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BY EMAIL TO dcantone@oag.state.md.us AND BY FIRST CLASS MAIL
Dale Cantone, Chair
Office of the Attorney General
Division of Securities
200 St. Paul Place, 20th Floor
Baltimore, MD 21202-2020

Re: NASAA Proposed Model Franchise Exemptions

Dear Dale:

I have reviewed the proposed Model Exemptions to franchise registration requirements proposed by the North American Securities Administrators Association, Inc. ("NASAA"). In general, the proposed Model Exemptions, if actually adopted by state securities administrators, will provide greater clarity as to the actual exemptions available and the filing exemption applications.

However, changes to the proposal are necessary to provide greater harmony between the Federal Trade Commission Franchise Rule, 16 C.F.R. Part 436 (the "FTC Rule") and the state registration and disclosure requirements. Given the lengthy and exhaustive FTC Rule review and revision process undertaken between 1995 and 2006, it is unfair to require franchisors to prepare a Franchise Disclosure Document to qualify for a state exemption, when they are not required to do so under United States law. Accordingly, the following changes are suggested:

1. Sophisticated Franchisee (Accredited Investor), Section 3.(c)

A franchise sale is exempt from the FTC Rule if "The franchisee (or its parent or any affiliates) is an entity that has been in business for at least five years and has a net worth of at least $5 million." FTC Rule, § 436.8(5)(ii). Accordingly, the following language should be added to the end of Section 3.(c)(iii)(5): ", unless the offer or sale of the franchise is exempt from the FTC Rule pursuant to 16 C.F.R. Part 436.8(5)(ii)." This same exception should be added to the end of Section 3.(c)(iv).

2. Substantial Investment, Section 3.(d)

A franchise sale is exempt from the FTC Rule if "The franchisee's initial investment, excluding any financing received from the franchisor or an affiliate and excluding the cost of unimproved land, totals at least $1 million and the prospective franchisee signs an acknowledgment verifying the grounds for the exemption." FTC Rule, § 436.8(5)(i). It appears that the requirements to qualify for a registration exemption under proposed Section 3.(d) are substantially more stringent than the exemption from the FTC Rule. Accordingly, Sections (i), (ii) and (iii) of this Section 3.(d) should be revised to exclude such sales from the disclosure as well as the registration requirements.

Thank you for your attention to these comments.

Sincerely,

David L. Cahn
Counsel

DLC:cdl