



**NASAA**

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January 8, 2002

Steven Toporoff, Attorney  
Federal Trade Commission  
Division of Marketing Practices  
Room 238  
Washington, DC 20580

**RE: FTC Rule Review  
Comparison of UFOC and Proposed FTC Disclosure Requirements**

Dear Mr. Toporoff:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA") I am pleased to submit the enclosed document prepared by the NASAA Franchise and Business Opportunities Project Group (the "Franchise Project Group"). The document is a side-by-side comparison of franchise disclosure requirements under the Uniform Franchise Offering Circular Guidelines ("UFOC") with new disclosure requirements proposed by the Federal Trade Commission (the "FTC") as part of its recent Rulemaking to amend its trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures" (the "FTC Rule Review").

Because the franchise disclosure requirements proposed under the FTC Rule Review are similar—but not identical—to the UFOC, the NASAA Franchise Project Group prepared the enclosed comparison to highlight differences between those two disclosure formats. NASAA hopes that this comparison can be a tool to assist the FTC, state franchise administrators and others to review and evaluate the proposed disclosure requirements under the FTC Rule Review.

NASAA appreciates the opportunity to work with the FTC as it moves toward promulgation of an amended Franchise Rule. We hope the FTC finds the enclosed comparison instructive. We stand ready to render any assistance that may be helpful to further our common goal of ensuring that prospective franchisees receive complete and meaningful disclosure before they invest in a franchise.

If you have any questions or comments about this matter, please do not hesitate to call me or Dale E. Cantone, Chair of the NASAA Franchise Project Group.

Very Truly Yours,

Joseph P. Borg,  
President, NASAA

Enclosure

**UFOC Disclosure Requirements  
Not Explicitly Included in Disclosure Guidelines of  
FTC Notice of Proposed Rulemaking**

**Item 1**

**THE FRANCHISOR,  
ITS PREDECESSORS  
AND AFFILIATES**

**THE FRANCHISOR, ITS PARENTS,  
PREDECESSORS,  
AND AFFILIATES**

UFOC Guidelines and Commentary

FTC Proposal

- |  |              |
|--|--------------|
| <p>\$ Use the word &gt;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 franchisee under the franchise agreement. Except in the 23 Item titles, use these initials or the word(s) to describe these persons or entities throughout the offering circular.</p> | <p>_____</p> |
| <p>\$ Define the franchisee as &gt;you= and use this description throughout the offering circular. If the franchisee could be a corporation, partnership or other entity, disclose whether &gt;you= includes the franchisee's owners.</p>  | <p>_____</p> |
| <p>\$ 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.</p>   | <p>_____</p> |
| <p>\$ Include, if appropriate, disclosure of the location of an international &gt;home office.=</p>  | <p>_____</p> |
| <p>\$ In a multi-state offering in which the agent for service of process is required, the franchisor may use an exhibit or the</p>  | <p>_____</p> |

**THE FRANCHISOR,  
ITS PREDECESSORS  
AND AFFILIATES**

**THE FRANCHISOR, ITS PARENTS,  
PREDECESSORS,  
AND AFFILIATES**

UFOC Guidelines and Commentary

FTC Proposal

acknowledgment of receipt to disclose this agent.

\$ Disclose that the franchisor sells or grants franchises	implied
\$ 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.	—
\$ COMMENTARY- Predecessor- Change of Ownership	—
\$ COMMENTARY- Predecessor Disclosure Period	—
\$ COMMENTARY- Affiliate/Natural Persons	—
\$ COMMENTARY- Foreign Affiliates	—

**Item 2**

**BUSINESS EXPERIENCE**

UFOC Guidelines and Commentary

ETC Proposal

\$ First disclose the position and the name of the person holding it. Underline this information; then skip one line.

\_\_\_\_\_

\$ Each job held@

\$ Principal positions and employers@

\$ Do not disclose home addresses, telephones, social security numbers or birth dates in this Item.

\_\_\_\_\_

\$ Disclose the required information concerning the franchise brokers directors, principal officers and executives with management responsibility to market or service the franchises.

