

NASAA Statement of Policy Regarding Uniform Franchise Delivery Requirements

(Adopted September 20, 2009)

I. Background

The Franchise and Business Opportunity Project Group (the “Franchise Project Group”) of the North American Securities Administrations Association, Inc. (“NASAA”) proposed that NASAA adopt a statement of policy recommending that states revise their franchise law provisions, if necessary, to achieve a more uniform approach to state franchise delivery requirements. Currently, there is a lack of uniformity among state franchise laws regarding when a franchise disclosure document must be delivered to a prospective franchisee. There is also a lack of uniformity between some state franchise delivery requirements and the delivery requirement adopted in 2007 under a Federal Trade Commission (“FTC”) Franchise Rule for franchise disclosure documents throughout the United States.¹ In order to address the lack of uniformity and to clarify when a disclosure document must be delivered to a prospective franchisee, the NASAA membership voted to adopt the following Statement of Policy which includes recommended statutory provisions and accompanying proposed regulations.

II. Recommended Statutory Provisions Regarding Delivery Requirement.

[Add to definitions]:

Prospective Franchisee.— “Prospective franchisee” means any person (including any agent, representative, or employee) who approaches or is approached by the franchisor, its employees, representatives, agents, subfranchisors, or any third party brokers involved in franchise sales activities, to discuss the possible establishment of a franchise relationship.

[Statutory delivery provision]:

A. A franchisor may not sell a franchise subject to registration in this State without delivering to a prospective franchisee a franchise disclosure document [offering circular/prospectus] and a copy of each proposed agreement that relates to the sale of the franchise at the earlier of:

- (i) 14 calendar days prior to the execution by the prospective franchisee of any binding agreement with the franchisor;
- (ii) 14 calendar days prior to payment of any consideration that relates to the franchise relationship; or
- (iii) the prospective franchisee’s reasonable request to receive a franchise

¹Final Amended Franchise Rule, 16 CFR 436, as amended, 72 FR 15444 (Mar. 30, 2007).

disclosure document [offering circular/prospectus].

B. A franchisor is not required under this [provision] to provide a franchise disclosure document [offering circular/prospectus] to a prospective franchisee if providing that disclosure document [offering circular/prospectus] would violate another provision of [the Act].

III. Text of Proposed Regulation Regarding Reasonable Request

For purposes of §[A] of the [state] Franchise Law, the 14 calendar day period commences the day after the Franchise Disclosure Document is received by the prospective franchisee.

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For purposes of §[B] of the [state] Franchise Law, a “reasonable request” to receive a franchise disclosure document means any request by a prospective franchisee in the sales process to buy a franchise from the franchisor.

(i) By way of illustration, a prospective franchisee is “in the sales process” when that individual has submitted a franchise application to the franchisor and been notified by the franchisor that he or she qualifies for a franchise.

(ii) A franchisor has no obligation under this regulation to furnish a franchise disclosure document to the franchisor’s competitors, the media, academicians, researchers, or any prospective franchisee who is not in the sales process to buy a franchise from the franchisor.