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I propose an exemption from registration for franchisors which grant franchise rights, such as a master franchise, area representative or area development franchise, for a territory which includes more than one state, so long as the franchisor has complied with all applicable registration and disclosure requirements in the jurisdiction which is the prospective franchisee's residence or principal place of business.

Need.

In several states, including Maryland and Indiana, among others, a franchisor must comply with a state's registration requirements "if the franchised business is or will be operated in the state." The grant of a multi-state territory to a single franchisee may create an obligation for a franchisor to register in multiple states to grant a single franchise to a single franchisee. We have seen the issue arise frequently when foreign franchisors consider awarding territories which cover substantial portions of the United States. They are confronted with the issue of whether they need to register in multiple states, just to have the right to negotiate a deal which may never come to fruition.

Requiring registrations in each state which may be covered by a franchise territory serves no real purpose. If the prospective franchisee is a resident of New York, and the franchisor complies with the registration and disclosure (or exemption) requirements of the New York franchise law, why should the states of Maryland, Virginia, Indiana, Rhode Island, etc. require registration of the same offer, just because the territory will or may include their states? Besides adding to the time and expense required to complete a transaction, franchisor always confront the risk that examiners in the different states will require changes to different aspects of an FDD or franchise agreement. When that happens, it places the franchisor and her lawyer in the untenable position of having to select one form of franchise agreement for execution, while ignoring the requirements of one or more other states.

This is a serious problem for foreign franchisors, especially when they begin discussions with a prospective franchisee about the scope of territorial rights they might grant to a prospect, but it is an issue for all franchisors who are considering granting territories which cross state boundaries, especially those in the Washington, D.C metro area, and the Chicago metropolitan area.

If the laws of the state from which the franchisee have been satisfied, no plausible basis exists for requiring registration in other states which do not, at the time of the offer and sale of the franchise, have any relationship with either of the parties. This is not to suggest that if a master franchise is granted, that the master and franchisor would not need to comply with registration and disclosure requirements in each state in which they will offer unit franchises.

I would be happy to discuss this with you further. This does seem to me to belong in the Committee's exemption project, rather than one dealing with multi-unit franchises, because it addresses jurisdictional issues relating to the application of the franchise laws, and because exemptions should be included in the same section of the statutes.

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