AND COURT, A SUMMARY OF THE ALLEGATIONS OR FACTS FOUND BY THE AGENCY OR COURT AND THE DATE, NATURE, TERMS AND CONDITIONS OF THE ORDER OR DECREES.

Item 3 Definitions:

I. For purposes of these instructions to Item 3, "franchisor" includes the franchisor, its predecessors, persons identified in Item 2 and affiliates offering franchises under the franchisor's principal trademarks.

II. Action: Action includes complaints, cross claims, counterclaims, and third party complaints in a judicial.
proceeding, and their equivalents in an administrative action or arbitration proceeding. The franchisor may disclose its
counterclaims. Only actions that were dismissed by final
judgment without liability of or entry of an adverse order
against the franchisor.

iii. Included in the definition of material is an action or an
aggregate of actions if a reasonable prospective franchisee would
consider it important in making a decision about the franchised
business.

iv. In this Item, settlement of an action does not diminish its
materiality if the franchisor agrees to pay material consider-
ation or agrees to be bound by obligations which are materially
adverse to its interests.

v. "Ordinary routine litigation" means actions which ordinarily
result from the business and which do not depart from the normal
kinds of actions in the business.

vi. "Held liable" includes a finding by final judgment in a
judicial, binding arbitration or administrative proceeding that
the franchisor, as a result of claims or counterclaims must pay
money or other consideration, must reduce an indebtedness by the
amount of an award, cannot enforce its rights, or must take
action adverse to its interests.

vii. "Currently Effective": An injunctive or restrictive order
or degree is "currently effective" unless it has been vacated or
reconciled by a court or by the issuing public agency. An order
that has expired by its own terms is not "currently effective." If
the named party(s) have fully complied with an order (for
example, through registration of its franchise offer), the order is
not "currently effective." A party has not fully complied
with an order to act or to refrain from an act (for example to
comply with the franchise law or to refrain from violating the
franchise law) until the order expires by its own terms.

Item 3 Instructions:

Civil Litigation, or Injunctive or Restrictive Orders:

viii. Use sample answer 3-1 for a negative response to Item 3 if
the franchisor has never been named in litigation or if the only
litigation naming the franchisor is outside the scope of Item 3.

ix. Disclose in the same order as the instructions below appear.

x. Title each action and state its case number or citation in
parentheses. Underline the title of the action.

xi. For each action state the action's initial filing date and
the opposing party's name and relationship with the franchisor.
Relationships include competitor, supplier, lessor, franchisee,
former franchisee, or class of franchisees.

xii. Summarize the legal and factual nature of each claim in the
action.

xiii. Summarize the relief sought or obtained. Summarize
conclusions of law or fact.

xiv. State that other than these (list number of actions) no
litigation is required to be disclosed in this offering circular.

Criminal convictions or pleas:

xv. Disclose in the same order as the following instructions
appear.

xvi. Title each action and state its citation in parentheses.
Underline the title of the action.

xvii. Name the person convicted or who pleaded.

xviii. Next, state the crime or violation and the date of
conviction.

xix. Next, disclose the sentence or penalty imposed.

xx. Lastly, state that other than these (list the number of
actions) actions, no litigation is required to be disclosed in
this offering circular.
Sample Answer 1-

No litigation is required to be disclosed in this offering circular.

Sample Answer 2-

Doe v. Belmont Muffler Service, Inc. (cite) On March 1, 1985, our franchisee, Donald Doe, sought to enjoin us from terminating him for nonpayment of royalty fees. Doe alleged ___________. On April 1, 1986, Doe withdrew the case when we repurchased his franchise for $90,000 and agreed not to enforce non-compete clauses against him.

Indiana v. Belmont Muffler Service, Inc. (cite) On April 1, 1985, the Attorney General of Indiana sought to enjoin us from offering unregistered franchises and from using false income representations. The Attorney General alleged that the earnings claims were false because ___________. The court found that we had offered franchises, that the offers were not registered and that we had made the alleged false representations in our earnings claims. The court enjoined us from repeating those acts.

Other than these 2 actions, no litigation is required to be disclosed in this offering circular.

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Adopted by NASAA on April 25, 1993

Item 4

Bankruptcy

STATE WHETHER THE FRANCHISOR, ITS AFFILIATE, ITS PREDECESSOR, OFFICERS OR GENERAL PARTNER DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR (A) FILED AS DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE; (B) OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE; OR (C) WAS A PRINCIPAL OFFICER OF A COMPANY OR A GENERAL PARTNER IN A PARTNERSHIP THAT EITHER FILED AS A DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE OR THAT OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE DURING OR WITHIN 1 YEAR AFTER THE OFFICER OR GENERAL PARTNER OF THE FRANCHISOR HELD THIS POSITION IN THE COMPANY OR PARTNERSHIP. IF SO, DISCLOSE THE NAME OF THE PERSON OR COMPANY THAT WAS THE DEBTOR UNDER THE BANKRUPTCY CODE, THE DATE OF THE ACTION AND THE MATERIAL FACTS.

Item 4 Instructions:

i. First, name the party that filed (or had filed against it) the petition in bankruptcy and the party’s relationship to the franchisor. If the debtor in a bankruptcy proceeding was or is affiliated with the franchisor, state the relationship. If the debtor in a bankruptcy proceeding is unaffiliated with the franchisor, state the name, address and principal business of the bankrupt company.

ii. Disclose that the entity filed bankruptcy or reorganization under the bankruptcy law and the date of the original filing.

iii. Identify the bankruptcy court, and the case name and number. Put this information in parentheses.

iv. State the date on which the debtor obtained a discharge in bankruptcy (including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the U.S. Bankruptcy Code).

v. Disclose other material facts.

vi. Cases, actions and other proceedings under the laws of foreign nations relating to bankruptcy proceedings should be included in answers, where responses are required, as if those cases, actions and proceedings took place under the U.S. Bankruptcy Code.

vii. If information is disclosed in this Item, at the end of the

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Adopted by NASAA on April 25, 1993
disclosure add sample answer 4-1 with the qualification "other than these actions."

viii. Use Sample Answer 4-1 if no person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings or any person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings but the bankruptcy proceedings (under the U.S. Bankruptcy Code or its predecessor, the National Bankruptcy Act of 1898) were discharged more than 10 years ago. "Person" includes natural persons and legal entities listed in Items 1 and 2. Person does not include anyone acting solely as the franchisor's agent for service of process.

Sample Answer 4-1

No person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

Sample Answer 4-2

On March 2, 1984, Belmont filed a petition to reorganize under Chapter 11 of the U.S. Bankruptcy Code. We were allowed to continue to operate under bankruptcy court supervision. On October 2, 1985, the bankruptcy court approved our plan of reorganization and discharged the proceedings. (US Bankruptcy Court for the District of ___________ Case B 84-301).

Belmont’s present president, Roger Nowe, was president of Acme Muffler Service, Inc., a Houston, Texas based manufacturer of exhaust systems, from July 1, 1978, through June 30, 1983. On June 6, 1983, an involuntary petition under the U.S. Bankruptcy Code was filed against Acme by its creditors. On July 14, 1983, the court entered an order of relief. Acme sold its assets and was dissolved.

Other than these 2 actions, no person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

Adopted by NASAA on April 25, 1993

Item 5

INITIAL FRANCHISE FEE

DISCLOSE THE INITIAL FRANCHISE FEE AND STATE THE CONDITIONS WHEN THIS FEE IS REFUNDABLE.

Item 5 Instructions:

i. "Initial fee" includes all fees and payments for services or goods received from the franchisor before the franchisee's business opens. "Initial fee" includes all fees and payments whether payable in lump sum or installments.

ii. If the initial fee is not uniform, disclose the formula or the range of initial fees paid in the fiscal year before the application date and the factors that determined the amount.

iii. Disclose installment payment terms in this Item or in Item 10.

Sample Answer 5-1

All franchisees pay a $10,000 lump sum franchise fee when they sign the franchise agreement. Belmont will refund the entire amount if we do not approve your application within 45 days. Belmont will refund $5,000 of this fee if you do not satisfactorily complete your 2-week training. There are no refunds under other circumstances.

Sample Answer 5-2

You must pay a franchise license fee of $____ per thousand licensed drivers who reside within your exclusive area when the franchise agreement is signed. The number of licensed drivers is determined by the latest abstract of the state agency which issues driver's licenses. The minimum fee is $20,000. When you send your application, you must pay a non-refundable $500 application fee. You must pay an additional $10,000 when you receive your equipment. The balance of your fee is payable in 12 equal monthly installments of $____. The first installment payment is due 1 year after your shop opens. Belmont charges 10% annual interest on the unpaid balance. Interest compounds daily and accrues from the date that you receive your equipment. All buyers pay this uniform fee and receive the same financing terms on the fee. If your application is not accepted, Belmont retains the $500 for investigative costs, but you are not liable for the $19,500 remainder. Belmont does not give refunds under other circumstances.

Adopted by NASAA on April 25, 1993
Item 4

OTHER FEES

DISCLOSE OTHER RECURRING OR ISOLATED FEES OR PAYMENTS THAT THE FRANCHISEE MUST PAY TO THE FRANCHISOR OR ITS AFFILIATES OR THAT THE FRANCHISOR OR ITS AFFILIATES IMPOSE OR COLLECT IN WHOLE OR IN PART ON BEHALF OF A THIRD PARTY. INCLUDE THE FORMULA USED TO COMPUTE THESE OTHER FEES AND PAYMENTS. IF ANY FEES ARE REFUNDABLE, STATE THE CONDITIONS WHEN EACH FEE OR PAYMENT IS REFUNDABLE.

Item 6 Instructions:

i. First disclose fees in tabular form. Use footnotes or a "remarks" column to elaborate on the information in the table or to disclose caveats. If elaborations are lengthy, use footnotes instead of a remarks column.

ii. Disclose the amount of each fee. A dollar amount or a percentage of gross sales is acceptable if the term gross sales is defined. If dollar amounts may increase, disclose the formula which determines the increase or the maximum amount of the increase.

iii. Disclose the due date for recurring payments.

iv. If all fees are payable to only the franchisor, disclose this in a footnote.

v. If all fees are imposed and collected by the franchisor, disclose this in a footnote.

vi. If all fees are non-refundable, state this in a footnote.

vii. Disclose the voting power of franchisor owned outlets on any fees imposed by cooperatives. If franchisor outlets have controlling voting power, disclose a range for the fee. Disclose this information in a footnote or a "remarks" column.

viii. The franchisor need not repeat information contained in Items 8 & 9, but the table should direct the franchisees to those items.

ix. Examples of fees are royalty, lease negotiation, construction, remodeling, additional training, advertising, group advertising, additional assistance, audit, accounting/inventory, and transfer and renewal fee.

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Sample Answer 6-1

<table>
<thead>
<tr>
<th>Name of fee</th>
<th>Amount</th>
<th>Due Date</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royalty*</td>
<td>4% of total</td>
<td>Payable monthly on</td>
<td></td>
</tr>
<tr>
<td></td>
<td>gross sales</td>
<td>the 10th day of the</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>next month</td>
<td></td>
</tr>
<tr>
<td>Advertising*</td>
<td>2% of total</td>
<td>Same as Royalty</td>
<td></td>
</tr>
<tr>
<td></td>
<td>gross sales</td>
<td>fee</td>
<td></td>
</tr>
<tr>
<td>Cooperative</td>
<td>Maximum - 2% of</td>
<td>Established by</td>
<td></td>
</tr>
<tr>
<td>Advertising*</td>
<td>total gross sales</td>
<td>franchisees</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional</td>
<td>$1,000 per</td>
<td>2 weeks prior to</td>
<td>Belmont trains 2 persons free -</td>
</tr>
<tr>
<td>Training*</td>
<td>person</td>
<td>beginning of training</td>
<td>See Item 11</td>
</tr>
<tr>
<td>Additional</td>
<td>$500 per day</td>
<td>30 days after</td>
<td>Belmont provides opening</td>
</tr>
<tr>
<td>Assistance*</td>
<td></td>
<td>billing</td>
<td>assistance free - See Item 11</td>
</tr>
<tr>
<td>Transfer*</td>
<td>$1,000</td>
<td>Prior to</td>
<td>Payable when you sell your</td>
</tr>
<tr>
<td></td>
<td></td>
<td>consummation of</td>
<td>franchise. No charge if</td>
</tr>
<tr>
<td></td>
<td></td>
<td>transfer</td>
<td>franchise transferred to a</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>corporation which you control</td>
</tr>
</tbody>
</table>

\* All fees are imposed by and are payable to Belmont. All fees are non-refundable.

Adopted by NASAA on April 25, 1993
<table>
<thead>
<tr>
<th>Name of Fee</th>
<th>Amount</th>
<th>Due Date</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Audit¹</td>
<td>Cost of audit plus 1% interest on underpayment²</td>
<td>30 days after billing</td>
<td>Payable only if audit shows an understatement of at least 3% of gross sales for any month.</td>
</tr>
<tr>
<td>Renewal Fee</td>
<td>$1,000</td>
<td>30 days before renewal</td>
<td></td>
</tr>
</tbody>
</table>

**Item 7**

INITIAL INVESTMENT

DISCLOSE THE FOLLOWING EXPENDITURES STATING TO WHOM THE PAYMENTS ARE MADE, WHEN PAYMENTS ARE DUE, WHETHER EACH PAYMENT IS REFUNDABLE, THE CONDITIONS WHEN EACH PAYMENT IS REFUNDABLE, AND, IF PART OF THE FRANCHISER'S INITIAL INVESTMENT IN THE FRANCHISE MAY BE FINANCED, AN ESTIMATE OF THE LOAN REPAYMENTS, INCLUDING INTEREST:

A. REAL PROPERTY, WHETHER PURCHASED OR LEASED. IF NEITHER ESTIMABLE NOR DESCRIBABLE BY A LOW-HIGH RANGE, DESCRIBE REQUIREMENTS, SUCH AS PROPERTY TYPE, LOCATION AND BUILDING SIZE.

B. EQUIPMENT, FIXTURES, OTHER FIXED ASSETS, CONSTRUCTION, REMODELING, LEASEHOLD IMPROVEMENTS AND DECORATING COSTS, WHETHER PURCHASED OR LEASED.

C. INVENTORY REQUIRED TO BEGIN OPERATION.

D. SECURITY DEPOSITS, UTILITY DEPOSITS, BUSINESS LICENSES, OTHER PREPAID EXPENSES.

E. ADDITIONAL FUNDS REQUIRED BY THE FRANCHISER BEFORE OPERATIONS BEGIN AND DURING THE INITIAL PHASE OF THE FRANCHISE.

F. OTHER PAYMENTS THAT THE FRANCHISER MUST MAKE TO BEGIN OPERATIONS.

**Item 7 Instructions:**

i. Begin disclosure by listing expenditures in tabular form. List preopening expenses first. Use footnotes to comment on expected expenditures.

ii. Disclose payments required by the franchise agreement and all costs necessary to begin operation of the franchise and operate the franchise during the initial phase of the business. A reasonable time for the initial phase of the business is at least 3 months or a reasonable period for the industry. Include an entry titled "additional funds" and disclose the length of the initial phase in the entry.

iii. If a specific expenditure amount is not ascertainable, use a low-high range based on the franchisor's current experience. If real property costs cannot be estimated in a low-high range, disclose the approximate size of the property and building involved. Describe the probable location of the building (for

1/ All fees are imposed by and are payable to Belmont. All fees are non-refundable.

2/ Interest begins from the date of the underpayment.

-24- Adopted by NASAA on April 25, 1993

-25- Adopted by NASAA on April 25, 1993
iv. The franchisor may include additional expenditure tables to show expenditure variations caused by differences in site location, premise size, etc. Describe in general terms the factors, basis and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.

v. If the franchisor or an affiliate finances part of the initial investment, state the expenditures that it will finance. State the required down payment, annual percentage rate of interest, rate factors, and the estimated loan repayments. Make the discussion brief, and refer to Item 10.

vi. Total the initial investment. This total should be the same as the total investment on the offering circular cover.

---

### SAMPLE ANSWER 1

**Your Estimated Initial Investment**

<table>
<thead>
<tr>
<th>AMOUNT</th>
<th>METHOD OF PAYMENT</th>
<th>WHEN DUE</th>
<th>TO WHOM PAYMENT IS TO BE MADE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INITIAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>FRANCHISE FEE</td>
<td>$20,000</td>
<td>Lump Sum</td>
<td>At Signing of Franchise Agreement</td>
</tr>
<tr>
<td></td>
<td>(Note 1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TRAVEL AND LIVING EXPENSES</td>
<td>$2,000 to As</td>
<td>Incurred</td>
<td>During Training</td>
</tr>
<tr>
<td>TRAVEL AND LIVING EXPENSES</td>
<td>$2,000</td>
<td>Lump Sum</td>
<td>Prior to Opening</td>
</tr>
<tr>
<td>EQUIPMENT</td>
<td>$40,000</td>
<td>Lump Sum</td>
<td>Prior to Opening</td>
</tr>
<tr>
<td>EQUIPMENT</td>
<td>(Note 2)</td>
<td>(Note 2)</td>
<td>(Note 2)</td>
</tr>
<tr>
<td>SITES</td>
<td>$2,500</td>
<td>Lump Sum</td>
<td>Prior to Opening</td>
</tr>
<tr>
<td>SITES</td>
<td>(Note 3)</td>
<td>(Note 3)</td>
<td>(Note 3)</td>
</tr>
<tr>
<td>MISCELLANEOUS OPENING COSTS</td>
<td>$8,000</td>
<td>As Incurred</td>
<td>As Utilities</td>
</tr>
<tr>
<td>MISCELLANEOUS OPENING COSTS</td>
<td>(Note 4)</td>
<td>(Note 4)</td>
<td>(Note 4)</td>
</tr>
<tr>
<td>OPENING INVENTORY</td>
<td>$8,000</td>
<td>Lump Sum</td>
<td>Prior to Opening</td>
</tr>
<tr>
<td>ADVERTISING FEE-1 months</td>
<td>$500</td>
<td>Monthly</td>
<td>Belcourt</td>
</tr>
<tr>
<td>ADDITIONAL FUNDS - 2 months</td>
<td>$50,000 to As</td>
<td>Incurred</td>
<td>As Employees, Suppliers, Utilities</td>
</tr>
<tr>
<td>ADDITIONAL FUNDS - 2 months</td>
<td>(Note 6)</td>
<td>(Note 6)</td>
<td>(Note 6)</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$1,000,295</td>
<td>(Note 7)</td>
<td>(Note 7)</td>
</tr>
</tbody>
</table>

Adopted by NASAA on April 25, 1993
Notes:

(1) See Item 5 for the conditions when this fee is partly refundable. Belmont does not finance any fee.

(2) If you do not own adequate shop space, you must lease the land and building for the Belmont muffler shop. Typical locations are light industrial and commercial areas. The typical Belmont Muffler Shop has 5,000 - 8,000 square feet. Former three or four bay gasoline service stations have been converted with relative ease into Belmont Muffler Shops. Rent is estimated to be between $12,000 - 25,000 per year depending on factors such as size, condition and location of the leased premises.

(3) This payment is fully refundable before equipment installation. After installation, Belmont deducts $1,000 installation costs from your refund.

(4) Includes security deposits, utility costs, incorporation fees.

(5) This payment is fully refundable before Belmont delivers your inventory. After delivery Belmont deducts a 10% restocking fee from your refund.

(6) This estimates your initial start up expenses. These expenses include payroll costs. These figures are estimates and Belmont cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow Belmont's methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period.

(7) Belmont relied on its 30 years of experience in the muffler business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.

(8) Belmont does not offer direct or indirect financing to franchisees for any items.
sales or leases. These amounts should be taken from the
franchisor's statement of operations (or profit and loss
statement) from the most recent annual audited financial
statement attached to the offering circular. If the franchisor's
annual audited financial statement is not required to be attached
to the offering circular or if the franchisor's affiliate sells
or leases required products or services to franchisees, disclose
the sources of information used in computing revenues.

iv. State how the franchisor formulates and modifies
specifications and standards imposed on franchisees.

v. Disclose whether specifications and standards are issued to
franchisees, subfranchisees, or approved suppliers.

vi. Describe how suppliers are evaluated, approved or
disapproved. Disclose whether the franchisor's criteria for
supplier approval are available to franchisees. State the fees
and procedure to secure approval and how approvals are revoked.
State the time period when the franchisee will receive
notification of approval or disapproval.

vii. If the designated supplier will make payments to the
franchisor because of transactions with franchisees, disclose the
basis for the payment. Specify a percentage or a flat amount.
Purchases of similar goods or services by the franchisor at a
lower price than that available to franchisees is a payment.

viii. Disclose whether the franchisor negotiates purchase
arrangements with suppliers (including price terms) for the
benefit of franchisees.

ix. Disclose whether the franchisor provides material benefits
(for example renewal or granting additional franchises) to a
franchisee based on a franchisee's use of designated or approved
sources.

x. Use sample answer 8-1 if the response to Item 8 is negative.

---

Sample Answer 8-1

Belmont has no required specifications, designated suppliers, or
approved suppliers for goods, services, or real estate relating to
your franchise business. Belmont will not derive revenue from
your purchases or leases.

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Sample Answer 8-2

You must purchase your pipe bending machine, hoist, cutting torch
and supplies under specifications in the operations manual.
These specifications include standards for delivery, performance,
design and appearance. You may purchase this equipment from
Belmont's affiliate, Ruffer Supply Co., at an approved supplier
of mufflers to franchisees. In the year ending December 31, 1992,
Belmont's total revenues were $500,000. Of this, 5% of Belmont's
revenues were $25,000. The purchase of mufflers from approved
suppliers represents 10% of your total purchases in accordance with
specifications established by your store.

Belmont's affiliate, Ruffer Supply Co., is an approved supplier
of mufflers to franchisees. In the year ending December 31,
1992, the affiliate's revenues were $2,000,000. The purchase of mufflers from
approved sources will represent 15% of your overall
purchases in operating the store. Belmont has approved other
suppliers of mufflers and exhaust pipe. If you would like to
purchase these items from another supplier, you may request our
"Supplier Approval Criteria and Request Form." Based on the
information and samples you supply to us and your payment of a
$500 fee, we will test the items supplied and review the proposed
supplier's financial records, business reputation, delivery
typically completed in 30 days.

One of the approved suppliers of mufflers and exhaust pipes,
Scottie's Pipes, Inc., pays Belmont a rebate of 1% of all franchisee purchases
Advertising Fund. Another approved supplier, Michael's Clean-
Air, Inc., pays Belmont 2% of all franchisee purchases of
catalytic converter cleaner. This amount is used in Belmont's training
center for classes in catalytic converter repair and replacement.

"30" Adopted by NASAA on
April 25, 1993

"31" Adopted by NASAA on
April 25, 1993
Item 9

FRANCHISEE'S OBLIGATIONS

DISCLOSE THE PRINCIPAL OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE AND OTHER AGREEMENTS AFTER THE SIGNING OF THESE AGREEMENTS.