\_\_\_\_\_

\$ 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 franchises differs from state to state, use an exhibit to refer to these personnel.

\_\_\_\_\_

\$ COMMENTARY- Employment History

\_\_\_\_\_

**Item 3**

**LITIGATION**

UFOC Guidelines and Commentary

ETC Proposal

\$ "been the subject of a material action"	\$ Abeen a defendant in a material action@	
\$ In this Item, settlement of an action does not diminish its materiality if the franchisor agrees to pay material consideration or agrees to be bound by obligations which are materially adverse to its interests		_____
\$ Definitions of Aordinary routine litigation,@Aheld liable@and Acurrently effective@		_____
\$ Specific formatting for civil litigation or injunctive or restrictive order		_____
\$ Specific formatting for criminal conviction or plea		_____
\$ State that other than these (list number of actions) actions, there is no litigation required to be disclosed in this offering circular.		_____
\$ 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 ("No litigation is required to be disclosed in this offering circular.")		_____
\$ COMMENTARY- Other Material Actions		_____
\$ COMMENTARY- Foreign Litigation		_____

UFOC Guidelines and Commentary

ETC Proposal

\$ COMMENTARY- Mediations

—

\$ COMMENTARY- Felonies

—

\$ COMMENTARY- Predecessor Litigation

—

## **Item 4**

### **BANKRUPTCY**

#### UFOC Guidelines and Commentary

- \$ Disclosure concerning an affiliate not limited (as, for example, to an affiliate who offers franchises under the franchisor's principal trademark).
  
- \$ Explicitly requires disclosure concerning "officers" of franchisor, and Commentary makes clear: (a) that this does not include all persons identified in Item 2 (e.g., a member of the Board of Directors), and (b) that "officers" includes *de facto* officers.
  
- \$ If there are any bankruptcies to disclose, general requirement to state "the material facts".

#### ETC Proposal

- \$ Disclosure concerning an affiliate limited to an affiliate who offers franchises under the franchisor's principal trademark.
  
- \$ Does not refer to "officers", but does require disclosure concerning "a person identified in Item 2." Item 2 might not include all officers of franchisor since, as in UFOC Guidelines, Item 2 disclosure of officers is limited to those who will have management responsibility relating to the offered franchises.
  
- \$ No general requirement to state "the material facts."

**Item 5**

**INITIAL FRANCHISE FEE**

UFOC Guidelines and Commentary

ETC Proposal

\$ Permits disclosure of installment payment terms in Item 5 or Item 10.

\$ No reference to disclosure of installment payment terms.

\$ Commentary makes clear payments to affiliates of franchisor before franchisee's business open should be disclosed as initial fees.=

\$ No reference to payments to affiliates of the franchisor.



**Item 6**

**OTHER FEES**

UFOC Guidelines and Commentary

ETC Proposal

- |   |  |
|---|--|
| <p>\$ If all fees are payable only to the franchisor, this must be disclosed in a footnote.</p> <p>\$ If all fees are non-refundable, this must be stated in a footnote.</p> <p>\$ Franchisor need not repeat information contained in Items 8 and 9, but the table should direct franchisee to these Items.</p> <p>\$ Commentary makes clear that the franchisor must disclose whether all continuing fees currently being charged are uniform, but need not disclose that fees charged in prior periods are different from the current fees.</p> <p>\$ Commentary makes clear that fees or payments to third parties are not required to be disclosed in this Item, but that franchisor must disclose fees or payments it imposes or collects on behalf of a third party.</p> | <p>\$ If all fees are payable only to the franchisor, this may be disclosed either in a footnote or the remarks column.</p> <p>\$ No such requirement B however, the terms and conditions under which any refundable fee is refundable must be disclosed.</p> <p>_____</p> <p>\$ No requirement to disclose whether fees are uniform.</p> <p>\$ No statement that fees or payments to third parties are not required to be disclosed in this Item (but as in UFOC, franchisor is required to disclose fees or payments it imposes or collects on behalf of a third party).</p> |
|---|--|