Item 9 Instructions:

i. Disclose obligations in tabular form. Refer to the section of the agreement that contains the obligation and any item of the Offering Circular that further describes the obligation.

ii. The table should contain a response to each category listed below. If the response to any category is that no obligation is imposed, the table should state that. Do not change the names of the categories. Fill all obligations within the listed categories. If other material obligations fall outside the scope of all of the prescribed categories, add additional categories as needed. The categories of franchisee obligations are:

a. Site selection and acquisition/lease
b. Pre-opening purchases/leases
c. Site development and other pre-opening requirements
d. Initial and ongoing training
e. Opening
f. Fees
g. Compliance with standards and policies/Operating Manual
h. Trademarks and proprietary information
i. Restrictions on products/services offered
j. Warranty and customer service requirements
k. Territorial development and sales quotas
l. Ongoing product/service purchases
m. Maintenance, appearance and remodeling requirements
n. Insurance
o. Advertising
p. Indemnification
q. Owner's participation/management/staffing
r. Records and reports
s. Inspections and audits
t. Transfer
u. Renewal
v. Post-termination obligations
w. Non-competition covenants
x. Dispute resolution
y. Other (describe)

iii. Before the table, state the following:

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

Sample Answer 2

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

<table>
<thead>
<tr>
<th>Obligation</th>
<th>Section in Agreement</th>
<th>Item in Offering Circular</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Site selection and acquisition/lease</td>
<td>Sectic 3A of Franchise Agreement</td>
<td>Items 6 and 11</td>
</tr>
<tr>
<td>b. Pre-opening purchases/leases</td>
<td>Section 3B of Franchise Agreement</td>
<td>Item 8</td>
</tr>
<tr>
<td>c. Site development and other pre-opening requirements</td>
<td>Sections 3A and 3B of Franchise Agreement</td>
<td>Items 6, 7 and 11</td>
</tr>
<tr>
<td>d. Initial and ongoing training</td>
<td>Section 5 of Franchise Agreement</td>
<td>Item 11</td>
</tr>
<tr>
<td>e. Opening</td>
<td>Section 4 of Franchise Agreement</td>
<td>Item 11</td>
</tr>
<tr>
<td>f. Fees</td>
<td>Section 6 of Franchise Agreement</td>
<td>Items 5 and 6</td>
</tr>
<tr>
<td>g. Compliance with standards and policies/Operating Manual</td>
<td>Section 8A of Franchise Agreement</td>
<td>Item 11</td>
</tr>
</tbody>
</table>

Adopted by NASAA on April 25, 1993
<table>
<thead>
<tr>
<th>Obligation</th>
<th>Section in Agreement</th>
<th>Item in Offering Circular</th>
</tr>
</thead>
<tbody>
<tr>
<td>h. Trademarks and proprietary information</td>
<td>Sections 7 and 11 of Franchise Agreement</td>
<td>Items 13 and 14</td>
</tr>
<tr>
<td>i. Restrictions on products/services offered</td>
<td>Section 12 of Franchise Agreement</td>
<td>Item 16</td>
</tr>
<tr>
<td>j. Warranty and customer service requirements</td>
<td>Section 8B of Franchise Agreement</td>
<td>Item 11</td>
</tr>
<tr>
<td>k. Territorial development and sales quotas</td>
<td>None</td>
<td></td>
</tr>
<tr>
<td>l. Ongoing product/service purchases</td>
<td>Section 9 of Franchise Agreement</td>
<td>Item 8</td>
</tr>
<tr>
<td>m. Maintenance, appearance and remodeling requirements</td>
<td>Sections 8C and 16 of Franchise Agreement</td>
<td>Item 11</td>
</tr>
<tr>
<td>n. Insurance</td>
<td>Section 13A of Franchise Agreement</td>
<td>Items 6 and 8</td>
</tr>
<tr>
<td>o. Advertising</td>
<td>Section 15 of Franchise Agreement</td>
<td>Items 6 and 11</td>
</tr>
<tr>
<td>p. Indemnification</td>
<td>Section 13B of Franchise Agreement</td>
<td>Item 6</td>
</tr>
<tr>
<td>q. Owner's participation/management/staffing</td>
<td>Sections 4, 5 and 14 of Franchise Agreement</td>
<td>Items 11 and 15</td>
</tr>
</tbody>
</table>

Adopted by NASAA on April 25, 1993
Item 10

FINANCING

DISCLOSE THE TERMS AND CONDITIONS OF EACH FINANCING ARRANGEMENT THAT THE FRANCHISOR, ITS AGENT OR AFFILIATES OFFERS DIRECTLY OR INDIRECTLY TO THE FRANCHISEE, INCLUDING:

Item 10 Instructions:

i. "Financing" includes leases and installment contracts.

ii. Payments due within 90 days on open account financing need not be disclosed under this Item.

iii. A written arrangement between a franchisor or its affiliate and a lender for the lender to offer financing to the franchisee or an arrangement in which a franchisor or its affiliate receives a benefit from a lender for franchisee financing is an "indirect offer of financing" and must be disclosed under this Item. The franchisor's guarantee of a note, lease or obligation of the franchisee is an "indirect offer of financing" and must be disclosed under this Item.

iv. If financing of the initial fee is disclosed in the Item 7 disclosure, a cross reference to Item 7 is sufficient if all the disclosure which Item 10 requires is provided in Item 7.

v. If an affiliate offers financing, identify the affiliate and its relationship to the franchisor.

vi. The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to entries in the chart to provide additional information required by these instructions that does not fit in the chart.

vii. If a financing arrangement is for the establishment of the franchised business, disclose what the financing covers, including:

a) Initial franchise fee;

b) Site acquisition;

c) Construction or remodeling;

d) Equipment or fixtures; and

e) Opening inventory or supplies.

viii. If the franchisor generally offers financing for the operation of the franchised business, disclose what the financing arrangement covers, including:

a) Inventory or supplies;

b) Replacement equipment or fixtures; and

c) Other continuing expenses.

ix. Disclose the terms of each financing arrangement, including:

a) The identity of the lender(s) providing the financing and its relationship to the franchisor (for example, affiliate);

b) The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed;

c) The annual percentage rate of interest ("APR") charged, computed as provided by Sections 106-107 of the Consumer Protection Credit Act, 15 U.S.C. §§ 106-107. If the APR may differ depending on when the financing is issued, disclose the APR on a specified recent date;

d) The number of payments or the period of repayment;

e) Nature of security interest required by the lender;

f) Whether a person other than the franchisee (for example, spouse, shareholder of the franchisee) must personally guarantee the debt;

g) Whether the debt can be prepaid and the nature of any prepayment penalty;

h) The franchisee's potential liabilities upon default, including any accelerated obligation to pay the entire amount due, court costs and attorney's fees for collection, and termination of the franchise, or other cross default clauses whether directly, as a result of non-payment, or indirectly, as a result of loss of necessary facilities; and

i) Other material financing terms.

x. Include specimen copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms. Put this information in parentheses at the end of the description of the term.

xi. Use Sample Answer 10-1 if the franchisor does not offer financing.
A. A WAIVER OF DEFENSES OR SIMILAR PROVISIONS IN A DOCUMENT.

Item 10A Instructions:

i. Describe the terms of waivers of legal rights by the franchisee under the terms of the financing arrangement (for example, confession of judgment).

ii. Describe provisions of the loan agreement that bar the franchisee from asserting a defense against the lender, the lender's assignee or the franchisor.

iii. If the loan agreement does not contain the provisions in (i) or (ii), disclose that fact.

iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

B. THE FRANCHISOR'S PRACTICE OR INTENT TO SELL, ASSIGN, OR DISCOUNT TO A THIRD PARTY ALL OR PART OF THE FINANCING ARRANGEMENT.

Item 10A Instructions:

i. Practice includes past or present practice and future intent to sell or assign franchisee financing arrangements.

ii. Disclose the assignment terms including whether the franchisor will remain primarily obligated to provide the financed goods or services.

iii. If the franchisor may sell or assign its rights under the financing agreement, disclose that the franchisor may lose all its defenses against the lender as a result of the sale or assignment.

iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

v. If no disclosure is required by Instruction 10B, disclose that fact.

C. PAYMENTS TO THE FRANCHISOR OR AN AFFILIATE(S) FOR THE PLACEMENT OF FINANCING WITH THE LENDER.

Item 10C Instructions:

i. Describe the payments.

Sample Answer 10-1
Belmont does not offer direct or indirect financing. Belmont does not guarantee your note, lease or obligation.

Sample Answer 10-2

<table>
<thead>
<tr>
<th>ITEM FINANCING</th>
<th>AMOUNT</th>
<th>DUE PAYMENT</th>
<th>INTEREST</th>
<th>MONTHLY PAYMENT</th>
<th>SECURITY REQUIRED</th>
<th>LIABILITY</th>
<th>LOSOF</th>
<th>LATE</th>
<th>NET</th>
<th>METHOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>CARRIER FEE</td>
<td>$10,000</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>PERSONAL GUARANTEE</td>
<td>INTEGRITY Card</td>
<td>LATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>LEASE SPACE</td>
<td>$10,000</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>PERSONAL GUARANTEE</td>
<td>INTEGRITY Card</td>
<td>LATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EQUIPMENT LEASE</td>
<td>$15,000</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>PERSONAL GUARANTEE</td>
<td>INTEGRITY Card</td>
<td>LATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OPENING SET UP</td>
<td>$2,000</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>PERSONAL GUARANTEE</td>
<td>INTEGRITY Card</td>
<td>LATE</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>OTHER FINANCING</td>
<td>$0</td>
<td>10%</td>
<td>10%</td>
<td>10%</td>
<td>PERSONAL GUARANTEE</td>
<td>INTEGRITY Card</td>
<td>LATE</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Adopted by NASAA on April 25, 1993

Adopted by NASAA on April 25, 1993
NOTE 1 - If you meet Belmont's credit standards, Belmont will finance the $10,000 initial franchise fee over a 10-year period at an APR of 15%. Only security贝尔mont requires is a personal guarantee of the note by you and your spouse or by all the shareholders of your corporation. (Loan Agreement Section 1) The note can be prepaid without penalty at any time during its 10-year term. (Loan Agreement Section 1) If you do not pay on time, Belmont can call the loan and demand immediate payment of the full outstanding balance and obtain court costs and attorney's fees in a collection action is necessary. (Loan Agreement Section 1) Belmont also has the right to terminate your franchise if you do not make your payments on time more than three times during the note term. (Loan Agreement Section 1) You waive your rights to notice of a collection action and to assert any defenses to collection against Belmont. (Loan Agreement Section 1) Belmont discounts these notes to a third party who may beimmune under the law to any defenses to payment you may have against Belmont. (Loan Agreement Section 1)

NOTE 2 - In most cases Belmont will sublease the franchised premise to you but will guarantee your lease with a third party if you have acceptable credit and that is the only way to obtain an exceptional location. (Lease Section 1) The precise terms of Belmont's standard lease in Exhibit B will vary depending on the size and location of the premises, but the chart reflects a typical range of payments for Belmont's standard 6-day franchise outlet, including payment of one month's rent as a security deposit. (Lease Section 1) The only other security Belmont requires is a personal guarantee of the lease by you and your spouse or by all the shareholders of your corporation. (Lease Section 1) The lease can be prepaid without penalty at any time during its term. (Lease Section 1) If you do not make a rent payment on time, Belmont has the right to collect the unpaid rent plus an additional two months rent, as liquidated damages. (Lease Section 1) Belmont can also obtain court costs and attorney's fees if a collection action is necessary. (Lease Section 1) If you are late with your rent more than three times during the lease term, Belmont has the right to terminate the lease, take over the premises, and terminate your franchise. If Belmont guarantees your lease, Belmont will require you to sign a guarantee agreement in Exhibit F (Lease Section 1). This gives Belmont the same legal rights as the sublease but requires you to give Belmont the right to approve your lease and pay the rent for you if you fail to pay on time. (Lease Section 1)

NOTE 3 - If you want to lease the pipe bending machine and other equipment you need, Belmont has arranged an equipment lease (see Exhibit C) from USA Credit Corporation of Las Vegas, Nevada. If you choose this option, you will pay $100 a month for 60 months (9 years) at an APR of 15% based on a cash price of $5,000, with no money down. (Equipment Lease Section 1) At the end of the lease term, you may purchase the equipment with a one-time payment of $2,500. (Equipment Lease Section 1) USA Credit requires a personal guarantee from you and your spouse or from all the shareholders of your corporation and retains a security interest in the equipment. (Equipment Lease Section 1) The equipment lease can be prepaid at any time, but the interest you might otherwise save will be reduced by application of the Rule of 78's for computing finance charges. (Equipment Lease Section 1) If you do not make a payment on time, USA Credit can demand payment of all past due payments, remove the equipment, and charge you $1,000 as liquidated damages. (Equipment Lease Section 1) USA Credit can also recover its costs of collection, including court costs and attorney's fees. (Equipment Lease Section 1) While Belmont does not know USA Credit's policies, USA Credit may discount the lease to a third party who may be immune under the law to claims or defenses you may have against USA Credit, the equipment manufacturer or Belmont. Belmont receives a referral fee of $500 from USA Credit for every franchisee who leases equipment from it.

NOTE 4 - If you prefer, Belmont will sell you the pipe bending machine and other necessary equipment on time (Equipment Purchase Agreement Section 1). Belmont requires a 25% down payment of $1,250. (Equipment Purchase Agreement Section 1) Belmont will finance the remainder over a 2-year period at your option at an APR of 15%. (Equipment Purchase Agreement Section 1) Payments range from $224.11 a month over 7 years to $821.46 a month over 2 years. (Equipment Purchase Agreement Section 1) Belmont's standard equipment financing note in Exhibit D must be personally guaranteed by you and your spouse or by all the shareholders of your corporation, and Belmont will retain a security interest in the equipment. (Equipment Purchase Agreement Section 1) You may purchase the equipment at any time during the lease period by paying the remainder of the principal plus a $500 prepayment penalty. (Equipment Purchase Agreement Section 1) If you do not make a payment on time, Belmont can demand all overdue payments, repossess the equipment, and terminate your franchise. Belmont can also recover its costs of collection, including court costs and attorney's fees. (Equipment Purchase Agreement Section 1) Except as disclosed in Note 1, Belmont does not offer financing that requires you to waive notice, confess judgment or waive a defense against Belmont or the lender, although you may lose your defenses against Belmont and others in a collection action on a note that is sold or discounted, as disclosed in Notes 2 and 3. Except as disclosed in Note 3, Belmont does not arrange financing from other sources.

Adopted by NASAA on April 25, 1993
Except as disclosed in Notes 1 and 3, commercial paper from
franchisees has not been and is not sold or assigned to anyone,
and Belmont has no plans to do so.

Except as disclosed in Note 1, Belmont does not receive direct or
indirect payments for placing financing.

Except as disclosed in Note 2, Belmont does not guarantee your
obligations to third parties.

ITEM 11
FRANCHISOR'S OBLIGATIONS

DISCLOSE THE FOLLOWING:
A. THE OBLIGATIONS THAT THE FRANCHISOR WILL PERFORM BEFORE THE
FRANCHISE BUSINESS OPENS. CITATE BY SECTION THE PROVISIONS OF THE
AGREEMENT REQUIRING PERFORMANCE.

ITEM 11A INSTRUCTIONS:
i. Begin the disclosure by stating: "Except as listed below,
the franchisor need not provide any assistance to you."

ii. Pre-opening obligations include assistance to:

a) Locate a site for the franchised business and
negotiate the purchase or lease of this site. State
whether the franchisor generally owns the premises
and leases it to the franchisee;

b) Conform the premises to local ordinances and
building codes and obtain the required permits (i.e.,
health, sanitation, building, driveway, utility and
sign permits);

c) Construct, remodel or decorate the premises for
the franchised business;

d) Purchase or lease equipment, signs, fixtures,
opening inventory and supplies. Disclose whether
the franchisor provides these items directly or
merely the names of approved suppliers. Disclose
whether the franchisor provides written
specifications for these items. Disclose whether the
franchisor delivers or installs these items. (The
franchisor may cross reference Item 8 for details);

and

e) Hire and train employees.

iii. After describing the obligation, cite the section number of
the agreement imposing the obligation. Put the citation in
parentheses. Use this format throughout this item.
B. THE OBLIGATIONS TO BE MET BY THE FRANCHISOR DURING THE OPERATION OF THE FRANCHISE BUSINESS.

ITEM 118 INSTRUCTIONS:

i. Include assistance in:

a) Products or services to be offered by the franchisee to its customers;

b) Hiring and training of employees;

c) Improvements and developments in the franchised business;

d) Pricing;

e) Administrative, bookkeeping, accounting and inventory control procedures; and

f) Operating problems encountered by the franchisee.

ii. For the franchisor's advertising program for the product or service offered by the franchisee:

a) Disclose the media in which the advertising may be disseminated (for example, print, radio, or television).

b) Disclose whether the coverage of the media is local, regional, or national in scope.

c) Disclose the source of the advertising. (For example, in-house advertising department, a national or regional advertising agency).

d) Disclose the conditions when the franchisor permits franchisees to use their own advertising material.

e) If there is an advertising council composed of franchisees that advises the franchisor on advertising policies, disclose:

(1) How members of the council are selected.

(2) Whether the council serves in an advisory capacity only or has operational or decision-making power.

(3) Whether the franchisor has the power to form, change, or dissolve the advertising council.

f) If the franchisees must participate in a local or regional advertising cooperative, disclose:

(1) How the area or membership of the cooperative is defined.

(2) How the franchisee's contribution to the cooperative is calculated (may reference Item 6).

(3) Who is responsible for administration of the cooperative (for example, franchisor, franchisees, advertising agency).

(4) Whether cooperatives must operate from written governing documents and whether the documents are available for review by the franchisee.

(5) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.

(6) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved or merged.

g) If applicable, for each advertising fund not described in above subpart (f), disclose:

(1) Who contributes to each fund (for example, franchisees, franchisor, franchisor-owned units, outside vendors or suppliers).

(2) Whether the franchisor-owned units contribute to the fund and, if so, whether it is on the same basis as franchisees.

(3) How much the franchisees must contribute to the advertising fund(s) (may reference Item 6) and whether other franchisees are required to contribute at a different rate (it is not necessary to disclose the specific rates).

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(4) Who administers the fund(s). Whether the fund is audited and when, and whether financial statements of the fund are available for review by the franchisee.

(5) Use of the fund(s) in the most recently concluded fiscal year, the percentages spent on production, media placement, administrative expenses, and other (with a description of what constitutes "other"). Totals should equal 100%.

(6) Whether the franchisor or an affiliate receives payment for providing goods or services to an advertising fund.

h) State whether the franchisor must spend any amount on advertising in the area or territory where the franchise is located.

i) If all advertising fees are not spent in the fiscal year in which they accrue, explain how the franchisor uses the remaining amounts. Indicate whether franchisees will receive a periodic accounting of how advertising fees are spent.

j) Disclose the percentage of advertising funds, if any, used for advertising that is principally a solicitation for the sale of franchises.

k) Cross reference Items 6, 8 and 9.

iii. If the franchisor requires that franchisees buy or use electronic cash register or computer systems, provide a general description of the systems in non-technical language:

a) Identify each hardware component and software program by brand, type and principal functions.

1) If the hardware component or software program is the proprietary property of the franchisor, an affiliate or a third party, state whether the franchisor, an affiliate or a third party has the contractual right or obligation to provide ongoing maintenance, repairs, upgrades or updates. Disclose the current annual cost of any optional or required maintenance and support contracts, upgrades and updates.

2) If the hardware component or software program is the proprietary property of a third party, and no compatible equivalent component or program has been approved by the franchisor for use with the system to perform the same functions, identify the third party by name, business address and telephone number, and state the length of time the component or program has been in continuous use by the franchisor and its franchisees.

3) If the hardware component or software program is not proprietary, identify compatible or equivalent components or programs that perform the same functions and indicate whether they have been approved by the franchisor.

b) State whether the franchisee has any contractual obligation to upgrade or update any hardware component or software program during the term of the franchise, and if so, whether there are any contractual limitations on the frequency and cost of the obligation.

c) For each electronic cash register system or software program, describe how it will be used in the franchisee's business, and the types of business information or data that will be collected and generated. State whether the franchisor will have independent access to the information and data, and if so, whether there are any contractual limitations on the franchisor's right to access the information and data.

iv. After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses.

v. Disclose if the franchisor is not obligated to provide or to assist the franchisee to obtain the above items or services.

vi. Do not repeat, but do cross reference disclosure made in Item 6.

vii. Disclose the table of contents of the operating manual(s) provided to the franchisee as of the franchisor's last fiscal year end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. Alternatively, this disclosure may be omitted if the prospective franchisee views the manual before purchase of the franchise.

C. THE METHODS USED BY THE FRANCHISOR TO SELECT THE LOCATION OF THE FRANCHISOR'S BUSINESS.

Item 11C: Instructions:

1. Disclose whether the franchisor selects the site or approves an area within which the franchisee selects a site. Disclose how and whether the franchisor must approve a franchisee selected site.
ii. Disclose the factors which the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings and lease terms).

iii. Disclose the time limit for the franchisor to locate or to approve or disapprove the site. Disclose the consequences if the franchisor and franchisee cannot agree on a site.

iv. Disclosures made in response to Item 11A need not be repeated or cross-referenced in the response to Item 11C.


Item 11D Instructions:

i. Disclosure may be a range of times if the range is specific.

ii. Describe the factors which may affect the time period such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures and signs.

E. THE TRAINING PROGRAM OF THE FRANCHISOR AS OF THE FRANCHISOR'S LAST FISCAL YEAR END OR A MORE RECENT DATE INCLUDING:

(1) THE LOCATION, DURATION AND GENERAL OUTLINE OF THE TRAINING PROGRAM;

(2) HOW OFTEN THE TRAINING PROGRAM WILL BE CONDUCTED;

(3) THE EXPERIENCE THAT THE INSTRUCTORS HAVE WITH THE FRANCHISOR;

(4) CHARGES TO BE MADE TO THE FRANCHISEE AND WHO MUST PAY TRAVEL AND LIVING EXPENSES OF THE ENROLLING IN THE TRAINING PROGRAM;

(5) IF THE TRAINING PROGRAM IS NOT MANDATORY, THE PERCENTAGE OF NEW FRANCHISEES THAT ENROLLED IN THE TRAINING PROGRAM DURING THE PRECEDING 12 MONTHS; AND

(6) WHETHER ANY ADDITIONAL TRAINING PROGRAMS AND/OR REFRESHER COURSES ARE REQUIRED.

Sample Answer 11

Except as disclosed below, Belmont need not provide any assistance to you.

Before you open your business, Belmont will:

1) Designate your exclusive territory (Franchise Agreement - paragraph 3).

2) Assist you in selecting a business site. Your site must be at least 16,000 square feet in area, have parking spaces, and an average of 18 cars per hour driving by. We must approve or disapprove your site within 20 days after you receive notice of the location.

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Within 30 days of your signing the Franchise Agreement, assist you to find and negotiate the lease or purchase of a location for your muffler shop (Franchise Agreement - paragraph ____). Your store location will be purchased or leased by you from independent third parties.

Within 60 days of your signing the Franchise Agreement, provide written specifications for store construction or remodeling and for all required and replacement equipment, inventory and supplies. (Franchise Agreement - paragraph ____) See Item 8 of this offering circular.

Within 60 days of your signing the Franchise Agreement, provide blueprints for your store construction or remodeling and obtain health, sanitation, building, utility and sign permits for your premises. You pay for the construction or remodeling. (Franchise Agreement - Paragraph ____) Within 60 days of your signing the Franchise Agreement, train you and one other person as follows:

SUBJECT | TIME BEGIN | INSTRUCTIONAL | HOURS OF MISTAKES | HOURS OF INSTRUCTOR CLASSESS | ON THE JOB | TRAINING | TRAINING |

Belmont does not charge for this training or service, but you must pay the travel and living expenses for you and your employees. All training occurs at Belmont's Jackson, Minnesota headquarters.

During the operation of the franchised business, Belmont will:

1) Develop new products and methods and provide you with information about developments. (Franchise Agreement - Paragraph ____) Each week for the first 90 days after you open your shop, Belmont will telephone to discuss your operational problems.

Belmont will hold annual conferences to discuss sales techniques, personal training, bookkeeping, accounting, inventory control, performance standards, advertising programs and merchandising procedures. There is no conference fee, but you must pay all your travel and living expenses. These elective conferences are chosen by a majority vote of all franchisees.

Belmont provides advertising materials and services to you through a national advertising fund (the "National Fund"). Materials provided by the National Fund to all franchisees include video and audio tapes, data, posters, banners and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies you must pay duplication costs.

You may develop advertising materials for your own use, at your own cost. Belmont must approve the advertising materials in advance and in writing.

Belmont occasionally provides for placement of advertising on behalf of the entire Belmont system, including franchisees. However, most placement is done on a local basis, typically by local advertising agencies hired by individual franchisees or advertising cooperatives. Belmont reserves the right to use national media (including broadcast, print or other media) in the future. In the past Belmont has used an outside advertising agency to create and place advertising. Neither Belmont nor its affiliate receives payment from the National Fund. Advertising funds are used to promote the product sold by the franchisees and are not used to sell additional franchises.

The National Fund is a nonprofit corporation which collects advertising fees from all franchisees. Each franchisor owns a store of Belmont contributes to the National Fund on the same basis as franchisees. All payments to the National Fund must be spent on advertising, promotion and marketing of goods and services provided by Belmont muffler shops. You must contribute the "Advertising Fees and Expenses." The National Fund is administered by Belmont's accounting and marketing personnel under the direction of the Advertising Council. An annual audited financial statement of the National Fund (ending on December 31, 1990), the National Fund spent 59% of its income on the production of advertisements and other promotional materials, 36%
for media placement, 18% for general and administrative expenses, 
and 7% for other expenses (the purchase of glasware given to 
customers of Belmont shops as part of a promotional campaign).

The Advertising Council acts as the board of directors of the 
National Fund. The Advertising Council has 8 members: the 
President, Treasurer, Vice President-Marketing, and Vice 
President-Operations of Belmont; and 4 franchisee representatives 
who are elected by the governing board of the Belmont Franchisees 
Association.

Once your shop opens, you must participate in the local 
advertising cooperative established in the Area of Dominant 
Influence (ADI) where your store is located. The amount of your 
contribution to the local advertising cooperative is described in 
Item 6 under the heading "Advertising Fees and Expenses."

Each local advertising cooperative must adopt written governing 
documents. A copy of the governing documents of the cooperative 
(if one has been established) for your ADI is available upon 
request. Each cooperative may determine its own voting 
procedures; however, each company-owned Belmont Shop will be 
entitled to one vote in any local advertising cooperative. The 
members and their elected officers are responsible for 
administration of the cooperative. Advertising cooperatives must 
prepare quarterly and annual financial statements. The annual 
financial statements must be prepared by an independent CPA and be 
made available to all franchisees in that advertising 
cooperative.

You select your business site within your exclusive area subject 
for approval. Belmont assists in site selection by telling 
you the number of new car registrations, population density, 
traffic patterns and proximity of the proposed site to other 
Belmont Puffler Shops.

Franchisees typically open their shops 4 to 7 months after they 
sign a franchise agreement. The factors that affect this time 
are the ability to obtain a lease, financing or building permits, 
zoning and local ordinances, weather conditions, shortages, and 
delayed installation of equipment fixtures and signs.
C. THE FRANCHISOR OR ITS AFFILIATE HAS ESTABLISHED OR MAY ESTABLISH OTHER FRANCHISES OR COMPANY-OWNED OUTLETS OR ANOTHER CHANNEL OF DISTRIBUTION SELLING OR LEASING SIMILAR PRODUCTS OR SERVICES UNDER A DIFFERENT TRADEMARK.

Item 12C Instructions

i. "Similar products and services" includes competing, interchangeable or substitute products but not products or services which are not part of the same product or service market.

ii. If the franchisor or an affiliate operates, franchises or has present plans to operate or franchise a business under a different trademark and that business sells goods or services similar to those to be offered by the franchisee, describe:

a) The similar goods and services;

b) The trade names and trademarks;

c) Whether outlets will be franchisor owned or operated;

d) Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee's territory;

e) A timetable for the plan;

f) How the franchisor will resolve conflicts between the franchisor and the franchisees and between the franchisees of each system regarding territory, customers or franchisor support; and

g) If appropriate, disclose the principal business address of the franchisor's similar operating business. If it is the same as the franchisor's principal business address disclosed in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

D. CONTINUATION OF THE FRANCHISEE'S TERRITORIAL EXCLUSIVITY DEPENDS ON ACHIEVEMENT OF A CERTAIN SALES VOLUME, MARKET PENETRATION OR OTHER CONTINGENCY AND UNDER WHAT CIRCUMSTANCES THE FRANCHISEE'S TERRITORIAL RIGHTS MAY BE ALTERED.

Item 12D Instructions:

i. Disclose conditions for the franchisee's keeping its territorial rights (for example, sales quotas or the opening of additional business outlets). Specify the quotas or conditions and the franchisor's rights if the franchisee fails to meet the requirements.

ii. Disclose other circumstances that permit the franchisor to modify the franchisee's territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise within the area.) Disclose the effect on the franchisee's rights.

Sample Answer 12-1
You will not receive an exclusive territory. Belmont may establish other franchised or company owned outlets that may compete with your location.

Sample Answer 12-2
You will receive an exclusive territory with a minimum population of 50,000 people. You will operate from one location and must receive Belmont's permission before relocating. Belmont will not operate stores or grant franchises for a similar or competitive business within your area. Except when advertising cooperatively with appropriate franchisees, neither Belmont nor you can advertise or solicit orders within another franchisee's territory. You and Belmont can accept orders from outside your territory without special payment.

You do not receive the right to acquire additional franchises within your area.

There is no minimum sales quota. You maintain rights to your area even though the population increases.
Item 11

TRADEMARKS

DISCLOSE THE PRINCIPAL TRADEMARKS TO BE LICENSED TO THE FRANCHISEE INCLUDING:

Item 11 Instructions:

i. As used in Item 11, "Principal trademarks" means the primary trademarks, service marks, names, logos and symbols to be used by the franchisee to identify the franchised business. It does not include every trademark owned by the franchisor.

ii. The franchisor may limit Item 11 disclosure to information that is relevant to the state where the franchised business will be located. The franchisor may include all states to eliminate the need for multiple disclosure in Item 11 but must amend its offering circular to reflect any material change in the list.

A. WHETHER THE PRINCIPAL TRADEMARKS ARE REGISTERED WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE. FOR EACH REGISTRATION STATE THE REGISTRATION DATE AND NUMBER AND WHETHER THE REGISTRATION IS ON THE PRINCIPAL OR SUPPLEMENTAL REGISTER.

Item 11A Instructions:

i. Identify each principal trademark which the franchisee may use. The franchisor may reproduce these trademarks in this Item.

ii. State the date and identification number of each trademark registration or registration application listed. State whether the franchisor has filed all required affidavits. State whether any registration has been renewed.

iii. State whether the principal trademarks are registered on the principal or supplemental register of the U.S. Patent and Trademark Office, and if not, whether an "intent to use" application or an application based on actual use has been filed with the U.S. Patent and Trademark Office. If the principal trademark to be used by the franchisee is not registered on the Principal Register of the U.S. Patent and Trademark Office, state:

By not having a Principal Register federal registration for [name or description of symbol], [Name of Franchisor] does not have certain presumptive legal rights granted by a registration.

B. DISCLOSE CURRENTLY EFFECTIVE MATERIAL DETERMINATIONS OF THE PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD, THE TRADEMARK ADMINISTRATOR OF THIS STATE OR ANY COURT; PENDING INFRINGEMENT, OPPOSITION OR CANCELLATION; AND PENDING MATERIAL LITIGATION INVOLVING THE PRINCIPAL TRADEMARKS.

Item 11B Instructions:

i. Litigation or an action in material if it could significantly affect the ownership or use of a trademark listed under Item 11. Describe how the determination affects the ownership, use or licensing. Describe any decided infringement, cancellation or opposition proceedings. Include infringement, opposition or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor.

ii. For pending material federal or state litigation regarding the franchisor's use or ownership rights in a trademark disclose:

a) The forum and case number;

b) The nature of claims made opposing the franchisor's use or by the franchisor opposing another person's use; and

c) Any effective court or administrative agency ruling concerning the matter.

iii. Do not repeat disclosure made in response to Item 11A.

iv. The franchisor need not disclose historical challenges to registrations of trademarks listed in Item 11 that were resolved in the franchisor's favor.

v. The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

C. DISCLOSE AGREEMENTS CURRENTLY IN EFFECT WHICH SIGNIFICANTLY LIMIT THE RIGHTS OF THE FRANCHISOR TO USE OR LICENSE THE USE OF TRADEMARKS LISTED IN ITEM 11 IN A MANNER MATERIAL TO THE FRANCHISE.

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Item 13C Instructions:
For each agreement disclose:

1. The manner and extent of the limitation or grant;
2. The agreement’s duration;
3. The parties to the agreement;
4. The circumstances under which the agreement may be cancelled or modified; and
5. All other material terms.

D. WHETHER THE FRANCHISOR MUST PROTECT THE FRANCHISEE'S RIGHT TO USE THE PRINCIPAL TRADEMARKS LISTED IN ITEM 13, AND MUST PROTECT THE FRANCHISEE AGAINST CLAIMS OF INFRINGEMENT OR UNFAIR COMPETITION ARISING OUT OF THE FRANCHISEE'S USE OF THEM.

Item 13D Instructions:

1. Disclose the franchisee’s obligation to notify the franchisor of the use of or claims of rights to a trademark identical to or confusingly similar to a trademark licensed to the franchisor.

2. State whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims. Identify who has the right to control administrative proceedings or litigation.

3. State whether the franchise agreement requires the franchisee to participate in the franchisee’s defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisee, or if the proceeding is resolved unfavorably to the franchisee.

4. Disclose the franchisee’s rights under the franchise if the franchisee requires the franchisee to modify or discontinue the use of a trademark as a result of a proceeding or settlement.

E. WHETHER THE FRANCHISOR ACTUALLY KNOWS OF EITHER SUPERIOR PRIOR RIGHTS OR INFRINGING USES THAT COULD MATERIALLY AFFECT THE FRANCHISOR'S USE OF THE PRINCIPAL TRADEMARKS IN THIS STATE OR THE STATE IN WHICH THE FRANCHISED BUSINESS IS TO BE LOCATED.

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Item 13E Instructions:

For each use of a principal trademark that the franchisee believes constitutes an infringement that could materially affect the franchisee’s use of a trademark, state:

1. The location(s) where the infringement is occurring;
2. To the extent known, the length of time of the infringement; and
3. Action taken by the franchisee.

If the franchisee knows of a use of a trademark by another in a geographic area relevant to the franchisee which is or is likely to be based on a claim of superior prior rights to the franchisee, state the nature of the use by the other person and the place or area where it is occurring.

Sample Answer 13

Belmont grants you the right to operate a shop under the name Belmont Muffler Shop. You may also use our other current or future trademarks to operate your shop. By trademark Belmont means trade names, trademarks, service marks and logos used to identify your shop. Belmont registered the below trademark on the United State Patent and Trademark Office principal register:

You must follow our rules when you use these marks. You can not use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which Belmont licenses to you. You may not use Belmont’s registered name in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by Belmont.

On June 4, 1973, the United States Patent and Trademark Office rejected Belmont’s application to register the mark “Super Mufflers” because the mark was found to be confusingly similar to a federal level permits others to establish rights to use the mark. This use will not be in areas where our franchisees are operating, or advertising under the mark, or in the natural zone of expansion for Belmont’s shops. In addition, these users must act in good faith and without actual knowledge of Belmont’s prior use of the mark. However, if others establish rights to use Belont’s mark, Belmont may not be able to expand into these areas using the mark.

No agreements limit Belmont’s right to use or license the use of Belmont’s trademarks.

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You must notify Belmont immediately when you learn about an infringement of or challenge to your use of our trademark. Belmont will take the action we think appropriate. While Belmont is not required to defend you against a claim against your use of our trademark, Belmont will reimburse you for your liability and reasonable costs in connection with defending Belmont’s trademark. To receive reimbursement you must have notified Belmont immediately when you learned about the infringement or challenge.

You must modify or discontinue the use of a trademark if Belmont notifies you of your use of the trademark. If this happens, Belmont will reimburse you for your tangible costs of compliance (for example, changing signs). You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

Belmont does not know of any infringing uses that could materially affect your use of Belmont’s trademark.

or

John S. Jones, 4211 Main Street, Reno, Nevada is currently doing business as Belmont Muffler Shoppe at 4211 Main Street, Reno, Nevada. We believe that this is an infringing use of our federally registered trademark “Belmont Muffler Shop,” and we have filed an action to enjoin Mr. Jones and to recover damages. If the court holds that Mr. Jones’ use is not infringing, Belmont may not be able to use Belmont’s trademark in Mr. Jones’ immediate area. (Belmont Muffler Shop v. Belmont Muffler Shoppe, Inc.)

Item 14

PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

IF THE FRANCHISOR OWNS RIGHTS IN PATENTS OR COPYRIGHTS THAT ARE MATERIAL TO THE FRANCHISE, DESCRIBE THESE PATENTS AND COPYRIGHTS AND THEIR RELATIONSHIP TO THE FRANCHISE. INCLUDE THEIR DURATION AND WHETHER THE FRANCHISOR CAN AND INTENDS TO RESEND THE COPYRIGHTS. TO THE EXTENT RELEVANT, DISCLOSE THE INFORMATION REQUIRED BY ITEM 13 CONCERNING THESE PATENTS AND COPYRIGHTS. IF THE FRANCHISOR CLAIMS PROPRIETARY RIGHTS IN CONFIDENTIAL INFORMATION OR TRADE SECRETS, DISCLOSE THEIR GENERAL SUBJECT MATTER AND THE TERMS AND CONDITIONS FOR USE BY THE FRANCHISEE.

Item 14 Instructions:

i. State the patent number, issue date and title for each patent. State the serial number, filing date and title of each patent application. Describe the type of patent or patent application (for example mechanical, process, or design). State the registration number and date of each copyright.

ii. Describe the relationship of the patent, patent application or copyright to the franchised business.

iii. Describe any current determination of the Patent and Trademark Office, Copyright Office (Library of Congress) or court regarding the patent or copyright. Include the forum, case number and effect on the franchised business.

iv. State the forum, case number, claims asserted, issues involved and effective determinations for any proceedings pending in the Patent and Trademark Office or the Court of Appeals for the Federal Circuit.

v. If counsel comments, the franchisor may include a counsel’s opinion or a summary of the opinion about patent or copyright issues discussed in this Item.

vi. If an agreement limits the use of the patent, patent application or copyright, state the parties to and duration of the agreement, the extent to which the franchisee may be affected by the agreement, and other material terms of the agreement.

vii. Disclose the franchisor’s obligation to protect the patent, patent application or copyright. State:

a) Whether franchisee must notify the franchisor of claims or infringements or if the action is discretionary.
b) Whether the franchisor must take affirmative action when notified of infringement or if the action is discretionary.

c) Who has the right to control litigation.

d) Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application or copyright licensed to the franchisee.

e) Requirements that the franchisee modify or discontinue use of the subject matter covered by the patent or copyright.

f) Franchisee's rights if the franchisor requires the franchisee to modify or discontinue the use of the subject matter covered by the patent or copyright.

viii. If the franchisor actually knows of an infringement that could materially affect the franchisee, state:

a) The nature of the infringement.

b) The location(s) where the infringement is occurring.

c) The length of time of the infringement.

d) Action taken or anticipated by the franchisor.

ix. State whether the franchisor intends to renew the copyright when the registration expires.

x. Discuss in general terms other proprietary information communicated to the franchisee (for example, whether there is a formula or recipe considered to be a trade secret.)

xi. Use Sample Answer 14-1 if no patents or copyrights are material to the franchise.

Sample Answer 14-1

No patents or copyrights are material to the franchise.

Sample Answer 14-2

You do not receive the right to use an item covered by a patent or copyright, but you can use the proprietary information in Belmont's Operations Manual. The Operations Manual is described in Item 11. Although Belmont has not filed an application for a copyright registration for the Operations Manual, it claims a copyright and the information is proprietary. Item 11 describes limitations on the use of this manual by you and your employees. You must also promptly tell us when you learn about unauthorized use of this proprietary information. Belmont is not obligated to take any action but will respond to this information as we think appropriate. Belmont will indemnify you for losses brought by a third party concerning your use of this information.

Sample Answer 14-3

U.S. Patent 3999442 was issued on December 14, 1980. It describes a process for exhaust system installation. The process describes the steps in making a straight length of exhaust pipe, bonding this pipe, coating the inside and outside of this pipe with our Pipe Protector and installing the exhaust pipe on a motor vehicle. You will use equipment utilizing this process.

On December 15, 1979, Belmont obtained a copyright registration for its Operations Manual under Registration A51193. Amendments to the manual were registered on January 7, 1982 (Reg. A521,571) and June 8, 1974 (Reg. A541,333). Belmont intends to renew these copyrights. Item 11 of this Offering Circular describes the Operations Manual and the manner in which you are permitted to use it.

Belmont's right to use or license these patents and copyrighted items is not materially limited by any agreement or known infringing use.

You must tell us immediately if you learn about an infringement or challenge to our use of these patents or copyrights. Belmont will take the action that Belmont thinks appropriate. You must also agree not to contest Belmont's interest in these or our other trade secrets.

If Belmont decides to add, modify or discontinue the use of an item or process covered by a patent or copyright, you must also do so. Belmont's sole obligation is to reimburse you for the tangible cost of complying with this obligation.

Although Belmont is not obligated to defend your use of these items or processes, Belmont will reimburse you for damages and reasonable costs incurred in litigation about them.
ITEM 16

OBLIGATION TO PARTICIPATE IN THE
ACTUAL OPERATION OF THE FRANCHISE BUSINESS

DISCLOSE THE FRANCHISER'S OBLIGATION TO PARTICIPATE PERSONALLY IN
THE DIRECT OPERATION OF THE FRANCHISE BUSINESS AND WHETHER THE
FRANCHISER RECOMMENDS PARTICIPATION.

Item 16 Instructions:

1. Include obligations arising from written agreement
   (including personal guaranty, confidentiality agreement or
noncompetition agreement) or from the franchisor’s practice.

ii. If personal "on premises" supervision is not required:

   a) If the franchisee is an individual, state whether the
      franchisor recommends "on-premises" supervision by the
      franchisee;

   b) State limitations on whom the franchisee can hire as an
      on-premises supervisor;

   c) Whether this "on-premises" supervisor must successfully
      complete the franchisor's training program; and

   d) If the franchisee is a business entity, state the amount of
      equity interest that the "on premises" supervisor must
      have in the franchise.

iii. Disclose the restrictions which the franchisee must place
    on its manager (for example, maintain trade secrets, non-
    competition).

iv. The franchisor may reference Items 14 and 17 in its answer.

Sample Answer 16-1

If you are an individual, you must directly supervise the
franchised business on its premises. If you are a corporation
the direct, on-site supervision must be done by a person who owns
at least 1/3 of the corporate equity.

Sample Answer 16-2

Belmont does not require that you personally supervise the
franchised business. The business must be directly supervised
"on-premises" by a manager who has successfully completed

Adopted by NASAA on
April 25, 1993

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Adopted by NASAA on
April 25, 1993

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Item 16

RESTRICTIONS ON WHAT THE FRANCHISOR MAY SELL

DISCLOSE RESTRICTIONS OR CONDITIONS IMPOSED BY THE FRANCHISOR ON THE GOODS OR SERVICES THAT THE FRANCHISEE MAY SELL OR THAT LIMIT THE CUSTOMERS TO WHOM THE FRANCHISEE MAY SELL GOODS OR SERVICES.

Item 16 Instructions:

i. Describe the franchisee's obligation to sell only goods and services approved by the franchisor.

ii. Disclose any franchisee obligation to sell all goods and services authorized by the franchisor. Disclose whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor's right to make changes.

iii. If the franchisee is restricted regarding customers, disclose the restrictions.

iv. The applicant may cross reference disclosures made in Items 8, 9, and 12.

v. Use Sample Answer 16-1 for a negative response.

Sample Answer 16-1

Belmont does not restrict the type of goods or services that you may offer.

Sample Answer 16-2

Belmont requires you to offer and sell only those goods and services that Belmont has approved (see Item 9).

You must offer all goods and services that Belmont designates as required for all franchisees. These required services are muffler inspection, repair and replacement, parts, supplies, and equipment used in your Belmont muffler business, must be approved by Belmont (see Item 8).

Belmont has the right to add additional authorized services that the franchisee is required to offer. There are no limits on Belmont's right to do so except that the investment required of a franchisee (for equipment, supplies and initial inventory) will not exceed $5,000 per year.

Belmont also designates some services as optional for qualified franchisees. Current optional services are brake inspection, repair and replacement, tire rotation, wheel balancing, and alignment and rustproofing. To offer optional goods or services, you must be in substantial compliance with all material obligations under your Franchise Agreement. In addition, Belmont may require you to comply with other requirements (such as training, marketing, insurance) before Belmont will allow you to offer certain optional services.

As long as you meet your annual agreed sales quota (see Item 12), Belmont will not restrict you from soliciting any customers, no matter who they are or where they are located. If you do not meet your annual sales quota, Belmont may deny you the right to receive any further fleet business referrals from Belmont and may either keep the fleet business referrals for itself or give them to another franchisee. Failure to meet your annual sales quota is a default under your Franchise Agreement and grounds for termination of your franchise (see Item 17).

Adopted by NASAA on April 25, 1993
ITEM 17
RENEWAL, TERMINATION, TRANSFER
AND DISPUTE RESOLUTION

SUMMARIZE THE PROVISIONS OF THE FRANCHISE AND OTHER AGREEMENTS
DEALING WITH TERMINATION, RENEWAL, TRANSFER, DISPUTE RESOLUTION
AND OTHER IMPORTANT ASPECTS OF THE FRANCHISE RELATIONSHIP.

Item 17 Instructions:

i. Begin Item 17 disclosure with the following statement:
   This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

ii. Respond in tabular form. Refer to the section of the agreement which covers each subject.

iii. Use a separate table for any other significant franchise-related agreements. If a provision in any other agreement affects the provisions of the franchise or franchise-related agreements disclosed in this Item (for example, the term of the franchise will be equal to the term of the lease), disclose that provision in the applicable category in the table.

iv. The table should contain a "summary" column to summarize briefly the disclosed provision. The summary is intended to provide a concise overview of the provision in no more than a few words or a sentence. Do not specify in detail all matters covered by a provision.

v. The table should respond to each category listed below. Do not change the names of the categories. List all contractual provisions relevant to each category in the table. If the response to any category is that the agreement does not contain the relevant provision, the table should so state. If the agreement is silent concerning a category but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, a footnote should describe this policy and state whether the policy is subject to change. The categories are:
   a. Term of the franchise
   b. Renewal or extension of the term
   c. Requirements for franchisee to renew or extend
   d. Termination by franchisee
   e. Termination by franchisor without cause
   f. Termination by franchisor with "cause"
   g. "Cause" defined - curable defaults
   h. "Cause" defined - defaults which cannot be cured
   i. Franchisee's obligations on termination/non-renewal
   j. Assignment of contract by franchisee
   k. "Transfer" by franchisee - defined
   l. Franchisee approval of transfer by franchisee
   m. Conditions for franchisee approval of transfer
   n. Franchisor's right of first refusal to acquire franchisee's business
   o. Franchisor's option to purchase franchisee's business
   p. Death or disability of franchisee
   q. Non-competition covenants during the term of the franchise
   r. Non-competition covenants after the franchise is terminated or expires
   s. Modification of the agreement
   t. Integration/merger clause
   u. Dispute resolution by arbitration or mediation
   v. Choice of forum
   w. Choice of law

Sample Answer 17

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

<table>
<thead>
<tr>
<th>Provision</th>
<th>Section in Franchise Agreement</th>
<th>Summary</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Term of the franchise</td>
<td>Section 1. (also Section 1 of Lease, Exhibit F)</td>
<td>Term is equal to lease term - 10 years</td>
</tr>
<tr>
<td>b. Renewal or extension of the term</td>
<td>Section 20</td>
<td>If you are in good standing you can add additional term equal to renewal term of lease (10 years max.)</td>
</tr>
<tr>
<td>c. Requirements for you to renew or extend</td>
<td>Section 20</td>
<td>Sign new agreement, pay fee, remodel and sign release</td>
</tr>
<tr>
<td>d. Termination by you</td>
<td>None</td>
<td></td>
</tr>
</tbody>
</table>

Adopted by NASAA on April 28, 1993
e. Termination by Belmont without cause

f. Termination by Belmont with cause

Section 21

Belmont can terminate only if franchisee defaults
You have 30 days
to cure: non-payment of fees, sanitation problems, non-submission of reports and any other default not listed in Sec. 21A

Section 21B

g. "Cause" defined - defaults which can be cured

Non-curable defaults: conviction of felony, repeated defaults even if cured, abandonment, trademark misuse and unapproved transfers

Section 22

i. Your obligations on termination/ nonrenewal

Obligations include complete deidentification and payment of amounts due (also see r, below)

Section 22

j. Assignment of contract by Belmont

No restriction on Belmont's right to assign

Section 18

k. "Transfer" by you - definition

Includes transfer of contract or assets or ownership change

Section 19A

l. Belmont's approval of transfer by franchisee

Belmont has the right to approve all transfers but will not unreasonably withhold approval

Section 19B

m. Conditions for Belmont approval of transfer

New franchisee qualifies, transfer fee paid, purchase agreement approved, training arranged, release signed by

Section 19C

n. Belmont's right of first refusal to acquire your business

Section 19F

Belmont can match any offer for the franchisee's business

Section 19F

o. Belmont's option to purchase your business

None, but see policy described in Note 1

Section 19D

p. Your death or disability

Franchise must be assigned by estate to approved buyer in 6 months

Section 19D

q. Non-competition covenants during the term of the franchise

No involvement in competing business anywhere in U.S.

Section 11

r. Non-competition covenants after the franchise is terminated or expires

No competing business for 2 years within 20 miles of another Belmont franchise (including after assignment)

Sections 19C and 22C

s. Modification of the agreement

No modifications generally but Operating Manual subject to change

Section 6A

t. Integration/ merger clause

Only the terms of the franchise agreement are binding (subject to state law). Any other promises may not be enforceable

Section 29

u. Dispute resolution by arbitration or mediation

Except for certain claims, all disputes must be arbitrated in

Section 24

Adopted by NASA on April 28, 1993

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v. Choice of forum  Section 27  Litigation must be in

w. Choice of law  Section 28  law

Note 1 - Franchisor is not obligated by the Agreement to do so, but, if the franchisee is terminated, franchisor’s policy is to buy back inventory at fair market value. This policy is subject to change at any time.


Item 18  PUBLIC FIGURES

DISCLOSE THE FOLLOWING:

A. COMPENSATION OR OTHER BENEFIT GIVEN OR PROMISED TO A PUBLIC FIGURE ARISING FROM:

(1) THE USE OF THE PUBLIC FIGURE IN THE FRANCHISE NAME OR SYMBOL OR

(2) THE ENDORSEMENT OR RECOMMENDATION OF THE FRANCHISE TO PROSPECTIVE FRANCHISEES.

B. THE EXTENT TO WHICH THE PUBLIC FIGURE IS INVOLVED IN THE ACTUAL MANAGEMENT OR CONTROL OF THE FRANCHISOR.

C. THE TOTAL INVESTMENT OF THE PUBLIC FIGURE IN THE FRANCHISOR.

Item 18 Instructions:

i. A “public figure” is a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.

ii. Disclose the compensation paid or promised for the endorsement or use of the name of the public figure.

iii. Describe the public figure’s position and duties in the franchisor’s business structure.

iv. State the amount of the public figure’s investment. Describe the extent of the amount contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).

v. Use sample answer 18-1 for a negative response.

Sample Answer 18-1
Belmont does not use any public figure to promote its franchise.

Sample Answer 18-2
Belmont has paid Ralph Doler $50,000 for the use of his name in promoting the sale of our franchise. The right expires December 31, 1992. Belmont has produced newspaper ads, a brochure and a video which feature Mr. Doler. Mr. Doler does not manage or own an interest in Belmont.

Adopted by NASAA on April 25, 1993

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Adopted by NASAA on April 25, 1993

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ITEM 19

EARNINGS CLAIMS

A. An earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and earnings claim is made, item 19 of the offering circular must contain the negative disclosure prescribed in the instruction.

Item 19 Instructions:

i. Definition: "Earnings claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level of franchised or non-franchised units may be easily ascertained.

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) in an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

ii. Supplemental earnings claim: If a franchisor has made an earnings claim in accordance with this item 19, the franchisor claim directed to a particular location or circumstance, apart be in writing, explain the departures from the earnings claim in item 19, and be left with the prospective franchisee.

iii. Scope of requirement: An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this item 19. If an earnings claim is not made, then negative disclosure is (below) must be used.

iv. Claims regarding future performance: A statement or prediction of future performance that is prepared as a forecast of services on prospective financial information (or its successor) issued by the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.

v. Burden of proof: The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.

NEGATIVE DISCLOSURE 19

REPRESENTATIONS REGARDING EARNINGS CAPABILITY

Belmont does not furnish or authorize its salespeople to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of (a) Belmont muffler shop. Actual results vary from unit to unit and Belmont cannot estimate the results of any particular franchise.

B. An earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation.

Item 19B Instructions:

i. Factual basis: The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend. This includes for example, economic or market conditions which are basic to a franchisee's operation and encompasses matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor or franchisees of that person; provided that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

ii. Basic disclosures: The earnings claim must state:

(a) Material assumptions, other than matters of common knowledge, underlying the claim (see definition iii under item 3 for the definition of "material");

(b) A concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;

Adopted by NASAA on April 25, 1993

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Adopted by NASAA on April 28, 1993

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(c) A conspicuous admonition that a new franchisee's individual financial results are likely to differ from the result stated in the earnings claim; and

(d) A statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.