**Item 7**

**ESTIMATED INITIAL INVESTMENT**

<u>UFOC Guidelines and Commentary</u>	<u>FTC Proposal</u>
\$ Whether each payment is refundable <sup>@</sup>	_____
\$ Other payments that the franchisee must make to begin operations <sup>@</sup>	\$ included within other payments= expense category, rather than separately listed
\$ Payments required by the franchise agreement and all costs necessary to begin operation of the franchise and operate the franchise <sup>@</sup>	_____
\$ The factors, basis and experience that the franchisor considered or relied upon in formulating the amount required for additional funds <sup>@</sup>	_____
\$ The expenditures that [the franchisor or an affiliate] will finance <sup>@</sup>	\$ changed to "The amount that [the franchisor or an affiliate] will finance"
\$ Refer to Item 10 <sup>@</sup>	\$ reference to Item 10 is optional
\$ Total should be the same as the total investment on the offering circular cover <sup>@</sup>	_____
\$ COMMENTARY- Initial Phase	_____
\$ COMMENTARY- Owner's Salary	_____

**Item 8**

**RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES**

<u>UFOC Guidelines and Commentary</u>	<u>FTC Proposal</u>
\$ Asupplies, Yinventory, computer hardware and software@	\$ presumably included within the terms Aequipment@and Acomparable items@
\$ Ahow the franchisor formulates and modifies specifications and standards@	\$ required to state Ahow the franchisor issues and modifies specifications@
\$ Awhether the franchisor's criteria for supplier approval are available to franchisees@	_____
\$ Use sample answer 8-1 if the response to Item 8 is negative ("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.")	_____
\$ COMMENTARY- Scope	_____
\$ COMMENTARY- Scope Clarification	_____
\$ COMMENTARY- Rebates for Advertising	_____
\$ COMMENTARY- Rebates from other Parties	_____
\$ COMMENTARY- Rebates- Identity of Suppliers	_____
\$ COMMENTARY- Product Discounts	_____
\$ COMMENTARY- Cooperatives	_____

UFOC Guidelines and Commentary

ETC Proposal

\$ COMMENTARY- Multiple Brands

—

\$ COMMENTARY- Price Terms

—

**Item 9**

**FRANCHISEE-S OBLIGATIONS**

UFOC Guidelines and Commentary

ETC Proposal

\$ A Do not change the names of the categories.@

—

\$ A Fit all obligations within the listed categories.@

—

\$ A If other material obligations fall outside the scope of all of the prescribed categories, add additional categories as needed.@

\$ A Include additional obligations, as is warranted.@

**Item 10**

**FINANCING**

UFOC Guidelines and Commentary

ETC Proposal

- |   |   |
|---|---|
| <p>\$ If financing of the initial fee is disclosed in the Item 7 disclosure, a cross reference to Item 7 is sufficient if all of the disclosure which Item 10 requires is provided in Item 7.</p> | _____   |
| <p>\$ Distinguishes between financing arrangements for establishment of the franchised business and for operation of the franchised business.</p>   | <p>\$ incorporates both establishment and operation financing into one disclosure</p> |
| <p>\$ A Disclose the terms of each financing arrangement Y@</p>   | <p>implied</p>  |
| <p>\$ A Whether a person other than the franchisee (for example, spouse, shareholder of the franchisee) must personally guarantee the debt@</p>   | <p>\$ does not give examples</p>  |
| <p>\$ Cite the section and name of the document containing the terms [arrangements]. Put this information in parentheses at end of the description of the term.</p>                               | <p>\$ does not specify placement of citations</p>                                     |
| <p>\$ If loan agreement does not contain provisions waiving legal rights of franchisee or barring franchisee from asserting a defense against the lender, disclose that fact.</p>                 | _____   |
| <p>\$ If no disclosure is required by Instruction 10B, disclose that fact.@</p>   | _____   |
| <p>\$ If no disclosure is required by Instruction 10C, disclose that fact.</p>  | _____   |

UFOC Guidelines and Commentary

ETC Proposal

\$ Use sample answer 10-1 if the franchisor does not offer financing ("Belmont does not offer direct or indirect financing. Belmont does not guarantee your note, lease or obligation.")