Item 30
LIST OF OUTLETS

DISCLOSE THE FOLLOWING:

A. THE NUMBER OF FRANCHISES OF A TYPE SUBSTANTIALLY SIMILAR TO THOSE OFFERED AND THE NUMBER OF FRANCHISOR OWNED OR OPERATED OUTLETS AS OF THE CLOSE OF EACH OF THE FRANCHISOR'S LAST 3 FISCAL YEARS. SEGREGATE FRANCHISES THAT ARE OPERATIONAL FROM FRANCHISES NOT YET OPERATIONAL. SEGREGATE DISCLOSURE BY STATE. TOTAL EACH CATEGORY.

B. THE NAMES OF ALL FRANCHISES AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL OF THEIR OUTLETS. THE FRANCHISOR MAY LIMIT ITS DISCLOSURE TO ALL FRANCHISES OUTLETS IN THE STATE, BUT IF THESE FRANCHISE OUTLETS TOTAL FEWER THAN 100, DISCLOSE FRANCHISES OUTLETS FROM ALL CONTIGUOUS STATES AND THEN THE NEXT CLOSEST STATE(S) UNTIL AT LEAST 100 FRANCHISE OUTLETS ARE LISTED.

C. THE ESTIMATED NUMBER OF FRANCHISES TO BE SOLD DURING THE 1 YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF THE FRANCHISOR'S MOST RECENT FISCAL YEAR.

D. THE NUMBER OF FRANCHISE OUTLETS IN THE FOLLOWING CATEGORIES THAT, FOR THE 1-YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF FRANCHISOR'S MOST RECENT FISCAL YEAR HAVE:

1. TRANSFERRED CONTROLLING OWNERSHIP;
2. BEEN CANCELLED OR TERMINATED BY THE FRANCHISOR;
3. NOT BEEN RENEWED BY THE FRANCHISOR;
4. BEEN REACQUIRED BY THE FRANCHISOR; OR
5. BEEN REASONABLY KNOWN BY THE FRANCHISOR TO HAVE OTHERWISE CEASED TO DO BUSINESS IN THE SYSTEM.

E. THE NAME AND LAST KNOWN HOME ADDRESS AND TELEPHONE NUMBER OF EVERY FRANCHISEE WHO HAS HAD AN OUTLET TERMINATED, CANCELLED, NOT RENEWED, OR OTHERWISE VOLUNTARILY OR IN VolUNTARILY CEASED TO DO BUSINESS UNDER THE FRANCHISE AGREEMENT DURING THE MOST RECENTLY COMPLETED FISCAL YEAR OR WHO HAS NOT COMMUNICATED WITH THE FRANCHISOR WITHIN 10 WEEKS OF THE APPLICATION DATE.

Item 29 Instructions:

1. Do not include a transfer when beneficial ownership of the franchise does not change.

Adopted by NASAA on April 28, 1993
ii. List an outlet that is reacquired by the franchisor in that column whether or not it also fits another category.

iii. Other than the franchisee names, addresses, and telephone numbers, disclose Item 20 information in tabular form. Use the table or to disclose or comments. Disclose the number of franchised and franchisor-owned outlets sold, opened and closed. Disclose the total number of franchised and franchisor-owned outlets open at the end of each year. Disclose information for each of the last 3 fiscal years.

iv. If an outlet has been operated by more than one franchisor, disclose each transfer in the transfer column.

v. Disclose information about franchisor-owned outlets that are substantially similar to the franchised outlets. In this item, "franchisor-owned" outlets include outlets owned by the franchisor and its affiliates. Use a separate table with a format similar to the format for franchised outlets. The name table may be used if the franchisor-owned outlets are separated from franchised outlets.

vi. For franchisees operating within the system disclose franchisee business addresses and telephone numbers. List outlets operated by the persons listed in Item 2 and their immediate families or by business entities owned by them as franchisor-owned outlets. These outlets can be identified in the table by an asterisk.

vii. Separate information by state. List all states for which franchisor has information responsive to this Item.

viii. When the requirement states "most recent fiscal year," the franchisor may use a more recent date if it discloses that date and uses that date for all disclosures in this Item.

ix. When the requirement states "most recent fiscal year," the state may require a more recent date.

---

Sample Answer 10

<table>
<thead>
<tr>
<th>STATE</th>
<th>REACQUIRED</th>
<th>TERMINATED</th>
<th>HANGOVER</th>
<th>CANCELLED</th>
<th>NOT BY SYSTEM FROM LEFT</th>
<th>TOTAL AT END</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>2/1/0</td>
<td>2/1/0</td>
<td>1/1/0</td>
<td>1/1/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Arizona</td>
<td>2/1/0</td>
<td>2/1/0</td>
<td>1/1/0</td>
<td>1/1/0</td>
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<td>5/0/0</td>
</tr>
<tr>
<td>California</td>
<td>2/1/0</td>
<td>2/1/0</td>
<td>1/1/0</td>
<td>1/1/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Colorado</td>
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<td>1/0/0</td>
<td>0/0/0</td>
<td>0/0/0</td>
<td>1/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Connecticut</td>
<td>2/0/0</td>
<td>2/0/0</td>
<td>0/0/0</td>
<td>0/0/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Delaware</td>
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<td>0/0/0</td>
<td>0/0/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
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<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Georgia</td>
<td>2/0/0</td>
<td>2/0/0</td>
<td>0/0/0</td>
<td>0/0/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Idaho</td>
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<td>0/0/0</td>
<td>0/0/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
<tr>
<td>Totals</td>
<td>2/0/0</td>
<td>2/0/0</td>
<td>0/0/0</td>
<td>0/0/0</td>
<td>2/0/0</td>
<td>5/0/0</td>
</tr>
</tbody>
</table>

---

Adopted by NASAA on April 22, 1993
### Status of Company Owned Stores

For Years 1992/1993/1994

<table>
<thead>
<tr>
<th>State</th>
<th>Stores Closed During Year</th>
<th>Stores Opened During Year</th>
<th>Total Stores Operating at Year End</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>0/0/0</td>
<td>0/0/0</td>
<td>0/0/0</td>
</tr>
<tr>
<td>Arizona</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Arkansas</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>California</td>
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<tr>
<td>Georgia</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Idaho</td>
<td>0/0/0</td>
<td></td>
<td>0/0/0</td>
</tr>
</tbody>
</table>

Note: Belmont no longer operates company owned stores.

### Projected Openings

As of December 31, 1992

<table>
<thead>
<tr>
<th>State</th>
<th>Franchise Agreements Signed But Store Not Open (1)</th>
<th>Projected Franchised New Stores in the Next Fiscal Year</th>
<th>Projected Company Owned Openings in Next Fiscal Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Arizona</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Arkansas</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>California</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Colorado</td>
<td>2</td>
<td>2</td>
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</tr>
<tr>
<td>Connecticut</td>
<td>2</td>
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<tr>
<td>Delaware</td>
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<tr>
<td>Florida</td>
<td>1</td>
<td>1</td>
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</tr>
<tr>
<td>Georgia</td>
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<td>1</td>
<td>0</td>
</tr>
<tr>
<td>Idaho</td>
<td>1</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>

Totals: 2, 3, 0

Note (1) As of December 31, 1992

Adopted by NASAA on April 25, 1993
Item 21

FINANCIAL STATEMENTS

PREPARE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY
ACCEPTED ACCOUNTING PRINCIPLES. THESE FINANCIAL STATEMENTS MUST
BE AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.
UNAUDITED STATEMENTS MAY BE USED FOR INTERIM PERIODS. INCLUDE
THE FOLLOWING FINANCIAL STATEMENTS.

A. THE FRANCHISOR'S BALANCE SHEETS FOR THE LAST TWO FISCAL
YEARS BEFORE THE APPLICATION DATE. IN ADDITION INCLUDE STATEMENTS
OF OPERATIONS, OF STOCKHOLDERS' EQUITY AND OF CASH FLOWS FOR EACH
BALANCE SHEET AND STATEMENT OF OPERATIONS ARE AS OF A DATE MORE
THAN 90 DAYS BEFORE THE APPLICATION DATE, THEN ALSO SUBMIT AN
UNAUDITED BALANCE SHEET AND STATEMENT OF OPERATIONS AS OF A DATE
WITHIN 90 DAYS OF THE APPLICATION DATE.

B. AFFILIATED COMPANY STATEMENTS. INSTEAD OF THE DISCLOSURE
REQUIRED BY ITEM 21A, THE FRANCHISOR MAY INCLUDE FINANCIAL
STATEMENTS OF ITS AFFILIATED COMPANY IF THE AFFILIATED COMPANY'S
FINANCIAL STATEMENTS SATISFY ITEM 21A AND THE AFFILIATED COMPANY
AND OBLIGATIONS OF THE FRANCHISOR UNDER THE FRANCHISE AGREEMENT.

C. CONSOLIDATED AND SEPARATE STATEMENTS:

(1) WHEN A FRANCHISOR OWNS A DIRECT OR BENEFICIAL,
CONTROLLING FINANCIAL INTEREST IN ANOTHER CORPORATION, ITS
FINANCIAL STATEMENTS SHOULD REFLECT THE FINANCIAL CONDITION
OF THE FRANCHISOR AND ITS SUBSIDIARIES.

(2) IF THE APPLICANT IS A SUBFRANCHISOR INCLUDE SEPARATE
FINANCIAL STATEMENTS FOR THE FRANCHISOR AND SUBFRANCHISOR
RELATED ENTITY.

(3) PREPARE CONSOLIDATED AND SEPARATE FINANCIAL STATEMENTS
IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

Item 21 Instructions:

i. States may require financial statements additional to those
listed in this item.

ii. A company controlling 50% or more of a franchisor may be
required to include its financial statements.

iii. Present required financials in a format of columns which
compare at least 2 fiscal years.

iv. In Item 21A, the required financial statements for a
franchisor with a calendar fiscal year end and a July 15, 1989
application filing date are:

a) Unaudited balance sheet as of either April 30, May 31 or
June 30, 1989 with an unaudited income statement for the
period from January 1, 1989 to the date of the balance
sheet;

b) Balance sheets, statements of operations, of stockholders'
equity and of cash flow. The balance sheets should be
audited as of December 31, 1987 and 1988. The remaining
statements should be audited and should be for periods
ending December 31, 1986, 1987 and 1988; and

c) If the franchisor has never had an audit, it need not
supply the financial statement required by (b) if it
supplies either an audit as of its last fiscal year end or
the statements required by (a) in an audited form.

v. In the Item 21B response, the affiliate's guarantee need
cover only the franchisor's obligations to the franchisee. The
guarantee need not extend to third parties. A sample guarantee
is on page 9 in Exhibit ____.

vi. In the Item 21B response the filing state may permit a
surety bond instead of the parent company's guarantee.

vii. Disclose the existence of a guarantee.
Item 22
CONTACTS

ATTACH A COPY OF ALL AGREEMENTS PROPOSED FOR USE OR IN USE IN THIS STATE REGARDING THE OFFERING OF A FRANCHISE, INCLUDING THE FRANCHISE AGREEMENT, LEASES, OPTIONS AND PURCHASE AGREEMENTS.

Item 22 Instructions:

i. Copies of agreements attached to the offering circular under Item 22 are part of the offering circular. Each offering circular delivered to a prospective franchisee must include copies of all agreements to be offered.

ii. The franchisor may cross reference Item 10 for financing agreements.

Item 21
RECEIPT

THE LAST PAGE OF THE OFFERING CIRCULAR IS A DETACHABLE DOCUMENT ACKNOWLEDGING RECEIPT OF THE OFFERING CIRCULAR BY THE PROSPECTIVE FRANCHISEE. IT MUST CONTAIN THE FOLLOWING STATEMENT IN BOLDFACE TYPE:

THIS OFFERING CIRCULAR SUMMARIZES CERTAIN PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN Plain LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF _______ OFFERS YOU A FRANCHISE, _______ MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

(1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR
(2) TEN BUSINESS DAYS BEFORE THE SIGNING OF A BINDING AGREEMENT; OR
(3) TEN BUSINESS DAYS BEFORE A PAYMENT TO ________.

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN A FRANCHISE AGREEMENT.

IF _______ DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, ON A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY). (ANY ADDITIONAL STATE DISCLOSURE TIME OR REQUIRED STATUTORY LANGUAGE.)

Item 21 Instructions:

1. Place the name of the franchisor in the blank.

2. Make two copies of the Receipt: one for retention by the franchisee and one by the franchisor.

3. Disclose the name, principal business address and telephone number of the subfranchisor or franchise broker offering the franchise in this state.

4. List the title of all attached exhibits.

5. Effective Date: (Leave blank until notified of effectiveness by state regulatory authority.)

6. The name and address of the franchisor’s registered agent authorized to receive service of process if not disclosed in Item 1.

-85- Adopted by NASAA on April 25, 1993
Sample Answer 21

RECEIPT

THIS OFFERING CIRCULAR SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF BELMONT OFFERS YOU A FRANCHISE, BELMONT MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

(1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR
(2) TEN BUSINESS DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR
(3) TEN BUSINESS DAYS BEFORE ANY PAYMENT TO BELMONT.

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.

IF BELMONT DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND STATE AGENCY.

Belmont authorizes Legal Process Corp at 445 West Washington Avenue, City, State to receive service of process for Belmont. I have received a Uniform Franchise Offering Circular dated ______. This offering circular included the following Exhibits:

A. License Agreement
B. Equipment Lease
C. Lease for Premises
D. Loan Agreement

Date

Franchisor

1. Name of Franchisor. (If applicant is subfranchisor, the name of the subfranchisor.)

Name under which the Franchisor is doing or intends to do business.

2. Franchisor's principal business address.

Name and address of Franchisor's agent in the State of (Name of State) authorized to receive process.

3. Name, address and telephone number of subfranchisors, if any, for this state.

4. Name, address and telephone number of person to whom communications regarding this application should be directed.

Adopted by NASAA on April 25, 1993

-86-

UNIFORM FRANCHISE REGISTRATION APPLICATION

(Inser file number of previous filings of applicant)

FEE:

(Enclosed when application is initially filed)

APPLICATION FOR (Check only one):

REGISTRATION OF AN OFFER AND SALE OF FRANCHISES
REGISTRATION RENEWAL STATEMENT OR ANNUAL REPORT
AMENDMENT NUMBER TO APPLICATION
POST-EFFECTIVE DATED
PRE-EFFECTIVE DATED

FILED UNDER SECTION

10

00
Form B - Supplemental Information

SUPPLEMENTAL INFORMATION

1. Disclose:
   A. The states in which this proposed registration application is effective.
   B. The states in which this proposed registration application is or will be shortly on file.
   C. The states that have refused to register this franchise offering.
   D. The states that have revoked or suspended the right to offer franchises.
   E. The states in which this proposed registration of these franchises has been withdrawn within the last five years, and the reasons for revocation or suspension.

2. Source of Funds for Establishing New Franchise

   Disclose franchisor's total costs for performing its pre-opening obligations to provide goods or services in connection with establishing each franchise, including real estate, improvements, equipment, inventory, training and other items stated in the offering. State separately the sources of all required funds.

---

Form C - Certification

I certify under penalty of law that I have read and know the contents of this application and the documents attached as exhibits and incorporated by reference and that the statements in all these documents are true and correct.

Executed at ________________, 19____

(Signature(s) of Franchisor and/or Subfranchisor)

By _____________________________

(Seal)

Title ___________________________

STATE OF _______________________

COUNTY OF _____________________

Personally appeared before me this ______ day of

________________, 19____ the above-named ______________________

and ______________________ to

be known to be the person(s) who executed the foregoing application (as ______________________ and

respectively, of the above-named applicant) and (each), being

first duly sworn, stated upon oath that said application, and all exhibits submitted herewith, are true and correct.

_____________________________

(Notary)

---

Adopted by NASAA on April 25, 1993
CORPORATE ACKNOWLEDGMENT

STATE OF ______________________
COUNTY OF ______________________ ss.

On this _____ day of ____________, 19___, before me ____________________________ the undersigned officer, personally appeared ____________________________ and ____________________________, known personally to me to be the ____________________________ President and ____________________________ Secretary, respectively, of the above-named corporation, and that they, as such officers, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by themselves as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

______________________________
(Notary Public)

(NOTARIAL SEAL)

My commission expires: ______________________

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Adopted by NASAA on April 25, 1993

UNIFORM CONSENT TO SERVICE OF PROCESS

organized under the laws of the State of ______________________
(a corporation)
irrevocably appoints the ____________________________ (regulatory authority)
and the successors in office, its attorney in the State of ____________________________ for service of notice, process or pleading in connection with the sale of franchises, or a violation of the franchise laws of ____________________________, and consents that an action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of ____________________________, may be commenced in a court of competent jurisdiction and proper venue within ____________________________ by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of ____________________________ and had lawfully been served with process in ____________________________.

It is requested that a copy of any notice, process or pleading served this consent be mailed to:

______________________________
(Name and address)

Dated: ________________________, 19___.

By ____________________________
Title ____________________________

(SEAL)

By ____________________________
Title ____________________________

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Adopted by NASAA on April 25, 1993

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT

STATE OF ______________________
COUNTY OF ______________________ ss.

On this _____ day of ____________, 19___, before me ____________________________, the undersigned officer, personally appeared ____________________________ to me personally known and known to me to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

______________________________
(Notary Public)

(NOTARIAL SEAL)

Form D

My commission expires: ______________________

Adopted by NASAA on April 25, 1993
Form E - Sales agent Disclosure Form
SALES AGENT DISCLOSURE FORM

1. List the persons who will offer or sell franchises in this state. For each person state:
   A. Name:
   B. Business address and telephone number;
   C. Home address and telephone number;
   D. Present employer;
   E. Present title;
   F. Social Security Number;
   G. Birthdate; and
   H. Employment during the past five years. For each employment, state the name of the employer, position held, and beginning and ending dates.

2. State whether any person identified in 1. above:
   A. Has any administrative, civil or criminal action pending alleging a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or any comparable allegations?
      YES _______________ NO _______________
   B. Had during the ten-year period immediately before the offering circular date:
      (1) been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable in a civil action by final judgment if the felony or civil action involved a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable violations of law?
      YES _______________ NO _______________

Adopted by NASAA on April 25, 1993
GUARANTEE OF PERFORMANCE

For value received __________, absolutely and unconditionally located at __________, guarantees the performance by __________, located at __________, of all of the obligations of __________, under its franchise registration in the State of __________ (Name of state or province) and of its Franchise Agreement. This guarantee continues until all obligations of __________ are satisfied. __________ is not discharged from liability if a claim by the franchisee against __________ remains outstanding. Notice of acceptance is waived. Notice of default on the part of __________ is not waived. This guarantee is binding on __________ and on its successors and assignees. __________ executes this guarantee at __________ on the __________ day of __________, 19___.

(Parent)

By: __________

Title: __________

JMH:ufoc

Adopted by NASAA on April 25, 1993
# FRANCHISES ACT

**CHAPTER F-17**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1(1) In this Act,

(a) "Agency" means the Agency of the Alberta Securities Commission established under the Securities Act;

(a.1) "area franchise" means a contract, agreement or arrangement between a franchisor and a subfranchisor whereby the subfranchisor for consideration given or agreed to be given in whole or in part for that purpose, is granted the right to trade in the franchise;

(b) "associate", when used to indicate a relationship with any person, includes

(i) a company of which that person beneficially owns, directly or indirectly, equity shares carrying more than 10% of the

voting rights attached to all equity shares of the company for the time being outstanding,

(ii) an associated corporation within the meaning of the Income Tax Act (Canada);

(iii) an affiliated company,

(iv) a trust or estate in which that person has a beneficial interest or as to which that person serves as trustee or in a similar capacity,

(v) a relative of spouse of that person or a relative of that

spouse who, in any such case, has the same home as that

person, or

(vi) a partner, fellow member of a syndicate or joint trustee;

(b.1) "Board" means the Board of the Alberta Securities Commission established under the Securities Act;

(b.2) "Chief of Securities Administration" means the Chief of Securities Administration appointed under the Securities Act and includes any Deputy Chief of Securities Administration appointed under that Act;

(c) repealed 1988 c 7 s 6;

(d) "company" means an incorporated corporation, incorporated association or other incorporated organization;

(e) "Executive Director of the Board" means the Executive Director of the Board appointed under the Securities Act;

(f) "franchise" means a contract, agreement or arrangement, either expressed or implied, whether oral or written, between 2 or more persons by which a franchisee is required to pay directly or indirectly a franchise fee in consideration for any of the following:

(i) the right to engage in the business of offering, selling or distributing the goods manufactured, processed or distributed or the services organized and directed by the franchisor,

(ii) the right to engage in the business of offering, selling or distributing any goods or services under a marketing plan or system prescribed or controlled by the franchisor,

(iii) the right to engage in a business which is associated with the franchisor's trademark, service mark, trade name, logo-type, advertising or any business symbol designating the franchisor or its associate,

(iv) the right to engage in a business in which the franchisee is reliant on the franchisor for the continued supply of goods or services, or

(v) the right to recruit additional franchisees or subfranchisors,

but excluding contracts, agreements or arrangements between manufacturers or if the franchisor is the Crown, a Crown agency or a municipal corporation;

(g) "franchisee" means a person to whom a franchise is granted;
(h) "franchise fee" means any consideration exchanged or agreed to be exchanged for the granting of the franchise agreement and, without limiting the generality of the foregoing, the consideration may include

(i) any fee or charge that a franchisee or subfranchisee is required to pay or agrees to pay,
(ii) any payment for goods or services,
(iii) any service which the franchisee or subfranchisee is required to perform or agrees to perform,
(iv) any loan, guarantee or other commercial consideration exigible from the franchisee or subfranchisee at the discretion of the franchisee or subfranchisee for the right to engage in business under a franchise agreement,

but the following are not franchise fees:

(v) the purchase of or agreement to purchase goods in a reasonable amount at the current wholesale market rate;
(vi) the purchase of or agreement to purchase services in a reasonable amount at the current market rate;
(vii) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honouring the credit card;

(i) "franchisor" means a person who grants a franchise;
(j) "Minister" means the Minister of Consumer and Corporate Affairs;
(k) "officer" means the chairman or a vice-chairman of the board of directors, the president, vice-president, secretary, assistant secretary, treasurer, assistant treasurer or general manager of a company, or any other person designated an officer of a company by by-law or similar authority;
(l) "person" means an individual, partnership, unincorporated association, unincorporated organization, syndicate, trustee, executor, administrator or other legal representative, corporation or company;

(m) "pyramid sales franchise" means a scheme, arrangement, device or other means whereby a participant pays a franchise fee and

(i) is required or receives the right to recruit one or more other persons as participants who are subject to a similar requirement or who obtain a similar right, and
(ii) has the right to receive money, credits, discounts, goods or any other right or thing of value the amount of which is dependent on the number of participants;

(n) "register" means register in accordance with this Act;
(o) "registrant" means a person registered or required to be registered under this Act;

(p) "Registrar" means a Registrar of the Agency appointed under the Securities Act;
(q) "salesman" means an individual who engages on behalf of a franchisee in negotiating or concluding a trade in a franchise;
(r) "subfranchisor" means a person to whom an area franchise is granted;
(s) "trade" or "trading" includes

(i) a purchase or sale or disposition of or other dealing in or a solicitation in respect of a franchise for valuable consideration whether the terms of the payment are by instalment or otherwise, or any attempt to do any of the foregoing,
(ii) any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the activities referred to in subclause (i).

(2) A company shall be deemed to be an affiliate of another company if one of them is the subsidiary of the other or if both are subsidiaries of the same company or if each of them is controlled by the same person.

(3) A company shall be deemed to be controlled by another person or persons if

(a) equity shares of the company carrying more than 50% of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of that other person or persons, and
(b) the votes carried by those shares are sufficient, if exercised, to elect a majority of the board of directors of the company.

(4) A company shall be deemed to be a subsidiary of another company if

(a) it is controlled by

(i) that other,
(ii) that other and one or more companies each of which is controlled by that other, or
(iii) 2 or more companies each of which is controlled by that other,

or

(b) it is a subsidiary of a company that is that other’s subsidiary.

(5) A company shall be deemed to be another’s holding company or parent company if that other is its subsidiary.
PART 1
REGULATION OF FRANCHISE TRADING

Exemptions

2 Any trade in a franchise other than a pyramid sales franchise is exempt from section 6

(a) if the franchisor has a net worth on a consolidated basis, according to its most recent audited financial statement,

(i) of not less than $2,000,000, or

(ii) of not less than $1,000,000 if the franchisor is at least 80% owned by a corporation which meets the requirements of subsection (i),

and

(b) if the franchisor

(i) has had at least 25 franchisees conducting business at all times during the 5-year period immediately preceding the trade;

(ii) has conducted business which is the subject of the franchise continuously for not less than 5 years immediately preceding the trade, or

(iii) is at least 80% owned by a corporation which meets the requirements of subsection (i) or (ii).

3(1) The Chief of Securities Administration may, if he is satisfied that to do so would not be prejudicial to the public interest, make an order exempting a trade from any 1 or more of the following provisions:

(a) section 4;

(b) section 5 or any part thereof;

(c) section 6;

(d) a regulation or part thereof made under this Act.

(2) An order under subsection (1) may be made by the Chief of Securities Administration on his own motion or on an application of a person or company directly affected by the trade in respect of which the application is being made.

(3) An order under subsection (1) may be subject to those terms or conditions that the Chief of Securities Administration considers necessary.

(4) An order made under subsection (1) may, at the direction of the Chief of Securities Administration, come into force on a date prior to the date on which the order is made.

4(1) No franchisor who claims an exemption under section 2 shall trade in a franchise until the franchisor has obtained an acknowledgment of the exemption under section 2 from the Chief of Securities Administration and has filed with the Chief of Securities Administration a copy of the statement of material facts.

(2) An acknowledgment of the exemption expires 1 year from the date of the acknowledgment unless the Chief of Securities Administration by order specifies a different period.

(3) The acknowledgment of an exemption may be renewed for additional periods of 1 year each by submitting to the Chief of Securities Administration an application for renewal in the prescribed form no later than 30 business days prior to the expiration of the acknowledgment unless that period is waived by an order of the Chief of Securities Administration.

(4) An application for renewal submitted under subsection (3) shall be accompanied by a copy of the franchisor’s most recent statement of material facts.

(5) When a material adverse change occurs after the date of the application for acknowledgment of an exemption or the submission of an application for renewal that may have an effect on the granting of the acknowledgment or renewal, notice of the change shall be filed with the Chief of Securities Administration as soon as practicable and in any event within 10 days from the date the change occurs.

5(1) When a trade in a franchise is exempt under section 2, the franchisor shall nevertheless at least 4 days (exclusive of Saturdays, Sundays or holidays) prior to

(a) the execution by the prospective franchisee of any binding franchise or any other agreement, or

(b) the receipt of any consideration,

supply each prospective franchisee with a statement of material facts.

(2) The statement of material facts shall contain the following information:

(a) the name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any associate that will engage in business transactions with the franchisor;

(b) the franchisor’s principal business address and the name and address of his agent for service in Alberta;

(c) the business form of the franchisor, whether corporate, partnership or otherwise;

(d) the business experience of the franchisor, including the length of time the franchisor

(i) has conducted a business of the type to be operated by the franchisee.
(ii) has granted franchises for that business, and
(iii) has granted franchises in other lines of business;
(e) a copy of the typical franchise contract or agreement prepared for use or in use in Alberta;
(f) a statement of the franchise fee charged, the proposed application of the proceeds of the fee by the franchisor and the formula by which the amount of the fee is determined if the fee is not the same in all cases, together with a notation concerning the existence of any continuing royalties;
(g) a statement describing any payments or fees other than franchise fees that the franchisee or subfranchisor is required to pay to the franchisor, including royalties and payments or fees which the franchisor collects in whole or in part on behalf of a third party or parties, together with the names of the third party or parties;
(h) a statement indicating whether the cash investment required for the franchise covers payment for fixtures and equipment;
(i) a statement of the conditions under which the franchise agreement may be terminated or renewal refused, or repurchased at the option of the franchisor;
(j) a statement as to whether the franchisee is able to sell the franchise and if so, what conditions, if any, attach to the sale;
(k) a statement as to whether, by the terms of the franchise agreement or by other device or practice, the franchisee or subfranchisor is required to purchase from the franchisor or his designate, services, supplies, products, fixtures or other goods relating to the establishment or operation of the franchise business together with a description of them;
(l) a statement as to whether the services, supplies, products, fixtures, or other goods relating to the establishment or operation of the franchise business are available from sources other than the franchisor;
(m) a statement as to whether, by the terms of the franchise agreement or other device or practice, the franchisee is limited in the goods or services which may be offered by him to his customers;
(n) a statement as to whether the franchisor has, whether by contract, agreement, arrangement or otherwise, agreed with a third party or parties that the products or services of the third party or parties will be made available to the franchisee or subfranchisor on a discount or bonus basis;
(o) a statement of the terms and conditions of any financing arrangements when offered directly or indirectly by the franchisor or his associate;
(p) a statement of any past or present practice of or any intent of the franchisor to sell, assign or discount to a third party any note, contract or other obligation of the franchisee or subfranchisor in whole or in part;
(q) if any statement of estimated or projected franchisee earnings is used, the data on which it is based;
(r) a statement as to whether franchisees or subfranchisees receive any exclusive rights or territory and if so, the extent thereof;
(s) a statement indicating whether the franchisee is required to participate in a franchisor sponsored promotion or publicity campaign;
(t) a statement as to whether the benefit of any patent or liability insurance protection of the franchisee is extended to the franchisee;
(u) a statement as to whether any procedure has been adopted by the franchisor for the settlement of disputes between the franchisor and franchisee;
(v) a statement as to whether the franchisor provides continuing assistance in any form to the franchisee and if so, the nature, extent and cost of the assistance;
(w) a list of other franchisees operating in Alberta if a list is available and if no such franchisees exist, a list of the franchisees operating in the next closest jurisdiction;
(x) the provisions governing withdrawal from the franchise agreement;
(y) the provisions relating to the right to rescind the franchise agreement.

Registration

6(1) No person shall trade in a franchise in Alberta either on his own account or on behalf of any other person until there have been filed with the Chief of Securities Administration both an application for registration in the prescribed form and a prospectus in respect to the offer of that franchise and until a receipt for the prospectus has been obtained from the Registrar.

(2) The applicant for registration of a franchise shall provide the information requested in the application form and any additional information requested by the Chief of Securities Administration and shall pay the prescribed fee.

(3) A trade in a franchise is deemed to have occurred in Alberta if
(a) an offer to sell or a sale is made in Alberta.
(b) an offer to buy is accepted in Alberta.
(c) the franchisee is domiciled or ordinarily resident in Alberta.
(d) the franchise will be operated in Alberta.
(e) an offer to sell is made from Alberta or
(f) an offer to sell or an offer to buy is accepted by communicating the acceptance to a person in Alberta either directly or through an agent in Alberta.

Amendment of application

7 If a material adverse change occurs
(a) after the date of the application for registration of a franchise, and
(b) before the issuance of a receipt for a prospectus
that makes contrary or misleading any statement of a material fact contained in the application for registration, an amendment to the application for registration shall be filed with the Chief of Securities Administration as soon as practicable, and in any event within 10 days from the date the change occurs.

Prospectus

8(1) A prospectus shall provide full, plain and true disclosure of all material facts relating to the franchise proposed to be offered.

(2) A prospectus shall comply as to form and content with the requirements of this Act and the regulations.

(3) The Chief of Securities Administration may require any additional information which he considers necessary to be included in the prospectus.

(4) The applicant shall file with a prospectus the documents, financial statements, reports and material, in a form satisfactory to the Chief of Securities Administration, and pay the fees prescribed by the regulations.

Certificate of lien endorsement

9(1) An application for registration, prospectus, registration renewal statement, and any amendments to them, shall contain a certificate in the following form:

The foregoing constitutes full, plain and true disclosure of all material facts relating to the franchise offered by this prospectus as required by Part I of the Franchise Act of Alberta and the regulations thereunder.

(2) The certificate shall be signed
(a) by the sole proprietor, partners, mutual holders, trustee, or
(b) in the case of a company, by the chief executive officer and the chief financial officer and on behalf of the board of directors by any 2 directors of the company, authorized to sign,
and by any other person who has a substantial interest in the franchisor.

Consent of reporting

10(1) If a solicitor, auditor, accountant, engineer, appraiser or any other person or company whose profession gives authority to a statement made by him, is named as having prepared or certified any part of the prospectus or statement of material facts, the written consent of that person or company to the inclusion of that report or valuation shall be filed with the Chief of Securities Administration not later than the time the prospectus or statement of material facts is filed.

(2) The Chief of Securities Administration may dispense with the filing of a consent required by subsection (1) if, in his opinion, the filing is impracticable or involves undue hardship.

(3) The consent of an auditor or accountant referred to in subsection (1)
(a) shall refer to the report required to be made by him under the regulations, stating the date of it and the dates of the financial statements on which the reports are made, and
(b) shall contain a statement that he has read the prospectus or statement of material facts and that the information contained in the prospectus or statement, which is derived from the financial statements contained in the prospectus or statement of material facts or which is within his knowledge, is, in his opinion, presented fairly and is not misleading.

(4) If a solicitor, auditor, accountant, engineer, appraiser or any other person or company referred to in subsection (1)
(a) has directly or indirectly received or expects to receive any interest, direct or indirect, in the property of the franchisor or an affiliate, or
(b) beneficially owns, directly or indirectly, any securities of the franchisor or an affiliate,
that interest or ownership shall be disclosed in the prospectus or statement of material facts.

(5) If a person or company referred to in subsection (1) is or is expected to be elected, appointed or employed as a director, officer or employee of the franchisor or an affiliate, that fact shall be disclosed in the prospectus or statement of material facts.

(6) Notwithstanding subsections (4) and (5), the Chief of Securities Administration may direct the Registrar not to issue a receipt for a prospectus if a person or company referred to in subsection (1) is not acceptable to him.

(7) When a change is proposed to be made in a prospectus or statement of material facts that in the opinion of the Chief of Securities Administration materially affects any consent required by subsection (1), the Chief of Securities Administration may require that a further consent be filed with him before a receipt for the amended prospectus or statement of material facts is issued.

11 If the Chief of Securities Administration finds that the applicant for registration has failed to demonstrate that adequate financial arrangements have been made to fulfill the franchisor's obligations to provide improvements, equipment, inventory, training or other items
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FRANCHISES
RSA 1980

12(1) The Chief of Securities Administration may in his discretion, and with due regard for the public interest, require the applicant to register any document which is filed or any prospectus filed with the Registrar under this Part unless it is in substantially the same form as that filed with the Registrar under section 11 of the Act of 1975, RSA 1980, and conforms with the requirements of that Act.

(2) The Chief of Securities Administration may in his discretion, and with due regard for the public interest, require the applicant to register any document which is filed or any prospectus filed with the Registrar under this Part unless it is in substantially the same form as that filed with the Registrar under section 11 of the Act of 1975, RSA 1980, and conforms with the requirements of that Act.

13 The Chief of Securities Administration may, in the case of any document, require the furnishing of any information, the making of any statement, or the giving of any undertaking, in the opinion of the Chief of Securities Administration, necessary to make the information furnished by the applicant relative to the nature of the business and the objects and purposes of the applicant, and the manner and extent of the business to be carried on, sufficient to determine whether the document is in the public interest.

14 The Chief of Securities Administration may, in the case of any document, require the furnishing of any information, the making of any statement, or the giving of any undertaking, in the opinion of the Chief of Securities Administration, necessary to make the information furnished by the applicant relative to the nature of the business and the objects and purposes of the applicant, and the manner and extent of the business to be carried on, sufficient to determine whether the document is in the public interest.

15 If an application for registration is refused, the applicant may within thirty days after the date of refusal, appeal to the Supreme Court of New Brunswick from the refusal of the Chief of Securities Administration.

16(1) When an application is filed, the Registrar shall, within thirty days after the date of the filing of the application, give notice in the manner prescribed by the regulations, of the filing of the application to the applicant, and to the person in whose name the securities are registered, if any, and to the person or persons, if any, to whom the securities are to be issued, and to all other persons interested in the securities, and to any person from whom the securities are to be acquired, and to all other persons in whose name any securities are registered, and to any person from whom any securities are to be acquired, and to all other persons interested in the securities, and to any person from whom any securities are to be acquired.

(2) If the application is not filed, the Registrar shall, within thirty days after the date of refusal, give notice in the manner prescribed by the regulations, of the refusal of the Chief of Securities Administration.

17(1) The Chief of Securities Administration may, in the case of any document, require the furnishing of any information, the making of any statement, or the giving of any undertaking, in the opinion of the Chief of Securities Administration, necessary to make the information furnished by the applicant relative to the nature of the business and the objects and purposes of the applicant, and the manner and extent of the business to be carried on, sufficient to determine whether the document is in the public interest.

(2) The Chief of Securities Administration may, in the case of any document, require the furnishing of any information, the making of any statement, or the giving of any undertaking, in the opinion of the Chief of Securities Administration, necessary to make the information furnished by the applicant relative to the nature of the business and the objects and purposes of the applicant, and the manner and extent of the business to be carried on, sufficient to determine whether the document is in the public interest.
(c) that the trade would constitute deceit or fraud of the purchasers,
the Board may order that all trading in the franchise shall cease.

(2) No order shall be made under subsection (1) without a hearing unless in the opinion of the Board the length of time required for a hearing could be prejudicial to the public interest, in which event a temporary order may be made which shall expire 15 days from the date of the making of it.

(3) A notice of every order made under this section shall be served on the person to whose franchise the prospectus relates and on every salesman of the franchise, and immediately on the receipt of the notice

(a) no further trades shall be made in the franchise named in the order by any person, and
(b) any receipt issued by the Registrar for the prospectus is revoked.

17(1) A franchisee shall advise in writing, by an application to amend the registration and prospectus, of any material change in the information contained in the application or prospectus as originally submitted, amended or renewed and the application shall be filed with the Registrar as soon as practicable and in any event within 10 days from the date the change occurs.

(2) The Chief of Securities Administration shall determine whether any changes as submitted pursuant to subsection (1) are to be accepted, but in no case shall a refusal be made without an opportunity to be heard.

An amendment approved by the Chief of Securities Administration becomes effective on any date the Chief of Securities Administration determines, having due regard to the public interest and the protection of franchisees.

18 The registration of a franchise offering expires one year from the date of registration, unless the Chief of Securities Administration by order specifies a different period.

19 The registration of a franchise offering may be renewed for additional periods of one year each by submitting to the Chief of Securities Administration a registration renewal statement in the prescribed form no later than 30 business days prior to the expiration of the registration unless that period is waived by the order of the Chief of Securities Administration.

20(1) No person shall act as a salesman on behalf of a franchisor whose franchise is registered under this Act unless

(a) he is listed on the franchisor's application for registration of a prospectus, and
(b) he is registered under this Act.

(2) The termination of the employment of a salesman with a person whose franchise is registered shall operate as a withdrawal of the registration of the salesman until notice in writing has been received by the Registrar from another person whose franchise is registered under this Act of the employment of the salesman by that other person and the employment has been approved by the Chief of Securities Administration.

21 Subject to sections 20 and 24, the registration of the salesman expires one year from the date of registration.

22 The registration of a salesman may be renewed for additional periods of one year each by submitting to the Chief of Securities Administration a registration renewal statement in the prescribed form no later than 30 business days prior to the expiration of the registration unless that period is waived by the order of the Chief of Securities Administration.

23(1) The Chief of Securities Administration shall grant registration or renewal of registration to a prospective salesman when in the opinion of the Chief of Securities Administration the applicant is suitable for registration and the proposed registration is not objectionable.

(2) The Chief of Securities Administration shall not refuse to grant or refuse to renew registration as a salesman without giving the applicant an opportunity to be heard.

(3) The Chief of Securities Administration may in his discretion restrict a registration of a salesman by imposing terms and conditions on it.

(4) The Chief of Securities Administration may, and when so directed by the Board shall, require any applicant for registration as a salesman or any person who has been registered as a salesman to deliver a bond to the Chief of Securities Administration within a specified time, or

(a) require any applicant for registration as a salesman or any person who has previously delivered a bond to deliver a new bond to the Chief of Securities Administration, and the bond or new bond shall be in the prescribed form and shall be approved by the Chief of Securities Administration as to amount and otherwise.
24(1) The Chief of Securities Administration, after giving the registered salesman an opportunity to be heard, shall suspend or cancel a salesman registration or may reprimand a salesman when in his opinion that action is in the public interest.

(2) Notwithstanding subsection (1), if the granting of an opportunity to be heard would be prejudicial to the public interest, the Chief of Securities Administration may suspend the registration of a salesman without giving the salesman an opportunity to be heard, in which case he shall forthwith notify the salesman of the suspension and of a hearing and review to be held before the Board within 15 days of the date of the suspension.

(3) The hearing and review shall be deemed to be a hearing and review under section 50.

25 If an application for registration as a salesman is refused the applicant may reapply on other or additional material or on the same material when there has been a significant change in circumstances.

26 An application for registration as a salesman shall be made in writing on a prescribed form provided by the Chief of Securities Administration and shall be accompanied by the prescribed fee.

27 The Chief of Securities Administration may require further information or material to be submitted by an applicant for registration as a salesman within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted, or

(a) may require the applicant for registration as a salesman or the registered franchise or any partner, joint trustee, joint unit holder, joint personal representative or director or officer of the latter to submit to an examination under oath by a person designated by the Chief of Securities Administration,

(b) may require the applicant for registration as a salesman or the registered franchise or any partner, joint trustee, joint unit holder, joint personal representative or director or officer of the latter to submit to an examination under oath by a person designated by the Chief of Securities Administration.

28 Without limiting the generality of section 25(1), the Chief of Securities Administration may refuse registration to a prospective salesman if he is satisfied, on the basis of statements on the application and from any other sources of information, that the applicant

(a) has not been a resident of Canada for at least one year prior to the date the application is made,

(b) is not a resident of Alberta at the date the application is made, or

(c) does not intend to make his permanent home in Alberta after the application is granted.

29 When an application for registration or renewal of registration of a franchise offering or of a salesman is refused or cancelled or

when a receipt for a prospectus is not obtained, the Chief of Securities Administration may refund the fee or any part of it that he considers fair and reasonable.

30 No franchisor shall conclude a franchise without providing to the purchaser a statement of material facts, prospectus or amended prospectus in accordance with section 36.

General

31(1) Except as may be permitted by the regulations in the case of a prospectus, no person shall hold himself out as being a registrant by having printed in a circular, pamphlet, advertisement, letter, telegram or other stationery anything indicating that he is a registrant.

(2) No person who is not a registrant shall either directly or indirectly hold himself out as being a registrant.

32 No person shall make any representation, written or oral, that the Alberta Securities Commission, the Board, the Executive Director of the Board, a person employed for the Board, the Agency, the Chief of Securities Administration, a Registrar or a person employed for the Agency has in any way passed on

(a) the financial standing, fitness or conduct of any registrant,

(b) the quality of any franchise, or

(c) the results to be expected by a franchisee operating under the terms of the franchise.

Records

33 A franchisor and subfranchisor offering franchises for sale shall at all times keep and maintain a complete set of books, records and accounts of their respective sales in Alberta at their principal place of business within Alberta shown on the prospectus or statement of material facts, as the case may be.

PART 2

ENFORCEMENT

Offences and Penalties

34(1) A person who

(a) in any material, evidence or information submitted or given under this Act or the regulations to the Board, a member of the Board, the Executive Director of the Board, a person employed for the Board, the Agency, the Chief of Securities Administration, a Registrar or a person employed for the Agency or to a person appointed to make an investigation or audit under this Act makes a statement

(i) that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact, or
(ii) that omits to state a material fact, the omission of which makes the statement false or misleading,

(b) in an application, report, prospectus, return, financial statement or other document required to be filed or furnished under this Act or the regulations makes a statement

(i) that, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to a material fact, or

(ii) that omits to state a material fact, the omission of which makes the statement false or misleading,

(c) contravenes this Act or the regulations,

(d) fails to observe or comply with an order, ruling, direction or other requirements made under this Act or the regulations

is guilty of an offence and liable to

(e) a fine of not more than $2000 or to imprisonment for a term of not more than one year, or to both, or

(f) in the case of a company, a fine of not more than $25,000.

No person is guilty of an offence under subsection (1)(a) or (b) if he establishes that he did not know that the statement was false or misleading and in the exercise of reasonable diligence could not have known that the statement was false or misleading.

No proceedings under section 34 shall be commenced more than one year after the facts on which the proceedings are based first came to the knowledge of the Chief of Securities Administration.

Civil Remedies and Liabilities

A person not acting as agent of the purchaser who receives an order for a franchise to which section 4, 6 or 19 is applicable shall, unless he has previously done so, send by prepaid mail or deliver to the purchaser the statement of material facts, prospectus or amended prospectus, whichever is the last required to be filed with the Chief of Securities Administration:

(a) before entering into an agreement of purchase and sale resulting from the order; or

(b) not later than midnight on the 4th day, exclusive of Saturdays, Sundays and holidays, after entering into the agreement.

An agreement of purchase and sale or a sale referred to in subsection (1) is not binding on the purchaser if the person from whom

the purchaser purchased the franchise receives written or telegraphic evidence noticing the intention of the purchaser not to be bound by the agreement of purchase and sale or the sale not later than midnight on the 4th day, exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the statement of material facts, prospectus or amended prospectus, whichever is the last required to be filed with the Chief of Securities Administration.

Subsection (2) does not apply if the purchaser is a registrant or if the purchaser sells or otherwise transfers beneficial ownership of the franchise referred to in subsection (2), otherwise than to secure indebtedness, before the expiration of the time referred to in subsection (2).

For the purpose of this section, when a statement of material facts, prospectus or amended prospectus is sent by prepaid mail, the statement of material facts, prospectus or amended prospectus shall be deemed conclusively to be received in the ordinary course of mail by the person or company to whom it was addressed.

The receipt of a statement of material facts, prospectus or amended prospectus by a person who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, receipt by the purchaser as of the date on which the agent received the statement of material facts, prospectus or amended prospectus.

The notice referred to in subsection (2) by a person who acted as agent of the vendor with respect to the sale of a franchise referred to in subsection (1) shall, for the purpose of this section, be receipt by the vendor as of the date on which the agent received the notice.

The onus of proving that the time for giving notice under subsection (2) has expired is on the person from whom the purchaser agreed to purchase the franchise.

Every statement of material facts or prospectus shall contain a statement of the rights given to a purchaser by this section.

A person who is a party to a contract as purchasing resulting from the offer of a franchise to which section 5, 6 or 17 is applicable has a right to rescind the contract while still the owner of the franchise if the statement of material facts or the prospectus and any amended prospectus then filed with the Chief of Securities Administration in compliance with section 17 and received by the purchaser, as of the date of receipt contains an untrue statement of a material fact or omits to state a material fact necessary in order to
make any statement contained therein not misleading in the light of the circumstances in which it was made.

(2) No action shall be commenced under this section after the expiration of 2 years from

(a) the receipt of the statement of material facts, prospectus or amended prospectus by the purchaser, or

(b) the date of the contract referred to in subsection (1), whichever is the later.

(3) Subsection (1) does not apply to an untrue statement or a material fact or an omission to state a material fact

(a) if the untruth or the fact or omission was unknown to the person whose franchises are being offered by the statement of material facts or prospectus and, in the exercise of reasonable diligence, could not have been known to that person,

(b) if the statement or omission is disclosed in an amended prospectus filed in compliance with section 17 and the amended prospectus was received by the purchaser, or

(c) if the purchaser knew of the untruth or the statement or fact of the omission at the time he purchased the franchise.

(4) For the purpose of this section, when a statement of material facts, prospectus or amended prospectus is sent by prepaid mail, it shall be deemed conclusively to be received in the ordinary course of mail by the person to whom it was addressed.

(5) The receipt of a statement of material facts, prospectus or amended prospectus by a person who is acting as agent of or who thereafter commences to act as agent of the purchaser with respect to the purchase of a franchise referred to in subsection (1) is, for the purpose of this section, receipt by the purchaser as of the date on which the agent received the statement of material facts, prospectus or amended prospectus.

(6) For the purpose of this section, a person shall not be considered to be acting as agent of the purchaser unless the person is acting solely as the agent of the purchaser with respect to the purchase and sale in question and has not received and has no agreement to receive compensation from or on behalf of the vendor with respect to the purchase and sale.

(7) The cause of action conferred by this section is in addition to and without derogation from any other right the purchaser may have at law.

(8) Every statement of material facts or prospectus shall contain a statement of the right of rescission provided by this section.

38(1) When a franchise has been registered under this Act, a subfranchisor may, instead of providing its own prospectus, provide to a prospective franchisee a copy of the franchisee's prospectus. The prospectus shall be deemed to be the prospectus of the subfranchisor except as it may be varied in writing by the subfranchisor.
prohibition or other extraordinary remedy lies or shall be instituted against any person, whether in his public capacity in respect of any act or omission in connection with the administration or the carrying out of this Act or the regulations when that person is a member of the Board, the Executive Director of the Board, a person employed for the Board, the Chief of Securities Administration, a Registrar or a person employed for the Agency, or when that person or company was proceeding under the written or oral direction or consent of one or more of them or under an order of the Minister made under this Act.

(2) No person has any rights or remedies and no proceedings lie or shall be brought against any person in respect of any act or omission of that person done or omitted in compliance or intended compliance with

(a) a requirement, order or direction under this Act of

(i) the Alberta Securities Commission,

(ii) the Board or a member of it, the Executive Director of the Board or a person employed for the Board,

(iii) the Chief of Securities Administration, a Registrar or a person employed for the Agency,

(iv) any person appointed by order of the Minister,

(v) the Minister, or

(vi) any representative of the Minister, the Alberta Securities Commission, the Board, the Agency, the Chief of Securities Administration or a Registrar or of any person appointed by the Minister,

or

(b) this Act and the regulations.

PART 3

INVESTIGATION AND ACTION

The Chief of Securities Administration or a person to whom as his representative he, in writing, delegates the authority may at any time

(a) make an examination of the financial affairs of a registrant or of any person whose franchises have been the subject of a filing with the Chief of Securities Administration, and

(b) prepare

(i) a balance sheet as of the date of the examination, and

(ii) any other statements and reports required by the Chief of Securities Administration.

(2) The Chief of Securities Administration or a person making an examination under this section is entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person whose financial affairs are being examined, and no person shall withhold, destroy, conceal or refuse to give any information or thing reasonably required for the purpose of the examination.

(3) The Chief of Securities Administration may charge the fees prescribed by the regulations for any examination made under this section.

42(1) The Chief of Securities Administration may appoint 1 or more experts to assist him in any manner he considers expedient.

(2) The Chief of Securities Administration may submit any agreement, prospectus, financial statement, report or other document to one or more experts appointed under subsection (1) for examination, and the Chief of Securities Administration has the like power to summon and enforce the attendance of witnesses before the expert and compel them to produce documents, records and things as is vested in the Chief of Securities Administration in conducting an investigation and section 43(3) and (4) apply with all necessary modifications.

(3) An expert appointed under subsection (1) shall be paid such sums for services and expenses as the Lieutenant Governor in Council determines.