—

\$ COMMENTARY- Financing Terms

—

**ITEM 11**

**FRANCHISOR'S OBLIGATIONS**

**FRANCHISOR'S ASSISTANCE,  
ADVERTISING, COMPUTER SYSTEMS  
AND  
TRAINING**

UFOC Guidelines and Commentary

FTC Proposal

\$ 11A(i) - Aÿ (the franchisor) need not provide ÿ@	\$ Aÿ(the franchisor) is not required to provideÿ@
\$ 11A(ii)(d) Cross-reference to Item 8	—
\$ 11B(ii)(f)(2) B Disclose how the franchisee's contribution to the cooperative is calculated (and may refer to Item 6).	\$ Disclose how much franchisee must contribute to the coop and whether other franchisees contribute at a different rate.  Disclose whether franchisor owned outlets contribute to the coop and, if so, whether on the same basis as franchisees.
\$ 11B(ii)(g)(1) B Examples of possible contributors to ad fund	—
\$ 11B(ii)(g)(5) B Use of ad fund B total of all allocated items must equal 100%	—
\$ 11B(vi) B Do not repeat disclosure in Item 6	—
\$ 11E B Table in sample answer adds 2 categories B ðime begun= and ðinstructors=	\$ Table does not include such items
\$ 11E(vii) B Disclose pre-opening charges for training or training materials in Item 5.	\$ Disclose charges for training in this Item



\$ 11E(1) B Disclose duration of training  
program

—

**ITEM 12**

**TERRITORY**

UFOC Guidelines and Commentary

FTC Proposal

\$Refers to exclusive territory and location

\$Refers to market area and defined area

## ITEM 13

### TRADEMARKS

#### UFOC Guidelines and Commentary

#### FTC Proposal

- |  |  |
|--|--|
| <p>\$ Franchisor may limit Item 13 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 13 but must amend its offering circular to reflect any material changes in the list.</p> | —  |
| <p>\$ The franchisee may reproduce these trademarks in this Item.</p>  | —  |
| <p>\$ Disclose . . . pending <u>material</u> litigation involving the principal trademarks.</p>  | <p>\$ Disclose any pending <u>federal or state</u> litigation</p>  |
| <p>\$ Litigation or an action is material if it could significantly affect the ownership or use of a trademark listed under Item 13.</p>   | —  |
| <p>\$ Describe any <u>decided</u> infringement, cancellation or opposition proceedings.</p>  | <p>\$ Refers to currently effective or pending matters</p>   |
| <p>\$ Describe how the determination affects the <u>ownership, use or licensing</u>.</p>   | <p>\$ Describe how the determination affects the <u>franchised business</u>.</p>   |
| <p>\$ 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 if the full opinion is attached.</p>   | <p>\$ Footnote refers to using a summary opinion of counsel if consent to use is included as part of the disclosure document</p> |
| <p>\$ If the franchisor knows of a use of a trademark by another in a geographic area relevant to the franchisee which is</p>  | —  |

## **ITEM 13**

### **TRADEMARKS**

UFOC Guidelines and Commentary

FTC Proposal

or is likely to be based on a claim of superior prior rights to the franchisor's, state the nature of the use by the other person and the place or area where it is occurring.

## ITEM 14

### PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

<u>UFOC Guidelines and Commentary</u>	<u>FTC Proposal</u>
\$ Describe the relationship of the patent, patent application or copyright to the franchised business.	—
\$ State the forum, case number, claims asserted, issues involved and effective determination <u>for any proceedings</u> in the PTO.	\$ Refers to any <u>material</u> proceedings
\$ If counsel consents, the franchisor may include <u>a counsel's opinion</u> or a summary of the opinion.	\$ Only refers to a summary opinion
\$ Use sample answer 14-1 if no patents or copyrights are material to the franchise (A No patents or copyrights are material to the franchise.©)	—

**Item 15**

**OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION  
OF THE FRANCHISE BUSINESS**

UFOC Guidelines and Commentary

FTC Proposal

\$ States that the franchisor may reference Items 14 and 17 in its answer.

—

\$ Commentary makes clear that Item 15 requires disclosure of all agreements that are binding on the franchisor's owners.