43(1) When on a statement made under oath it appears probable to the Chief of Securities Administration that any person has

(a) contravened this Act or the regulations, or

(b) committed an offence under the Criminal Code (Canada) in connection with a trade in franchises,

the Chief of Securities Administration may by order appoint a person to make any investigation that the Chief of Securities Administration considers expedient for the due administration of this Act, and in the order shall determine and prescribe the scope of the investigation.

(2) The Chief of Securities Administration may, on its own motion by order, appoint 1 or more persons to make any investigation that the Chief of Securities Administration considers expedient for the due administration of this Act or into any matter relating to trading in franchises, and in the order shall determine and prescribe the scope of the investigation.

(3) For the purposes of an investigation ordered under this section, the person appointed to make the investigation may investigate, inquire into and examine

(a) the affairs of the person in respect of whom the investigation is being made and any books, papers, documents, correspondence, communications, negotiations, transactions, investigations, loans, borrowings and payments to, by, on behalf of or in relation to or connected with that person and any property, assets or things owned, acquired or alienated in whole or in part by that
person or by any person acting on behalf of or as agent for that person, and
(b) the assets at any time held, the liabilities, debts, undertakings and obligations at any time existing, the financial or other conditions at any time prevailing or in relation to or in connection with any such person and the relationship that may at any time exist or have existed between that person and any other person, by reason of a sale or in an agreement of purchase and sale, commissions promised, secured or paid, interests held or acquired, the loaning or borrowing of money or other property, interlocking directorates, common control, undue influence or control or any other relationship.

(4) The person making an investigation under this section has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Court of Queen's Bench for the trial of civil actions, and the failure or refusal of a person to attend, to answer questions or to produce the documents, records and things that are in his custody or possession makes the person liable to be committed for contempt by a judge of the Court of Queen's Bench as if in breach of an order of judgment of the Court of Queen's Bench, and no provision of the Alberta Evidence Act exempts any bank or any officer or employee of a bank from the operation of this section.

(5) A person giving evidence at an investigation under this section may be represented by counsel.

(6) When an investigation is ordered under this section, the person appointed to make the investigation may seize and take possession of any documents, records, securities or other property of the person whose affairs are being investigated.

(7) When any documents, records, securities or other property are seized under subsection (6), the documents, records, securities or other property must be made available for inspection and copying by the person from whom seized at a mutually convenient time and place.

(8) When an investigation is ordered under this section the Chief of Securities Administration may appoint an accountant or other expert to examine documents, records, properties and matters of the person whose affairs are being investigated.

(9) A person appointed under subsection (1), (2) or (8) shall report the result of his investigation or examination to the Chief of Securities Administration.

(10) The provisions of any rules of court or of law relating to the service of subpoenas to witnesses and to the payment of conduct money or witness fees do not apply with respect to investigations under this section or section 45.

(11) An order under subsection (1) or (2) may provide for the appointment of 2 or more persons to make the investigation.

44 When on the report of an investigation made under section 43 it appears to the Chief of Securities Administration that any person may have

(a) contravened this Act or the regulations, or

(b) committed an offence under the Criminal Code (Canada) in connection with a transaction relating to franchises,

the Chief of Securities Administration shall send a full and complete report of the investigation, including the report made to him, any transcripts of evidence and any material in his possession relating thereto, to the Minister and to the Attorney General.

45 Notwithstanding section 43, the Minister may by order appoint one or more persons to make any investigation he considers expedient for the due administration of this Act or into any matter relating to trading in franchises, in which case the person or persons so appointed, for the purposes of the investigation, have the same authority, powers, rights and privileges as a person appointed under section 43.

46 No person, without the consent of the Chief of Securities Administration, shall disclose, except to his counsel, any information or evidence obtained or the name of any witness examined or sought to be examined under section 43 or 45.

47 When an investigation has been made under section 43, the Chief of Securities Administration may, and, when an investigation has been made under section 45, the person making the investigation shall, report the result of the investigation, including the evidence, findings, comments and recommendations, to the Minister and to the Attorney General, and the Minister, with the consent of the Attorney General, may publish the report in whole or in part in any manner he considers proper.

48(1) When

(a) the Chief of Securities Administration is about to order an investigation under section 43 or during or after an investigation under section 43 or 45,

(b) the Chief of Securities Administration is about to make or has made a direction, decision, order or ruling suspending or cancelling the registration of a person or affecting the right of a person to trade in franchises, or

(c) criminal proceedings or proceedings in respect of a contravention of this Act or the regulations are about to be or have been instituted against a person, that in the opinion of the Chief of Securities Administration are connected with or arise out of a
franchise or a trade in a franchise or out of any business conducted by that person,

the Chief of Securities Administration may, in writing or by telegram,

(d) direct any person having on deposit or under control or for safekeeping any funds or securities of the person referred to in clause (a), (b) or (c) to hold the funds or securities, or

(e) direct the person referred to in clause (a), (b) or (c) to refrain from withdrawing any of the funds or securities from any other person having any of them on deposit, under control or for safekeeping or to hold all funds or securities of clients or others in his possession or control

in trust for an interim receiver, custodian, trustee, receiver or liquidator appointed under the Bankruptcy Act (Canada), the Judicature Act, the Companies Act or the Winding-up Act (Canada), or until the Chief of Securities Administration in writing revokes the direction or consents to release any particular fund or security from the direction, and in the case of a bank, loan or trust company the direction applies only to the offices, branches or agencies named in the direction.

(2) A person in receipt of a direction given under subsection (1), if in doubt as to the application of the direction to any funds or franchise or in the case of a claim being made to the funds or franchise by a person not named in the direction, may apply to the Court of Queen’s Bench which may direct the disposition of the funds or franchise and may make any order as to costs that seems just to it.

(3) In any of the circumstances mentioned in subsection (1)(a), (b) or (c), the Chief of Securities Administration may, in writing or by telegram, notify any registrar of land titles that proceedings are being or are about to be taken that may affect land belonging to the person referred to in the notice, and the notice shall be registered or recorded against the land mentioned in it and has the same effect as the registration or recording of a certificate of its pendants or a caution, but the Chief of Securities Administration may in writing revoke or modify the notice.

RSA 1980 c F-17 s 49; RSA 1988 c F-17 s 56(20)

Appellant for the Court of Appeal

PART 4

APPEALS

50(1) Any person primarily affected by a direction, decision, order or ruling of the Chief of Securities Administration may, by notice in writing sent by registered mail to the Registrar within 30 days after the mailing of the notice of the direction, decision, order or ruling, request and be entitled to a hearing and review thereof by the Board.

(2) On a hearing and review, the Board may by order confirm the direction, decision, order or ruling under review or make any other direction, decision, order or ruling the Board considers proper.

RSA 1980 c F-17 s 50; 1988 c F-17 s 69(21)

Appellant for the Court of Appeal

51(1) Any person primarily affected by a direction, decision, order or ruling of the Board may appeal to the Court of Appeal.

(2) An appeal shall be by notice of motion sent by registered mail to the Registrar within 30 days after the mailing of the notice of the order, and the practice and procedure on and in relation to the appeal
shall be the same as on an appeal from a judgment of a judge of the Court of Queen's Bench in an action.

(3) The Executive Director of the Board shall certify to the Registrar of the Court of Appeal

(a) the direction, decision, order or ruling that has been reviewed by the Board,

(b) the order of the Board, together with any statement of reasons for it,

(c) the record of the review, and

(d) all written submissions to the Board or other material that is relevant to the appeal.

(4) The Chief of Securities Administration may appear and be represented by counsel appointed by the Attorney General for that purpose on the hearing of an appeal under this section.

(5) When an appeal is taken under this section, the Court of Appeal may by its order direct the Board to make a direction, decision, order or ruling or to do some other act that the Board is authorized and empowered to do under this Act or the regulations and as the Court considers proper, having regard to the material and submissions before it and to this Act and the regulations, and the Board shall make that direction, decision, order or ruling or do that act accordingly.

(6) notwithstanding an order of the Court of Appeal, the Board has power to make any further direction, decision, order or ruling on new material or when there is a material change in the circumstances, and every such direction, decision, order or ruling is subject to this section.

(7) Neither the Chief of Securities Administration nor a Registrar may commence an appeal under this section.

PART 5
ADMINISTRATION

For the purposes of a hearing required or permitted under this Act to be held before the Board or the Chief of Securities Administration, the following rules apply:

(a) in addition to any other person to whom notice is required to be given, notice in writing of the time, place and purpose of the hearing shall be given to any person who, in the opinion of the Board or the Chief of Securities Administration, is primarily affected by the hearing, and the notice is sufficient if sent to the person by prepaid mail at the last address of the person appearing on the records of the Board or the Chief of Securities Administration, as the case may be, or, if not so appearing, to an address directed by the Board or the Chief of Securities Administration;

(b) for the purposes of the hearing any of the persons convening the hearing or before whom the hearing is held has the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise, and to produce documents, records and things, as is vested in the Court of Queen's Bench for the trial of civil actions, and the failure or refusal of a person to attend to answer questions or to produce the documents, records and things that are in his custody or possession makes the person liable to be committed for contempt by a judge of the Court of Queen's Bench as if in breach of an order or judgment of that Court;

(c) at the hearing, the person presiding shall receive all evidence submitted by any person to whom notice has been given or by any other person submitting evidence that is relevant to the hearing, but the person presiding is not bound by the legal or technical rules of evidence;

(d) at the hearing or hearing and review by the Board, all oral evidence received shall be taken down in writing and together with the documentary evidence and things received in evidence by the Board shall form the record;

(e) when the direction, decision, order or ruling made after a hearing adversely affects the right of a person to trade in franchises, the person presiding at the hearing shall, at the request of the person, issue written reasons for the direction, decision, order or ruling;

(f) notice of every direction, decision, order or ruling, together with a copy of the written reasons for it, if any, shall be given on the issuance of it to every person to whom notice of the hearing was given and to any person who, in the opinion of the person who presided at the hearing, is primarily affected by it, and the notice is sufficient if sent to the person by prepaid mail at the last address of the person appearing on the records of the Board or the Chief of Securities Administration, as the case may be, or, if not so appearing, to an address directed by the Board or the Chief of Securities Administration;

(g) a person attending or submitting evidence at a hearing pursuant to clause (a) may be represented by counsel;

(h) the provisions of any rules of court or of law relating to witnesses and to the payment of conduct money or witness fees apply.

A statement as to

(a) the registration or non-registration of a person,

(b) the filing or non-filing of a document or material required or permitted to be filed with the Board or the Chief of Securities Administration, or

(c) any other matter pertaining to such registration, non-registration, filing or non-filing or to any such person, document or material, purporting to be certified by the Board, a member of the Board, the Chief of Securities Administration or a Registrar shall, without proof
of the office or signature of the person certifying, be admitted in evidence, so far as relevant, for all purposes in any action, proceeding or prosecution.

54(1) If a judge or justice of another province issued a warrant for the arrest of a person on a charge of contravening any statute of that province similar to this Act, any provincial judge or justice of Alberta, within whose jurisdiction that person is or is suspected to be, may, on satisfactory proof of the handwriting of the provincial judge or justice who issued the warrant, make an endorsement on the warrant in the form prescribed by the regulations.

(2) A warrant endorsed pursuant to subsection (1) is sufficient authority to the person bringing the warrant and to all persons to whom it was originally directed and to all peace officers in Alberta to execute it, and to take the person arrested under it either out of or anywhere in Alberta and to re-arrest that person anywhere in Alberta.

(3) A peace officer of Alberta or of any other province of Canada who is passing through Alberta having in his custody a person arrested in another province under a warrant endorsed pursuant to subsection (1) is entitled to hold, take and re-arrest the accused anywhere in Alberta under that warrant without proof of the warrant or the endorsement of it.

55(1) When it appears to the Chief of Securities Administration that a person has failed to comply with or is contravening any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of the non-compliance or contravention and in addition to any other rights it may have, the Chief of Securities Administration may apply to the Court of Queen’s Bench by way of originating notice for an order directing that person to comply with the provision or for an order restraining that person from contravening the provision, and on the application the Court may make that order or any other order that it thinks fit.

(2) The originating notice shall be served at least 2 clear days before the day named in the notice for hearing the application.

(3) An appeal lies to the Court of Appeal from an order made under subsection (1).

56(1) Any bond mentioned in section 14 of section 23 is forfeited and the amount of it becomes due and owing, by the person bound by it, as a debt to the Crown in right of Alberta

(a) when a person or an officer or partner of a company in respect of whose conduct the bond is conditioned has been convicted of

(i) an offence under this Act or the regulations,

(ii) an offence involving fraud or theft or conspiracy to commit an offence involving fraud or theft under the Criminal Code (Canada), or

(b) when judgment has been given against a registered person or an officer or partner of a registered company, in respect of whose conduct the bond is conditioned, or

(c) when proceedings by or in respect of a registered person or an officer or partner of a registered company, in respect of whose conduct the bond is conditioned, have been taken under the Bankruptcy Act (Canada) or by way of winding up and a receiving order under the Bankruptcy Act (Canada) or a winding-up order has been made,

and the conviction, judgment or order has become final by reason of lapse of time or of having been confirmed by the highest court to which an appeal may be taken.

(2) A bond may be cancelled by any person bound under it by giving to the Registrar at least 3 months’ notice in writing of intention to cancel and, subject to subsection (3), it shall be deemed to be cancelled on the date stated in the notice, which date shall be not less than 3 months after receipt of the notice by the Registrar.

(3) For the purposes of every act and omission occurring during the period of registration or the period prior to cancellation under subsection (2), every bond continues in force and the collateral security, if any, shall remain on deposit for a period of 2 years after the lapse or cancellation of the registration to which it relates, or the cancellation of the bond, whichever occurs first.

(4) When a bond secured by the deposit of collateral security with the Provincial Treasurer is forfeited under subsection (1) the Lieutenant Governor in Council may direct the Provincial Treasurer to sell the collateral security at the current market price.

(5) When Her Majesty becomes a creditor of any person in respect of a debt to the Crown arising from the provisions of subsection (1), the Chief of Securities Administration may take any proceedings that he considers fit under the Bankruptcy Act (Canada), the Judicial Act, the Companies Act, the Business Corporations Act or the Winding-up Act (Canada) for the appointment of an interim receiver, custodian, trustee, receiver or liquidator.

(6) The Lieutenant Governor in Council may direct the Provincial Treasurer

(a) to assign a bond forfeited under subsection (1) and transfer the collateral security, if any,

(b) to pay over any money recovered under such a bond, or

(c) to pay over any money realized from the sale of the collateral security under subsection (4),

to any person, or to the clerk of the Court of Queen’s Bench in trust for persons who may become judgment creditors of the person bonded or to any trustee, custodian, interim receiver, receiver or liquidator of that person.
(7) When

(a) a bond has been forfeited under subsection (1) by reason of a conviction or judgment under subsection (1)(a) or (b), and

(b) the Chief of Securities Administration has not

(i) within 2 years of the conviction or judgment having become final, or

(ii) within 2 years of the registered person in respect of whom the bond was furnished having ceased to carry on business as such,

whichever occurs first, received notice in writing of any claim against the proceeds of the bond or of such portion of the bond as remains in the possession of the Provincial Treasurer,

the Lieutenant Governor in Council may direct the Provincial Treasurer to pay the proceeds or portion of them to that person or to any person who on forfeiture of the bond made any payments under it, after first deducting the amount of any expenses that have been incurred in connection with any investigation or other matter relating to that person.

RSA 1980 cF-17 s55; 1981 c11-15 s244(b); 1986 c7 s6(17)

57 The Lieutenant Governor in Council may make regulations

(a) prescribing the form and content of prospectuses to be filed with the Chief of Securities Administration by persons in accordance with the Act;

(b) prescribing requirements respecting applications for registration and renewal of registration;

(c) regulating the trading in franchises and records relating to that trading;

(d) governing the furnishing of information to the public or to the Board, the Agency, the Chief of Securities Administration or a Registrar by a registrant in connection with franchises or trades in them;

(e) governing the keeping of accounts and records, the preparation and filing of financial statements of franchise issuers and the audit requirements with respect thereto;

(f) prescribing the fees payable to the Board, the Agency, the Chief of Securities Administration or a Registrar including fees for filing, fees on applications for registration, fees in respect of audits made by the Board, the Agency, the Chief of Securities Administration or a Registrar and other fees in connection with the administration of this Act and the regulations;

(g) prescribing the documents, reports, statements, agreements and other information and the form, content and other particulars relating to them that are required to be filed, furnished or delivered under this Act and the regulations;

(h) prescribing the practice and procedure of investigations under sections 43 and 45:
LOI n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l'amélioration de leur environnement économique, juridique et social

NOR : COMMEUR

L'Assemblée nationale et le Sénat ont adopté.
Le Président de la République promulgue la loi dont la teneur suit :

CHAPITRE Ier
Dispositions en faveur de l'entreprise

Art. 1er. - Toute personne qui met à la disposition d'une autre personne un nom commercial, une marque ou une enseigne, en exigeant d'elle un engagement d'exclusivité ou de quasi-exclusivité pour l'exercice de son activité, est tenue préalablement à la signature du contrat conclu dans l'intérêt commun des deux parties de fournir à l'autre partie un document d'information sur les informations sises, qui lui permet de s'engager en conscience de ce qui lui est communiqué.

Ce document, dont le contenu est fixé par décret, précise notamment l'étendue et l'exclusivité de l'entreprise, l'état et les perspectives de développement du marché, l'importance du réseau d'exploitants, la durée, les conditions de renouvellement, de résiliation et de cession du contrat ainsi que les champ de travaux.

Lorsque le versement d'une somme est exige préalablement à la signature du contrat mentionné ci-dessus, notamment pour obtenir la réservation d'une zone, les prestations ouvertes en contrepartie de cette somme sont précisées par écrit, ainsi que les obligations réciproques des parties en cas de délit.

Le document prévoit au premier alinéa, ainsi que le projet de contrat sont communiqués par écrit avant la signature du contrat ou, le cas échéant, avant le versement de la somme mentionnée à l'alinéa précédent.

DECRET

Portant application de l'article 1er de la loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l'amélioration de leur environnement économique, juridique et social.

Le Premier ministre,

Sur le rapport du ministre de l'Industrie et de l'Aménagement du territoire, du Gare des souches, ministre de la Justice et du ministère délégué au Commerce et à l'Artisanat ;

Vu la Code général, notamment son article R. 25 ;

Vu l'article 1er de la loi n° 89-1008 du 31 décembre 1989 relative au développement des entreprises commerciales et artisanales et à l'amélioration de leur environnement économique, juridique et social ;

Le Conseil d'État (section des finances) entendu,

DÉCRÈTE

Article 1er. - Le document prévu au premier alinéa de l'article 1er de la loi du 31 décembre 1989 susvisée doit contenir les informations suivantes :

1° L'adresse du siège de l'entreprise et la nature de ses activités avec l'indication de sa forme juridique et l'identité du chef d'entreprise s'il s'agit d'une personne physique ou des dirigeants s'il s'agit d'une personne morale ;

2° Le numéro d'immatriculation au registre du commerce et des sociétés ou le numéro d'inscription au répertoire des métiers ainsi que la date et le numéro d'enregistrement ou le dépôt de la marque et, dans le cas où la marque qui doit faire l'objet du contrat a été acquise à la suite d'une cession d'une licence, la date et le numéro d'inscription correspondant au registre national des marques ;

3° Le ou les domiciles bancaires de l'entreprise. Cette information peut être limitée aux cinq principales domiciliations bancaires ;

4° Le date de la création de l'entreprise avec un rappel des principales étapes de son évolution, y compris celle du réseau d'exploitants, s'il y a lieu, ainsi que toutes indications permettant d'apprécier l'expérience professionnelle acquise par le ou les dirigeants ;

Les informations mentionnées à l'alinéa précédent peuvent ne porter que sur cinq dernières années qui précèdent celle de la remise du document. Elles doivent être complétées par une présentation de l'état général et local du marché des produits ou services servant à faire l'objet du contrat et des perspectives de développement de ce marché ;

Douriront être annexées à cette partie du document les comptes annuels des deux dernières années ou, pour les sociétés dotant publiquement appel à l'espègne, les rapports établis au titre des deux derniers exercices pour l'année précédente et les cinq dernières années qui précèdent celle de la remise du document ;

5° Une présentation du réseau d'exploitants qui doit comporter :

a) la liste des entreprises établies en France avec lesquelles la personne qui dispose du contrat est liée par des contrats de même nature que celui dont la conclusion est envisagée ; la date de conclusion ou de renouvellement de ces contrats est précisée ;

Lorsque le réseau comporte plus de vingt-cinq exploitants, les informations mentionnées à l'alinéa précédent ne sont exigées que pour les cinquante entreprises les plus proches du lieu de l'exploitation envisagée ;

2° Le nombre d'entreprises qui, dites liées au réseau par des contrats de même nature que celui dont la conclusion est envisagée, ont effectué au moins un tiers de la valeur des opérations effectuées au cours de l'année précédente ;

3° Le document doit préciser si le contrat est venu à expiration ou s'il a été résilié ou annulé ;

b) si l'il y a lieu, la présence, dans la zone d'activité de l'exploitation prévue par le contrat ouvert de tout établissement dans lequel sont effectués, avec l'accord des parties qui organisent le contrat, les produits au service de leur objet ;

6° L'indication de la durée du contrat proposé, des conditions de renouvellement, de résiliation et de cession, ainsi que le champ des exclusivités ;

Le document doit, en outre, préciser la nature et le montant des dépenses et investissements spécifiques à l'entreprise ou à la marque que la personne destinataire du projet de contrat devra engager avant de commencer l'exploitation.

Articles 2 et 3. - Le Gérant des souches, ministre de la Justice, et le ministre délégué au Commerce et à l'Artisanat sont chargés, chacun à son compte, de l'exécution du présent décret qui sera publié au Journal Officiel de la République française.

VIII. Clear information as to periodic fees and other expenses to be paid by the franchisee to the franchise, or to third parties indicated by the franchise, detailing the respective basis for the calculation, and what payment is made to the franchisee (or franchisees) directly:
(a) Periodic payments for use of the trademark or trade name, or in exchange for goods and services rendered by the franchisee to the franchisee (or franchisees);
(b) Rental of equipment or commercial site;
(c) Advertising fees or similar;
(d) Minimum insurance and risk fees;
(e) Other expenses owed franchisee by the franchisee (or franchisees).

IX. Complete list of all franchisees, subdivided by franchisee, and the number, sub-
franchisees, as well as of those who have changed hands in the past twelve months with name, address and telephone:
(a) To information, the following should be specified:
(b) Possibilities of the franchisee to make sales or render services outside
higher territory, or to export;
(c) Clear indication of what is actually offered to the franchisee by the franchisee.

X. Indication of who is responsible for the franchisee to make sales or render services outside higher territory, or to export:
(a) Market supervision;
(b) Branding;
(c) Advertising;
(d) Training of franchisee employees;
(e) Franchise manuals;
(f) Cost of initial fee for association, franchise or bond tax, and.

X. Indication of what is actually offered to the franchisee by the franchisee.
sanctions that may apply.

Paragraph 3. - In the event of franchise relationships under way on the date of enactment of this law in which there is no written contract and between the parties, the franchisor will have 180 (one hundred and eighty) days to adapt to the provisions of article 8.

Article 8. - The provisions of this law apply to franchise systems set up and operating throughout Brazil.

Article 9. - For the purposes of this law, the term “franchisor”, when mentioned in any of its provisions, serves also to designate a sub-franchisor, just as the provisions referring to the “franchisee” are also applicable to the sub-franchisee.

Article 10. - This law will come into effect 60 (sixty) days after its publication.

Article 11. - Provisions to the contrary are repealed.
Australia Franchising Code of Practice

After approval by the Trade Practices Commission, the final version of the Australian Franchising Code of Practice issued, dated August 29, 1993. Essentially a voluntary effort with government support, the Code requires disclosure as outlined and sets standards of conduct. Inquiries should be directed to The Executive Secretary, Franchising Code Administration Council Ltd., Level 21, 201 Miller Street, North Sydney, New South Wales 2060. Telephone: (02) 936 2344; Fax: (02) 936 2244.

Franchising Code of Practice

1. Administration

1.1 The Minister for Small Business, in consultation with the Meeting of Small Business Ministers, has established the Franchising Code Administration Council Ltd. (the "Council") to administer the Franchising Code of Practice (the "Code").

1.2 The Council is comprised of five (5) representatives of Franchisees, five (5) representatives of Service Providers and Advisers, one (1) lawyer, one (1) chairperson and one (1) government representative as observer.

1.3 Except for certain initial appointments, Members of the Council serve for two year terms and may not serve more than two consecutive terms.

1.4 The Council meets on a quarterly basis, or more frequently as required by circumstances.

1.5 The Council is supported by its own secretariat.

1.6 The role of the Council is to:

(a) finalise the precise terms of the Code and to review and amend the terms of the Code from time to time;

(b) advise the Commonwealth Minister for Small Business on policy and other issues relating to Franchising from time to time, and undertake tasks referred to it by the Minister, within the terms of reference of the Council;

(c) establish a register of persons agreeing to comply with the Code (the "Register of Compliance") and set compliance registration and annual fees and promote the adoption of an adherence to the Code;

(d) review and monitor the overall effect and performance of the Code and to make
recommendations for the enhancement of franchising in Australia generally;
(e) report to the Commonwealth Minister for Small Business, and through the Minister, to the Meeting of Small Business Ministers, on an annual basis;
(d) deregister persons who fail to comply with the Code;
(g) appoint a franchise conciliator or conciliators; and
(h) exempt certain arrangements or systems which fall within the scope of the Code from full or partial compliance with the Code where such compliance would be inappropriate due to the nature of the arrangements or systems.

2. Funding
2.1 Initial establishment funding has been provided by the Commonwealth Government, with full cost recovery of the Code's administration to be achieved within two years of commencement.
2.2 A compliance registration fee applies to all Franchisors, Advisers and Service Providers payable upon application for registration on the Register of Compliance. An annual renewal fee will also be payable.
2.3 A Franchisor is entitled to recoup from existing and new franchisees such component of the compliance registration fee and annual fee as designated by the Council as being attributable to Franchisees.

3. Definition and Scope
3.1 The following definitions apply for the purposes of the Code:
(a) "Franchise" means a contract, arrangement or agreement by or relating to the grant, whether express, implied, written or oral, between two or more parties (such contract, arrangement or agreement hereinafter called the "Franchise Agreement"); by which a party to the Franchise Agreement (hereinafter called the "Franchisor") authorises or permits the other party to the Franchise Agreement (hereinafter called the "Franchisee") to engage in the business, offering, selling or distributing goods or services within Australia and such Franchise Agreement contains at least the following obligations or provisions:

- (a) Franchise grants to the Franchisee the right to the use of a mark, in such a manner that the business carried on by the Franchisee is or can be identified by the public as being substantially associated with a mark identifying, commonly connected with or controlled by the Franchisor;

- (b) "Franchise System" includes a business system comprising a Franchisor and Franchisees who have Franchise Agreement with the Franchisor.

- (c) "Master Franchise" means a Franchise in which the Franchisor grants another person (called the Master Franchisor or Sub-Franchisor) the rights to sub-franchise to other persons ("the Franchisees") the Mark and Franchise System of the Franchisor.

- (d) "Sub-Franchisor" means a person to whom a Master Franchise has been granted by a Franchisor.

- (e) "Mark" includes a symbol, design, device, brand, heading, label, ticket, name, signature, word, letter or any combination of these.

- (f) "Franchisor" is defined as a person granting a franchise in accordance with the definition set forth in the Code and a "Franchisee" is defined as a person to whom a Franchise has been granted.

- (g) "Advisers" are defined as persons, firms or associations holding themselves out to be advisers to Franchisees and will specifically include persons or firms providing legal and accounting advice, marketing and management services, brokerage and similar services, including Small Business Corporations or similar statutory small business authorities.

- (h) "Service Providers" are defined as banking and financial institutions which provide specific franchise-related financial support to Franchisors or Franchisees and publishers or advertising media providers who accept and publish advertisements for the purposes of selling or promoting Franchise operations.

- (i) The term "person" or "persons" includes natural persons, corporations, partnerships, associations, firms, joint venturers or trustees.

- (j) The term "Party" or "Parties" includes any person or persons who are within the scope of the Code and have agreed to comply with the Code and are registered with the Council.

(h) "Franchise System" includes a business system comprising a Franchisor and Franchisees who have Franchise Agreement with the Franchisor.

(i) "Master Franchise" means a Franchise in which the Franchisor grants another person (called the Master Franchisor or Sub-Franchisor) the rights to sub-franchise to other persons ("the Franchisees") the Mark and Franchise System of the Franchisor.

(j) "Sub-Franchisor" means a person to whom a Master Franchise has been granted by a Franchisor.

3.2 The Code applies to Franchising arrangements within Australia including the sale of multiple Franchises by overseas Franchisors. Where there is a single sale of an Australian Master Franchise from an overseas Franchisor, such overseas Franchisor will not be required to comply with the Code in respect of the sale of that one single Master Franchise. In the event, however, of the overseas person entering into or engaging in the sale of more than one Franchise into Australia within two years of the original sale the first Franchisee then the Code will apply accordingly.

3.3 The Code does not apply to a resident Australian Franchisor in respect of a Franchise sale to a person resident outside Australia, where the Franchise operation is to be located outside Australia.

4. Compliance
4.1 The Council seeks compliance with the Code, on an annual basis, by Franchisors, Advisers and Service Providers who are subject to the definition and scope of the Code. In accordance with Division 1.6(b), the Council may exempt parties to the Code from full or partial compliance with certain provisions of the Code.

4.2 Franchisors who register with the Council certify that they agree to comply with the Code and in so doing represent to potential Franchisees that they have so complied. Any Code then in existence at the date of the execution of the Franchise Agreement, Franchisors who agree to comply to the Code will include in their new Franchise Agreement a provision also requiring the Franchisee to act in accordance with the Code. By this method, new Franchisees of such franchise systems are covered by the Code. In respect of existing Franchisors, Franchisors who register with the Council will represent to such Franchisees that they have agreed to comply with the Code and shall seek and encourage the agreement of such current Franchisors to comply with the Code. Where a Franchisor does not so agree to comply with the Code then the Franchisor shall not be deemed to have failed to comply with the Code in respect of any conduct by that Franchisor.

4.3 Where a national Franchisor has granted a matter franchise to a sub-Franchisor (Master Franchisor), and the sub-Franchisor grants a franchise to a Franchisee, the national Franchisor shall be deemed to have agreed to comply with the Council as a Franchisor. An appropriate adjustment in fees shall be made.

4.4 Advisers who register with the Council certify that they agree to comply with the Code in respect of those provisions which apply to them. Where the registered Adviser is a firm and not an individual, the Adviser shall nominate the individuals within the firm who hold themselves out to be Advisers to Franchisees or Franchisees as previously defined.

4.5 Service Providers who register with the Council certify that they agree to comply with the Code in respect of those provisions which apply to them.

4.6 Franchisors, Advisers and Service Providers who register with the Council before 30 June 1993 shall be deemed to be registered on the basis that they will comply with the Code as soon as reasonably practicable and, in any event, shall comply on and from 1 July 1993.

5. Non-Compliance
5.1 A Party who has been registered with the Council will be removed from the Register of Compliance if:
(a) such Party fails to renew its registration on an annual basis or fails to pay the prescribed fees within the prescribed time.
(b) such Party notifies the Council that it no longer agrees to comply with the Code or has ceased to be in the business of Franchising and wishes to be removed from the Register of Compliance;
(c) such Party is removed from the Register of Compliance in accordance with the following paragraph 5.2.

5.2 The Council has the power to remove from the Register of Compliance a Party to the Code.
11.2 The cooling-off period need not be contained within a Franchise Agreement upon renewal of a franchise by a Franchisee or a Franchise Agreement that is to be entered into upon the sale of a franchise by a Franchisee, provided that, in the latter circumstances, the Franchise Agreement and the documents set forth in paragraph 16.1 are provided to the potential franchisees not less than 7 days prior to signing of the Franchise Agreement.

12. Standards of Conduct

12.1 Franchisees and Franchises will not participate in unconscionable conduct, which is unlawful, in relation to Franchise arrangements.

12.2 Franchisees and Franchisees should act in an ethical, honest and lawful manner and endeavour to pursue best franchise business practices at all times. The obligations of Franchisees and their Compliance with this Code should be demonstrated by their dealings with one another, at least avoid the following conduct, where said practice would have a significant detrimental effect on either party's business:

(a) Substantial and unreasonable overvaluation of fees and prices;
(b) Conduct which is unnecessary and unreasonable in relation to the risks to be incurred by one party; and
(c) Conduct that is not reasonably necessary for the preservation of the legitimate business interests of the Franchisee, Franchisee or Franchise system.

13. Dispute Resolution

13.1 Each Franchisee and Franchisee will cooperate with the following dispute resolution procedures:

(a) Where a dispute arises between Franchisee and Franchisee ("the Parties") the complainant will set out in writing the nature of the dispute.
(b) Both Parties will make every effort to resolve the dispute by mutual negotiation.

(c) In the event that the Parties are unable to reach a resolution of the dispute, any other Party may by notice in writing advise the other Party to refer the dispute resolved by conciliation.
(d) Within 21 days or such other time period as set forth in the Franchise Agreement, the Parties may refer the matter to a mutually agreed conciliator. In the event that no agreement can be reached on an appropriate conciliator, the dispute will be referred to a conciliator or mediator ("Conciliator") by the Franchisees, the Franchisor, and/or the Franchise Administration Council ("Conciliator").
(e) The Conciliator will have the right to determine procedures and may or may not allow the appearance of lawyers on behalf of the Parties and may co-opt other expert assistance.
(f) The Conciliator is to be satisfied that both Parties have made a determined and genuine effort to resolve the dispute and have cooperated with the Conciliator.
(g) Proceedings of the Conciliator will be informal as is consistent with the proper conduct of the matter and shall allow to Conciliator to communicate privately with the Parties or with their lawyers.
(h) The Parties to the conciliation will agree:

-everything that occurs before the Conciliator will be in confidence and in closed session;
-no discussions will be without prejudice; and
-no documents brought into existence specifically for the purpose of the conciliation process will be called into evidence in any subsequent litigation by either Party.
(j) It will be the Conciliator to act fairly, in good faith and without bias with the purpose of seeking a resolution of the dispute and will treat all matters in confidence.
(k) Each party will have the opportunity to adequately present their case.
(l) The Conciliator will have regard to the fairness and reasonableness of any matters pertaining to a dispute and the levied in the Franchise to sustain the integrity of its name, image and Franchise System.

(ii) The Conciliator will deal with any matter expeditiously as possible but no later than 14 days after referral to the Conciliator.

(iii) The parties to the conciliation will bear the conciliation costs on an equal basis and grant immunity from liability to the Conciliator.

(iv) The Parties will report back to the Conciliator within 14 days, on actions taken, based on the outcome of the conciliation.

(v) Nothing contained in the dispute resolution procedure above will deny a Party to a Franchise Agreement the right to seek injunctive relief from an appropriate Court, where failure to obtain such relief would cause irreparable damage to the Party concerned on the Franchise System. Further, such dispute resolution procedures will not apply to events giving rise to the immediate termination of the Franchise Agreement where such events are clearly specified in the Franchise Agreement and Disclosure Document, and there is no legitimate dispute as to the interpretation of their meaning or factors giving rise to such events.

14. Identification

14.1 A Franchisor who is registered with the Council shall issue each Franchisee to clearly identify both within business premises and on appropriate stationery, that the Franchisee's business is being operated under Franchise from the Franchisor.

15. Advertisers

15.1 Advertisers who are registered with the Council and the relevant nominated persons are permitted to place their advertisements in the print media, the Services Provider shall ensure that:

(a) such advertisements comply with the requirements of the Code; and
(b) where practical, classified franchise opportunity advertisements placed by registered franchisees in the print media shall prominently displayed within a distinct classification section for registered franchisees.

Appendix A

Disclosure Document Requirements

(i) Name and registered office of the Franchisor. State if a member of the Franchisees Association of Australia and New Zealand Limited or any other relevant trade or industry association.
(ii) Names, job descriptions, qualifications (if any) of the Franchisee's directors/executive officers/principals.
(iii) A detailed resume of the experience of the Franchisor and any related entities and its directors/secretaries/executive officers/principals including:
(a) Length of experience in the type of business offered in the franchise.
(b) Length of experience in operating or offering other franchises and a description of those franchises.
(iv) Viability statement with key financial information in respect of the Franchisor from the Franchisor’s directors/principals in terms of Appendix 1. The information and statements set forth in Appendix 1 shall not be required to be provided by a Franchisee which is a wholly owned subsidiary of a public company whose shares are publicly traded on an Australian Stock Exchange.

(a) the Franchisor or its parent company has obtained from the Australian Securities Commission an exemption from the provision of separate accounts for subsidiary companies; and

(b) the Franchisor provides, in place of the information and statements set forth in Appendix 1, the audited annual report of the parent company containing consolidated financial statements, including that of the Franchisor.

(v) Details of any materially relevant debt, criminal, civil or administrative proceedings or bankruptcies/involvenencies (past or pending) concerning the Franchisor (and any related entities) or any of its directors/executive officers/principals.

(vi) Summary of the main particulars and features of the franchise including:

(a) Nature and period of existence of the franchise system and how it has developed.

(b) Examples of any trade mark, log, symbol or mark used to market the Franchisor’s goods/services.

(c) Details of payments to be made by the Franchisee to the Franchisor (including method of calculation if applicable). Amount refunded by Franchisor if Franchise Agreement terminates Franchise Agreement within Cooling Off Period.

(d) Particulars of any restrictions, e.g. territorial, or offer to franchise, imposed on the Franchisor.

(e) Summary of the terms and conditions for purchase of services, goods, fixtures, property, etc. from the Franchisor and the situation pertaining if source of goods/products supplied by Franchisor fails. Relevant comments/conditions in respect to rebates, etc. from suppliers.

(f) Details of Franchisor’s involvement/approval for site selection.

(g) Summary of terms and conditions relating to termination, renewal, goodwill and assignment of the franchise.

(h) Summary of the main obligations of the Franchisor (including initial and ongoing training to be provided).

(iii) A tabulated list of components making up the franchise purchase e.g. franchise fee, stock, fixtures/fittings, working capital, etc. with estimated individual cost itemized to reflect the full outlay. A summary of those items which could be leased and estimated costs involved being part of the full outlay.

(iv) Details of any financial requirements by the Franchisor of the Franchisee, e.g. a specific amount of nonborrowed capital towards the franchise purchase price.

(v) Number of existing franchises and company or principal’s outlets. A list of existing Franchises (including address and phone number of each franchisee and business) should be available for reference purposes. Should a full list be impractical, then a list of all Franchises in the State, Metropolitan area, etc., as appropriate to the circumstances, should be provided. Number of Franchises terminated or not renewed over the past year. Details of any current unresolved litigation with any existing or former Franchisees.

(2) Where written projections are provided, in respect to levels of potential sales, income, gross/net profits or other financial projections, etc. from the franchise or Franchisees of a similar nature, particulars of the basis/assumptions upon which the representations are made shall be provided.

(b) Each page of the projections should be qualified in respect of such basis/assumptions, for example:

—These figures represent ACTUAL performance by either the Franchisor or Franchisee. There is no guarantee that you will achieve these figures nor is it intended that you should rely on them as a guarantee.

OR

—These figures indicate the gross profit margins and revenue expenses at statutory turnover levels which have been experienced by the Franchisor in its own operations or the Franchisee on average in the last profit and loss accounts which have been supplied to the Franchisor. There is no guarantee that you will achieve the same results, nor is it intended that you should rely on them as a guarantee.

(c) A clear statement whether or not depreciation and any salary/wages for the Franchisee and the cost of servicing loans are included.

(xvi) Statement as to whether the territory or site to be franchised has been subject to any trading activity, particularly a previous franchise, and if so, the history and details including, the circumstances of any cessation of the franchise.

(xviii) This Disclosure Document should help you make up your mind. While it includes some information about your Contract (Franchise Agreement), don’t rely on it alone to understand your Contract. Read all of your Contract carefully. Buying a franchise is a serious undertaking. Take your time to decide. You are also required to have the Contract explained to you by a solicitor and should seek accountancy and financial advice on the franchise proposition.

(2) Financial Data

(a) Financial Data

The Franchisor will at least supply the Franchisee with Key Financial Data, extracted from accounts prepared in accordance with normal accounting standards, together with a signed Statement as below:

<table>
<thead>
<tr>
<th></th>
<th>/10</th>
<th>/19</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td>$</td>
<td>$</td>
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<tr>
<td>Non-current tangible assets</td>
<td>$</td>
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<td>Total assets</td>
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<tr>
<td>Current liabilities</td>
<td>$</td>
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</tr>
<tr>
<td>Non-current liabilities</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Shareholders' equity</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Operating profit/(loss) after income tax</td>
<td>$</td>
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</tr>
<tr>
<td>Profit/(loss) on extraordinary items after income tax</td>
<td>$</td>
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</tbody>
</table>

Where the company acts as a trustee, the following should also be stated:

(a) Amount of liabilities incurred by the company for another

(b) The amount by which the Company has the right to be indemnified out of trust assets

The data presented is for the period /10 in /19 (Where this is the Franchisor’s first year of trading).

The comparative data presented is for the period /10 in /19 (Where this is the Franchisor’s second year of trading).

(B) Group Companies Only

List all Australian subsidiary companies of the Franchisor by name and percentage of ownership (if applicable).

(C) Statement
(to be placed at the end of the Financial Statement section of the Disclosure Document)

We certify that there have been no significant material changes (or as the case may be) in the Company’s financial position since the latest date above.

The Company has reasonable grounds to believe that it will be able to pay its debts as and when they fall due.

(Directors)

Note:
Where the Franchisor is not a Company, substitute the appropriate Franchisee entity in the above Statements to be then signed by the Principals or Trustees as applicable.
INTERNATIONAL FRANCHISE ASSOCIATION
CODE OF PRINCIPLES AND STANDARDS OF CONDUCT

SECTION I: PREAMBLE

Franchising is a business relationship utilized in more than 65 different industries. A wide variety of franchise relationships exist between thousands of franchisors and hundreds of thousands of franchisees. Franchising offers an excellent opportunity for individuals who are seeking to enter into business for themselves, by providing a framework for a mutually beneficial business relationship.

In recognition of the increasing role of franchising in the marketplace and the very beneficial and positive contributions of franchising to the American economy, the members of the International Franchise Association ("IFA") believe that franchising must reflect the highest principles and standards of fair business practices. The IFA seeks to promote this objective by means of a strong and effective Code of Principles and Standards of Conduct.

To protect and to promote the interests of consumers, franchisees, and franchisors, and to ensure that this unique form of entrepreneurship continues to flourish with a high degree of success and security, we, the members of the International Franchise Association, do hereby set forth the following principles and standards of conduct.

SECTION II: PRINCIPLES

Franchisors shall conduct their businesses professionally, with truth, accuracy, fairness, and responsibility.

Franchisors shall use fair business practices in dealings with franchisees, consumers, and government agencies.

Franchisors shall comply with all applicable laws and regulations in all business operations.

Franchisors shall offer opportunities in franchising to minorities, women and disabled persons on a basis equal to all other persons.

SECTION III: COMPLIANCE AND ENFORCEMENT

1. Applicability. The Code of Principles and Standards of Conduct ("Code") shall be applicable to all IFA members in their United States operations.

These principles and standards of conduct reflect the collective beliefs of the members of the IFA with respect to the manner in which franchise relationships should generally be established, structured and implemented. Franchise relationships should be established by a clear and unambiguous franchise agreement, and by prior delivery of clear and complete disclosure documents as required by law. A franchise relationship is governed by the franchise agreement. The principles and standards of conduct contained in the Code do not substitute for or supplement the franchise agreements between IFA members and their franchisees or create any rights for franchisees of IFA members. Franchise agreements entered into before these principles and standards were adopted may not be in accord with all of these principles and standards. Some franchise relationships, due to their structure, product or service, cannot be Implemented in complete accord with these principles and standards. Therefore, these principles and standards will be applied with flexibility, taking into consideration the wide range of structures, forms of agreement and reasonable business practices used to document and implement franchise relationships in the past and currently.

2. Interpretation. Interpretations of the Code will be made by the Executive Committee of the IFA and its interpretations will be final and binding on members of the IFA. The Executive Committee will consider the interpretations recommended by the Committee on Standards of Conduct of the IFA.

3. Compliance. The policies and practices of members shall be consistent with the Code.

4. Enforcement. IFA shall review complaints concerning possible violations of the Code and, if appropriate, shall suspend, terminate, or take other appropriate action with respect to a member which is found to be in violation of the Code.

5. Compliance With Applicable Law. To the extent that applicable law imposes standards of conduct that are different from those contained in this Code, a franchisor shall comply with both such applicable law and this Code, except to the extent that compliance with this Code might constitute a violation of such law.

SECTION IV: STANDARDS OF CONDUCT

1. Franchise Sales and Disclosure. The sale of franchises is heavily regulated in the United States under federal and state law and may be subject to regulation in other countries. Franchisors that comply with such regulation disclose an extensive body of information to prospective franchisees regarding the franchisor, the nature and costs of an investment in its franchise and the franchise relationship that it offers. Therefore, in the advertisement and grant of franchises, a franchisor shall comply with all applicable laws and regulations. Disclosure documents shall comply with all applicable legal requirements.

All matters material to the granting of a franchise shall be contained in or referred to in one or more written documents, which shall clearly set forth the terms of the relationship and the respective rights and obligations of the parties. (A franchisor may establish and
periodically modify system standards and policies and prescribe such standards and policies in a separate document, such as an operations manual.) Disclosure documents shall be provided to a prospective franchisee on a timely basis as required by law. A franchisor that complies with applicable federal and state laws relating to the grant of franchises will be in compliance with this paragraph.

A franchisor shall encourage prospective franchisees to seek legal or other professional advice prior to the signing of a franchise agreement.

A franchisor shall encourage prospective franchisees to contact existing franchisees to gain a better understanding of the requirements and benefits of the business.

2. Good Faith Dealing. In the United States, many jurisdictions imply in every contract an obligation of good faith on all parties to the contract. However, the good faith obligation does not supersede, enlarge or diminish the rights and obligations contained in an agreement.

Therefore, franchisors and franchisees shall deal with each other fairly and in good faith, which means dealing honestly, ethically, and with mutual respect, in accordance with the terms of their franchise agreements. A franchisor that acts in compliance with the terms of its franchise agreement with a franchisee is dealing with its franchisee fairly and in good faith.

3. Franchise Advisory Councils and Franchise Associations. Many franchisors have established advisory councils to which franchisees elect or the franchisor appoints franchisees. A number of franchise networks have associations that represent a majority or a minority of their franchisees. Some franchise networks have both an advisory council and an association that represents some of the network's franchisees. Franchisors have increasingly utilized advisory councils and franchise associations to improve communication between the franchisor and its franchisees and as the mechanism to foster discussion and exchange of ideas that enhances the competitive capability of the network and deal efficiently and effectively with any problems or disagreements that arise in the franchise relationship. Effective communication between a franchisor and its franchisees is essential to a healthy franchise relationship.

Therefore, a franchisor shall foster open dialogue with franchisees by such means as the franchisor determines to be most effective, including one or more franchise advisory councils, an association of franchisees or other communication mechanisms.

A franchisor shall not prohibit a franchisee from forming, joining, or participating in any franchise association.

4. Termination of Franchise Agreements. Termination of franchise agreements before their expiration is a rare occurrence. Such a termination is usually the result of the franchisee's failure to pay fees in compliance with his or her franchise agreement. Terminations also occur when a franchisee has failed to comply with system standards or other obligations set forth in his or her franchise agreement or collateral documents and has failed to remedy such defaults after notice and an opportunity to do so. Termination is virtually always a last resort that is costly to both the franchisor and the franchisee.

Franchisors have a strong interest in diligent enforcement by their franchisees of (1) franchisees' payment obligations, which support the wide range of franchise activities that maintain and enhance the competitiveness of the franchise network and (2) system standards, which are the foundation of the goodwill of the network.

Therefore, a franchisor shall apply the following standards in connection with the termination of franchise agreements:

(a) A franchise agreement may only be terminated for good cause, which includes the failure of a franchisee to comply with any lawful requirement of the franchise agreement.

(b) A franchisee shall be given notice and a reasonable opportunity to cure breaches of the franchise agreement, which need not be more than 30 days.

(c) A franchise agreement may be terminated immediately, without prior notice or opportunity to cure, in the event of a franchisee's insolvency, abandonment of the franchised business, repeated breaches of its franchise agreement, material dishonesty, criminal misconduct or endangerment of public health or safety.

(d) A franchise agreement may be terminated pursuant to an express provision in the franchise agreement providing for a reciprocal right to terminate the agreement without cause.

5. Expiration of Franchise Agreements. Most franchises are granted for a specific term. Some franchise agreements grant qualified renewal rights to the franchisee and others do not address the issue of a franchisee's post expiration rights to continue to operate as a franchisee. The continuation of a franchise relationship subsequent to the expiration of a franchise is an element of the franchise relationship that each franchisor must determine and express in its franchise agreement. However, expiration of a franchise need not necessarily deprive a franchisee of the value of his or her business (as distinct from the value of the expired franchise). This value can be preserved by giving a franchisee reasonable advance notice that his or her franchise relationship with the franchisor will not continue subsequent to the expiration of the franchise and an opportunity to sell his or her business to a successor franchisor (who will acquire a new franchise from the franchisor). Alternatively, the franchisee can be granted the right to continue in the same business at the same location or in the same market or otherwise be able to realize the value of his or her business (as distinct from the value of the expired franchise).
Therefore, a franchisor shall apply the following standards in connection with the expiration of franchise agreements that provide for a specific term:

(a) A franchisee shall be given notice, at least 30 days prior to expiration, of a franchisor's intention not to grant a new franchise agreement to the franchisee.

(b) The franchisor may determine not to grant a new franchise agreement:

(1) for good cause, which includes the failure of the franchisee to comply with any lawful requirement of the franchise agreement; or

(2) if the franchisor permits the franchisee to:

(i) during the 180 days prior to the expiration of the franchise, sell the business to a purchaser meeting the then-current qualifications and requirements specified by the franchisor; or

(ii) continue to operate the business under a different trade identity at the same location or within the same trade area; or

(iii) if the franchisee is otherwise permitted to realize the value of the business (as distinct from the value of the expired franchise).

(c) The franchisor may determine not to grant a new franchise agreement to a franchisee, without prior notice, in the event of the franchisee's insolvency, abandonment of the franchise business, repeated breaches of its franchise agreement, material dishonesty or bad faith, criminal misconduct or endangerment of public health or safety.

(d) The franchisor may exercise any right to purchase the franchisee's business as provided in the franchise or other agreement.

(e) The franchisor may determine not to grant a new franchise agreement to a franchisee if the franchisor is withdrawing from the market area.

6. Transfer of Franchise. The great majority of franchise agreements grant to the franchisee a qualified right to transfer the franchise in connection with the sale of his or her business. Transfer rights are important to franchisees, because transferability is an important element of the value of the franchise and the franchisee's business. Restrictions on transferability are equally important to the franchisor, which has a compelling interest in the right to determine the persons who operate under its franchise and the terms on which its franchises are acquired.