—

**ITEM 16**

**RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL**

UFOC Guidelines and Commentary

ETC Proposal

\$ The applicant may cross reference disclosures made in Items 8, 9 and 12.

—

\$ Use Sample Answer 16-1 for a negative disclosure ("Belmont does not restrict the type of goods or services that you may offer.")

—

## ITEM 17

### RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

#### UFOC Guidelines and Commentary

#### FTC Proposal

\$ 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.

—

\$ 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 agreement 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.

—

\$ 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.

\$ Summarize briefly each contractual provision.

\$ Do not change the names of the categories.

—

\$ If the response to any category is that the agreement does not contain the relevant provision, the table should so

\$ If a particular item is not applicable, state "Not Applicable."



UFOC Guidelines and Commentary

ETC Proposal

state.

**ITEM 18**

**PUBLIC FIGURES**

UFOC Guidelines and Commentary

ETC Proposal

\$ Use sample answer 18-1 for a negative response ("Belmont does not use any public figures to promote its franchise.")

—

**ITEM 19**

**EARNINGS CLAIMS**

**FINANCIAL PERFORMANCE REPRESENTATIONS**

UFOC Guidelines and Commentary

ETC Proposal

- |   |   |
|---|---|
| \$ Definition refers to "information given to a prospective franchisee"   | \$ Refers to "representation to a prospective franchisee"   |
| \$ Definition refers to information given "on behalf of or at the direction of the franchisor or its agent"   | —   |
| \$ Definition states "from which a specific level or range of . . . costs . . . may be easily ascertained"  | \$ doesn't refer to costs   |
| \$ If no earnings claim is made:<br><br>Belmont does not furnish or authorize its <u>salespersons</u> to furnish any oral or written information concerning the <u>actual or potential sales, costs, income or profits</u> of [a Belmont muffler shop]. | \$ If no earnings claim is made:<br><br>This franchisor does not make any " <u>representations about a franchisee's financial performance.</u> " We also do not authorize our <u>employees or representatives</u> to make such representations either orally or in writing. |
| \$ Supplemental earnings claim -- "directed to a particular location or <u>circumstance</u> "   | \$ "about a particular location or <u>variation</u> "   |
| \$ Burden of proof: The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.  | —   |
| \$ Earnings claim shall include description of factual basis and material assumptions   | \$ Must have written substantiation<br>\$ If past performance, disclose material bases<br>\$ If forecast of future  |

UFOC Guidelines and Commentary

ETC Proposal

performance, state material  
bases and assumptions

\$ Factual basis includes significant matters upon which a franchisee's future results are expected to depend. For example, economic or market conditions which are basic to the franchisee's operation and encompass . . . franchisee's sales, the cost of goods or services sold and operating expenses

\$ For past performance, description of material bases did not refer explicitly to franchisee's sales or operating expenses.

For forecast, these items are all included.

\$ Earnings claim may be based on results of operations of substantially similar business of affiliate of franchisor or affiliate's franchisees.

—

**ITEM 21**

**FINANCIAL STATEMENTS**

UFOC Guidelines and Commentary

ETC Proposal

\$ 21(iv) B UFOC requires at least one audited statement

\$ Audited statement not required immediately but phased-in over several years. Must disclose fact that audits unavailable.

Phase-in available for start-up franchise systems. What if company has existed for many years (as a non-franchisor) but has never had an audit?

\$ 21(ii) B Parent statements may be required

\$ Must include parent company financial statements.

\$ 21(vi) B Surety bond in lieu of guarantee

—

**ITEM 22**  
**CONTRACTS**

<u>UFOC Guidelines and Commentary</u>	<u>ETC Proposal</u>
\$ Copies of agreements are part of UFOC	—
\$ May refer to Item 10 re financing agreements	—

**ITEM 23**

**RECEIPT**

UFOC Guidelines and Commentary

FTC Proposal

\$ Text in boldface

—

\$ Delivery requirements based on old  
FTC Rule

\$ New delivery requirements

\$ 2 copies of receipt

—

\$ Effective date

\$ Issuance date