Therefore, except with respect to franchises that are expressly nontransferable personal service contracts, a franchisor shall not withhold approval of a proposed transfer of a franchise when the following criteria are met:

(a) The transferring franchisee is in compliance with the terms of the franchise agreement;

(b) The proposed transferee meets the then-current qualifications of the franchisor;

(c) The terms of the transfer meet the then-current requirements of the franchisor and the transfer provisions of the franchise agreement;

(d) The franchisor determines not to exercise a right of first refusal in accordance with the franchise or other agreement.

7. System Expansion. The granting of territorial protection to franchisees varies widely among franchise networks due to differing business and competitive considerations. Accurately predicting the competitive impact of establishing an additional outlet (whether a fixed location or mobile facility) in a market already served by one or more franchisees may not be possible. Nevertheless, in addition to respecting the legal rights of a franchisee, sound franchising practice requires a franchisor to consider those factors relevant to its business that will determine the impact of an additional outlet on the business of an existing franchisee and to balance the projected impact with the needs of the franchisor's network to expand, gain market share and meet competition.

Therefore, in determining whether to open, or to authorize the opening of, an outlet in close proximity to an existing franchised outlet, that will offer products or services similar to those of the existing outlet, a franchisor shall take into account the factors that are relevant to its business, which may include any or all of the following:

(a) Territorial rights of existing franchisees contained in their franchise agreements.

(b) The similarity of the new outlet and the existing outlet in terms of products and services to be offered and the trademarks to be used.

(c) Whether the new outlet and the existing outlet will sell products or services to the same customers for the same occasion.

(d) The competitive activities in the market.

(e) The characteristics of the market.
(f) The ability of the existing outlet to adequately supply anticipated demand.

(g) The positive or negative effect of the new outlet on the existing outlet.

(h) The quality of operations and physical condition of the existing outlet.

(i) Compliance by the franchisee of the existing outlet with the franchise agreement.

(j) The experience of the franchisee in similar circumstances.

(k) The benefit or detriment to the franchise system as a whole in opening the new outlet.

(l) Relevant information submitted by existing franchisees and the prospective franchisee.

Any program, method or procedure agreed to by a franchisor and its franchisees to resolve system expansion issues will comply with this Code.

8. Supply Sources. A franchisor has a compelling interest in maintaining system standards and protecting its trademark. Controlling the sources of operating assets, goods sold and materials and supplies utilized by its franchisees in developing and operating his or her business is an effective method of policing system standards compliance. Such controls can also protect a franchisor's trade secrets and other confidential information and can constitute a valuable service to franchisees by assuring sources of high quality goods and services at competitive prices. Franchisees that derive their principal revenue by selling goods to their franchisees must be able to be assured that their franchisees will not buy such goods from other sources, thereby impairing the franchisor's revenue base. Restrictions on the supplies from which franchisees may buy goods and services used in the establishment and operation of their business is comprehensively regulated under federal and state antitrust and trade regulation laws.

Therefore, with respect to the formulation and implementation of designated and approved supplier programs and other restrictions on the suppliers from which franchisees are permitted to purchase goods and services, franchisors shall comply in all respects with applicable antitrust and trade regulation laws.

9. Disputes. Traditional litigation between franchisors and franchisees has frequently been costly and antithetical to productive franchise relationships. Franchisors should resort to judicial dispute resolution only after other methods have failed to resolve a dispute.

Therefore, whenever practicable, a franchisor shall make a diligent effort to resolve disputes with a franchisee by negotiation, mediation, or internal appeal procedures. A franchisor will consider the use of additional alternative dispute resolution procedures in appropriate situations to resolve disputes that are not resolved by negotiation, mediation or internal appeal.

10. Discrimination. Discrimination is not consistent with fair and sound franchising practices. A Franchisor should make its franchisees available to the widest possible spectrum of individuals. Many franchisees have adopted programs to assist minority and other disadvantaged persons to become franchisees.

Therefore, a franchisor shall not discriminate in the operations of its franchise system on the basis of race, color, religion, national origin, sex or disability. A franchisor may utilize reasonable criteria in determining eligibility for its franchise and may grant franchises to some franchisees on more favorable terms than are granted to other franchisees as part of a program to make franchises available to persons lacking capital, training, business experience or other qualifications ordinarily required of franchisees. A franchisor may implement other affirmative action programs.
L. DEFINITION OF FRANCHISING

Franchising is a system of marketing goods and/or services and/or technology, which is based upon a close and ongoing collaboration between legally and financially separate and independent undertakings, the Franchisor and its individual Franchisees, whereby the Franchisor grants its Individual Franchisees the right, and imposes the obligation, to conduct a business in accordance with the Franchisor's concept.

The right entitles and compels the individual Franchisee, in exchange for a direct or indirect financial consideration, to use the Franchisor's trade name, and/or trade mark and/or service mark, know-how (*), business and technical methods, procedural system, and other industrial and/or intellectual property rights, supported by continuing provision of commercial and technical assistance, within the framework and for the term of a written franchise agreement, concluded between parties for this purpose.

(*) "Know-how" means a body of non patented practical information, resulting from experience and testing by the Franchisor, which is secret, substantial and identified:

- "secret" means that the know-how, as a body or in the precise configuration and assembly of its components, is not generally known or easily accessible; it is not limited in the narrow sense that each individual component of the know-how should be totally unknown or unobtainable outside the Franchisor's business;

- "substantial" means that the know-how includes information which is of importance for the sale of goods or the provision of services to end-users, and in particular for the presentation of goods for sale, the processing of goods in connection with the provision of services, methods of dealing with customers, and administration and financial management; the know-how must be useful for the Franchisee by being capable, at the date of conclusion of the agreement, of improving the competitive position of the Franchisee, in particular by improving the Franchisee's performance or helping it to enter a new market;

- "identified" means that the know-how must be described in a sufficiently comprehensive manner so as to make it possible to verify that it fulfills the criteria of secrecy and substantiality; the description of the know-how can either be set out in the franchise agreement or in a separate document or recorded in any other appropriate form.
2. GUIDING PRINCIPLES

2.1 The Franchisor is the initiator of a franchise network, composed of itself and its Individual Franchisees, of which the Franchisor is the long-term guardian.

2.2 The obligations of the Franchisor:

The Franchisor shall

- have operated a business concept with success, for a reasonable time and in at least one pilot unit before starting its franchise network;
- be the owner, or have legal rights to the use, of its network's trade name, trade mark or other distinguishing identification;
- provide the Individual Franchisee with initial training and continuing commercial and/or technical assistance during the entire life of the agreement.

2.3 The obligations of the Individual Franchisee:

The Individual Franchisee shall

- devote its best endeavours to the growth of the franchise business and to the maintenance of the common identity and reputation of the franchise network;
- supply the Franchisor with verifiable operating data to facilitate the determination of performance and the financial statements necessary for effective management guidance, and allow the Franchisor, and/or its agents, to have access to the Individual Franchisee's premises and records at the Franchisor's request and at reasonable times;
- not disclose to third parties the know-how provided by the franchisor, neither during nor after termination of the agreement.

2.4 The ongoing obligations of both parties:

Parties shall exercise fairness in their dealings with each other. The Franchisor shall give written notice to its Individual Franchisees of any contractual breach and, where appropriate, grant reasonable time to remedy default.

Parties should resolve complaints, grievances and disputes with good faith and goodwill through fair and reasonable direct communication and negotiation.

3. RECRUITMENT, ADVERTISING AND DISCLOSURE

3.1 Advertising for the recruitment of Individual Franchisees shall be free of ambiguity and misleading statements.

3.2 Any recruitment, advertising and publicity material, containing direct or indirect references to future possible results, figures or earnings to be expected by Individual Franchisees, shall be objective and shall not be misleading.

3.3 In order to allow prospective Individual Franchisees to enter into any binding document with full knowledge, they shall be given a copy of the present Code of Ethics as well as full and accurate written disclosure of all information material to the franchise relationship, within a reasonable time prior to the execution of these binding documents.

3.4 If a Franchisor imposes a Pre-contract on a candidate Individual Franchisee, the following principles should be respected:

- prior to the signing of any pre-contract, the candidate Individual Franchisee should be given written information on its purpose and on any consideration he may be required to pay to the Franchisor to cover the latter's actual expenses incurred during and with respect to the pre-contract phase; if the Franchise agreement is executed, the said consideration should be reimbursed by the Franchisor or set off against a possible entry fee to be paid by the Individual Franchisee;
- the Pre-contract shall define its term and include a termination clause;
- the Franchisor can impose non-competition and/or secrecy clauses to protect its know-how and identity.

4. SELECTION OF INDIVIDUAL FRANCHISEES

A Franchisor should select and accept as Individual Franchisees only those who, upon reasonable investigation, appear to possess the basic skills, education, personal qualities and financial resources sufficient to carry on the franchised business.

5. THE FRANCHISE AGREEMENT

5.1 The Franchise agreement shall comply with the National law, European community law and this Code of Ethics and any national Extensions thereto.

5.2 The agreement shall reflect the interests of the members of the franchised network in protecting the Franchisor's industrial and intellectual property rights and in maintaining the common identity and reputation of the franchised network. All agreements and all contractual arrangements in connection with the franchise relationship shall be written in or translated by a sworn translator into the official language of the country the Individual Franchisee is established in, and signed agreements shall be given immediately to the Individual Franchisee.
5.3 The Franchise agreement shall set forth without ambiguity, the respective obligations and responsibilities of the parties and all other material terms of the relationship.

5.4 The essential minimum terms of the agreement shall be the following:
- the rights granted to the Franchisor;
- the rights granted to the Individual Franchisee;
- the goods and/or services to be provided to the Individual Franchisee;
- the obligations of the Franchisor;
- the obligations of the Individual Franchisee;
- the terms of payment by the Individual Franchisee;
- the duration of the agreement which should be long enough to allow Individual Franchisees to amortize their initial investments specific to the franchise;
- the basis for any renewal of the agreement;
- the terms upon which the Individual Franchisee may sell or transfer the franchised business and the Franchisor's possible preemption rights in this respect;
- provisions relevant to the use by the Individual Franchisee of the Franchisor's distinctive signs, trade name, trade mark, service mark, store sign, logo or other distinguishing identification;
- the Franchisor's right to adapt the franchise system to new or changed methods;
- provisions for termination of the agreement;
- provisions for surrendering promptly upon termination of the franchise agreement any tangible and intangible property belonging to the Franchisor or other owner thereof.

6. THE CODE OF ETHICS AND THE MASTER-FRANCHISE SYSTEM

This Code of Ethics shall apply to the relationship between the Franchisor and its Individual Franchisees and equally between the Master Franchisee and its Individual Franchisees. It shall not apply to the relationship between the Franchisor and its Master-Franchisees.
1. DÉFINITION DE LA FRANCHISE

LA FRANCHISE est un système de commercialisation de produits et/ou de services et/ou de technosciences, basé sur une collaboration étroite et continue entre des entreprises juridiquement et financièrement distinctes et indépendantes (1), le Franchisseur et ses Franchisés, dans le cadre duquel le Franchisseur accorde à ses Franchisés le droit, et impose l'obligation d'exploiter une entreprise en conformité avec le concept (2) du Franchisseur.

Le droit ainsi concédé autorise et oblige le Franchisé, en échange d’une contribution financière directe ou indirecte, à utiliser l’enseigne et/ou la marque de produits et/ou de service, le savoir-faire (3), et autres droits de propriété intellectuelle, soutenu par l’apport continu d’assistance commerciale et/ou technique, dans le cadre et pour la durée d’un contrat de franchise écrit, conclu entre les parties à cet effet.

2. LES PRINCIPES DIRECTEURS

2.1 Le Franchisseur est l’initiateur d’un “Réseau de Franchise” constitué du Franchisseur et des Franchisés et dont il a vocation à assurer la pérennité (4).

2.2 Le Franchisseur devra :

a) avoir mis au point et exploité avec succès un concept pendant une période raisonnable et dans au moins une unité pilote avant le lancement du réseau (5).

b) être titulaire des droits sur les signes de ralliement de la clientèle : Enseigne, marques et autres signes distinctifs (6) (7)

c) apporter à ses Franchisés une formation initiale et leur apporter continuellement une assistance commerciale et/ou technique pendant toute la durée du contrat.

2.3 Le Franchisé devra :

a) consacrer ses meilleurs efforts au développement du réseau de Franchise et au maintien de son identité commune et de sa réputation.

b) fournir au Franchisseur les données opérationnelles vérifiables afin de faciliter la détermination des performances et les états financiers requis pour la direction d’une gestion efficace. Le Franchisé autorisera le Franchisseur et / ou ses délégués à avoir accès à ses locaux et à sa comptabilité à des heures raisonnables.

c) ne pas divulguer à des tiers le savoir-faire fourni par le Franchisseur ni pendant, ni après la fin du contrat (8).
2.4 Les deux parties devront respecter, de manière continue, les obligations suivantes :

a) agir de façon équitable dans leurs relations mutuelles. Le Franchisseur avertira le Franchisé par écrit de toute infraction au contrat et lui accordera, si justifié, un délai raisonnable pour la réparer,

b) résoudre leurs griefs et litiges avec loyauté et bonne volonté, par la communication et la négociation directes.

3. RECRUTEMENT, PUBLICITÉ ET DIVULGATION

3.1 La publicité pour le recrutement de Franchisés doit être dépourvue de toute ambiguïté et d'informations trompeuses.

3.2 Tout document publicitaire faisant apparaître directement ou indirectement des résultats financiers prévisionnels du Franchisé, devra être objectif et vérifiable.

3.3 Afin que le futur Franchisé puisse s'engager en toute connaissance de cause, le Franchisseur lui fournira une copie du présent Code de Déontologie ainsi qu'une information complète et écrite concernant les clauses du contrat de Franchise - ceci dans un délai raisonnable avant la signature du contrat.

3.4 Lorsque le Franchisseur propose la signature d'un contrat de réservation, celui-ci respecte les principes suivants :

- avant la signature de tout contrat de réservation, le futur Franchisé doit se voir remettre les informations écrites quant au contenu de ce contrat ainsi qu'aux dépenses qui en découleront pour le candidat.

Si le contrat de Franchise est signé, les dépenses seront remboursées par le Franchisseur ou à l'avoir sur le droit d'entrée s'il y a lieu.

- La durée du contrat de réservation doit être précisée - une clause de dédit réciproque doit être prévue.

- Le Franchisseur peut imposer une clause de non-concurrence et de confidentialité afin d'empêcher le détournement du savoir-faire transmis pendant la durée du contrat de réservation.

4. SÉLECTION DES FRANCHISÉS

Le Franchisseur sélectionne et n'accepte que les Franchisés qui, d'après une enquête raisonnable, auraient les compétences requises (formation, qualités personnelles, capacités financières) pour l'exploitation de l'entreprise franchisée.

5. LE CONTRAT DE FRANCHISE

5.1 Le contrat de Franchise doit être en conformité avec le Droit National, le Droit Communautaire et le Code de Déontologie.

Le contrat reflète les intérêts des membres du réseau de Franchise, en protégeant les droits de propriété industrielle ou intellectuelle du Franchisseur et en maintenant l'identité commune et la réputation du réseau de Franchise (9).

Tout contrat et toute convention contractuelle gérant les relations Franchisseur/Franchisé est rédigé ou traduit par un traducteur assermenté dans la langue officielle du pays dans lequel le Franchisé est établi, des copies du contrat signé seront immédiatement remises au Franchisé.

5.2 Le contrat de Franchise définit sans ambiguïté les obligations et les responsabilités respectives des parties ainsi que toutes autres clauses matérielles de la collaboration.

5.3 Les points essentiels minima du contrat sont les suivants :

- les droits du Franchisseur
- les droits du Franchisé
- les biens et/ou services fournis au Franchisé
- les obligations du Franchisseur
- les obligations du Franchisé
- les conditions financières pour le Franchisé
- la durée du contrat, fixée de façon à permettre au Franchisé l'amortissement des investissements spécifiques à la Franchise
- les conditions de renouvellement, s'il y a lieu, du contrat
- les conditions dans lesquelles pourront s'opérer la cession ou le transfert des droits découlant du contrat et les conditions de préemption du Franchisseur
- les conditions d'utilisation par le Franchisé des signes de ralliement de la clientèle appartenant au Franchisseur : enseigne, marque, marques de service, logo et tous signes distinctifs
- le droit du Franchisseur de faire évoluer son concept de Franchise
- les clauses de résiliation du contrat
- les clauses prévoyant la récupération par le Franchisseur de tout élément corporel ou incorporé lui appartenant en cas de cessation du contrat avant l'échéance prévue (11).

6. MASTER FRANCHISE

Ce Code de Déontologie ne s'applique pas aux relations entre le Franchisseur et son Master-Franchisé. En revanche, il s'applique aux relations entre le Master-Franchisé et ses Franchises.
ANNEXES

(1) Le Franchisé est responsable des moyens humains et financiers qu’il engage et responsable à l’égard des tiers, des actes accomplis dans le cadre de l’exploitation de la Franchise. Il a une obligation de collaborer loyalement à la réussite du réseau auquel il a adhéré.

(2) Le concept est la conjonction originale de 3 éléments :
- la propriété ou le droit d’usage de signes de ralliement de la clientèle : marque de fabrique de commerce ou de services, enseigne, raison sociale, nom commercial, signes et symboles, logos;
- l’usage d’une expérience, d’un savoir-faire;
- une collection de produits, de services et/ou de technologies brevetées ou non, qu’il a conçus, mis au point, agréés ou acquis.

(3) Définition du savoir-faire :
Le savoir-faire est un ensemble d’informations pratiques non brevetées, résultant de l’expérience du Franchisseur et testées par celui-ci. Il est secret, substantiel et identifié.

"Secret", le fait que le savoir-faire, dans son ensemble ou dans la configuration et l’assemblage précis de ses composants, ne soit pas généralement connu ou facilement accessible : cela n’est pas limité au sens étroit que chaque composant individuel du savoir-faire doit être totalement inconnu ou impossible à obtenir hors des relations avec le Franchisseur.

"Substantiel", le fait que le savoir-faire doit inclure une information importante pour la vente de produits ou la prestation de services aux utilisateurs finaux et notamment pour la présentation des produits pour la vente, la transformation des produits en liaison avec la prestation de services, les relations avec la clientèle, et la gestion administrative et financière; le savoir-faire doit être utile pour le Franchisé en étant susceptible, à la date de conclusion de l’accord, d’améliorer la position concurrentielle du Franchisé, en particulier en améliorant ses résultats ou en l’aidant à entrer sur un nouveau marché.

"Identité", le fait que le savoir-faire doit être décrit d’une façon suffisamment complète pour permettre de vérifier qu’il remplit les conditions de secret et de substantielité; la description du savoir-faire peut être faite dans l’accord de Franchise, dans un document séparé ou sous toute autre forme appropriée."

Le Franchisseur garantit au Franchisé la jouissance d’un tel savoir-faire qu’il évolue et développe. Le Franchisseur par une information et une formation adaptées le transmet au Franchisé et en contrôle l’application et le respect. Le Franchisseur encourage la remontée d’information des Franchisés afin d’améliorer le savoir-faire.

Dans les périodes pré-contractuelle, contractuelle et post-contractuelle, le Franchisseur empêche toute utilisation et toute transmission de savoir-faire, en particulier à l’égard de réseaux concurrents, pouvant porter préjudice au réseau de Franchise.

(4) Le Réseau de Franchise est constitué du Franchisseur et des Franchisés. Le Réseau de Franchise, par son organisation et son développement, contribue à améliorer la production et/ou la distribution des produits et/ou services ou à promouvoir le progrès technique et économique tout en réserver aux utilisateurs une partie équitable du profit qui en résulte. Le marque du Franchisseur, symbole de l’identité et de la réputation du réseau, constitue la garantie de la qualité du service rendu au Consommateur. Cette garantie est assurée par la transmission et le contrôle du respect d’un savoir – faire et la mise à disposition d’une gamme homogène de produits et/ou de services et/ou de technologies. Le Franchisseur s’assure que le Franchisé, par une signalisation adéquate fait connaître sa nature d’Entrepreneur juridiquement indépendant.

(5) Il lui appartiendra de consacrer à la promotion de sa marque, à la recherche et à l’innovation, les moyens humains et financiers permettant d’assurer le développement et la pérennité de son concept.

(6) Ces droits doivent être d’une durée au moins égale à la durée du contrat.

7) L’image de marque
Le Franchisseur garantit au Franchisé la jouissance de signes de ralliement de la clientèle mis à sa disposition. Il doit notamment lui garantir la validité de ses droits sur la ou les marques dont l’usage est conféré à quelque titre que ce soit, au Franchisé. Le Franchisseur entretient et développe l’image de marque.

Le Franchisseur veille au respect par le Franchisé des prescriptions d’utilisation de la marque et des autres signes de ralliement mis contractuellement à sa disposition. À l’issue du contrat, le Franchisseur s’assurera de la non-utilisation des signes de ralliement de la clientèle par l’ancien Franchisé. En cas d’exclusivité de l’utilisation de la marque sur un territoire donné, le Franchisseur en précise les modalités : objet, portée.
Le Franchisseur s'assure par tout moyen que la collection de produits et/ou de services et/ou de technologies offerts au consommateur est bien conforme à l'image de marque et ce au moyen d'une clause d'achats exclusifs pour les systèmes qui le justifiaient et en particulier lorsque les produits portent la marque du Franchisseur.

8) A cet égard, le contrat pourra prévoir une clause de non-concurrence en cours ou en fin de contrat dont la durée, la portée et l'objet sont déterminés pour tenir compte de l'intérêt du réseau.

9) Les relations contractuelles

Le Franchisseur et les Franchisés savent qu'ils collaborent dans un système où leurs intérêts sont liés, tant à court qu'à terme plus long.
La souplesse du système et le sens des responsabilités de chacun ont fait le succès de la Franchise.
Les relations entre les partenaires doivent donc permettre de suivre les évolutions nécessaires à améliorer le fonctionnement du réseau de Franchise et la satisfaction du consommateur.
Le Franchisseur établit le contrat écrit qui énonce de façon complète et précise les droits, obligations et responsabilités des parties.

Le contrat doit traduire la stratégie du réseau de Franchise. Il comporte l'indication des moyens nécessaires pour atteindre la réalisation du concept de Franchise.
Le contrat n'impose pas aux parties intéressées de restrictions qui ne soient pas nécessaires pour atteindre les objectifs.

L'équilibre du contrat est apprécié d'une façon globale en fonction de l'intérêt du réseau de Franchise.
Le cadre contractuel permet l'expression d'un dialogue permanent et favorise les solutions de conciliation.

10) Le Franchisseur informe le Franchisé avec un préavis suffisant de son intention de ne pas renouveler l'ancien contrat arrivé à son terme ou de ne pas signer un nouveau contrat.

11) Le Franchisseur, ayant indiqué dans le contrat les conditions de reprise et/ou d'utilisation des matériaux spécifiques à la Franchise ne recherche pas, par ces conditions, à pénaliser l'ancien Franchisé, mais à protéger l'identité et la réputation du réseau de Franchise.
BRITISH FRANCHISE ASSOCIATION

CODE OF ETHICAL CONDUCT: EXTENSION AND INTERPRETATION

This Extension and Interpretation forms an integral part of the Code of Ethical Conduct adopted by the British Franchise Association and in which its members adhere.

APPLICATION

1. The Code of Ethical Conduct forms part of the membership agreement between the British Franchise Association and its member companies. It does not form any part of the contractual agreement between franchisor and franchisee unless expressly stated to do so by the franchisor. Neither should anything in this Code be construed as limiting a Franchisor's right to sell or assign its interest in a franchised business.

DISCLOSURE

2. The objectivity of recruitment literature (Clause 3.2) refers specifically to publicly available material. It is recognised that in discussing individual business propositions with franchisees, franchisors are invariably involved in making assumptions which can only be tested by the passage of time.

CONFIDENTIALITY

3. For the generality of this Code of Ethical Conduct, 'know-how' is taken as being as defined in the European Block exemption to Article 85 of the Treaty of Rome. However, for the purposes of Article 3.4 of the European Code of Ethics it is accepted that franchisors may impose non-compete and secrecy clauses to protect other information and systems where they may be reasonably regarded as material to the operation of the franchise.

CONTRACT LANGUAGE

4. Franchisors should seek to ensure that they offer to franchisees contracts in a language in which the franchisee is competent.

CONTRACT TERM

5. In suggesting in Article 5.4 of the European Code of Ethics that the minimum term for a franchise contract should be the period necessary to amortise those of a franchisee's initial investment which are specific to the franchise, it is recognised:

(a) that for a majority of the largest franchisee opportunities amortising initial investments may not be a primary objective for the franchisees. In such cases the objective should be to adopt a contract period which reasonably balances the interests of the parties to the contract.

(b) that this section could be subject to national laws concerning the retention of code and may need to be met through renewal clauses.

CONTRACT RENEWAL

6. The basis for contract renewal should take into account the length of the original term, the extent to which the contract empowers the franchisee to require investments from the franchisor for reconditioning or renovation, and the extent to which the franchisor may vary the terms of a contract on renewal. The overriding objective is to ensure that the franchisee has the opportunity to recover his franchise specific initial and subsequent investments and to exploit the franchised business for as long as the contract permits.

ADOPTION

7. This Code of Ethical Conduct comprising this Extension and Interpretation and the European Code of Ethics for Franchising was adopted by the British Franchise Association, replacing its previous Code of Ethics on 30th August 1990, subject to a transitional period for full compliance ending 31st December 1991. During the transitional period members of the Association are nonetheless required to comply at least with the Code of Ethics previously in force. In October 1991 the Association agreed with the European Franchising Federation some amendments to the Code agreed in August 1990 and at the same time extended the transitional period to full compliance to 31st December 1992.