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January 5, 2022

VIA ELECTRONIC MAIL

North American Securities Administrators Association, Inc.
Corporation Finance Section
Franchise and Business Opportunities Project Group
750 First Street, N.E.
Suite 1140
Washington, D.C. 20002
NASAAComments@nasaa.org

Re: Proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments

Dear Sir or Madam:

I am the Managing Partner of Laffey, Leitner & Goode LLC ("LLG"), a trial law firm based in Milwaukee, Wisconsin.

This letter is submitted in response to the December 6, 2021 Request for Public Comment regarding NASAA's Proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgements (the "Statement of Policy"). I write this letter on my own behalf, but am joined in its sentiment by my colleague Mark M. Leitner, who has reviewed it and approves of its contents.

We are first and foremost trial lawyers who have collectively more than 64 years of experience in trade distribution matters.

Over the last 28 years, I have had the privilege to represent manufacturers, dealers, franchisors, franchisees, and others involved in trade channel distribution matters in state and federal court and in a host of arbitrations. Unlike some law firms that focus their franchise and dealership practices representing one side of the trade channel or the other, LLG (and the firms at which we have worked at previously) purposefully chooses to take on engagements of any client who needs our assistance because we believe they benefit from having lawyers who are not institutionally constrained by a particular viewpoint or perception (political, legal, or otherwise). Rather, we have found our willingness to help both franchisors and franchisees (and manufacturers and dealers) alike makes us more useful to clients because we understand the full nature of the channel relationship and can appreciate how the "other side" is thinking about a particular dispute. In the end, we think this makes us better counselors to clients who engage us.

In the last 20 years, we have seen a growing trend in franchise law where franchisors seek to use disclaimers, non-reliance clauses, and franchise questionnaires and acknowledgements in the sales process as a means to hinder **any** future franchisee claims seeking redress for fraud and misrepresentation. This is particularly problematic in states like Wisconsin (one of the so-called registration states) that maintains both anti-fraud and anti-waiver statutory protection for franchisees.

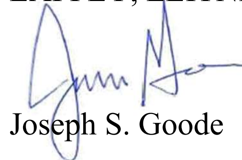
If our legal system is truly designed to get at the truth, I have always found these franchisor-driven approaches to be problematic because they undermine the actual facts with a contrived "contractual commitment" that often bears little truth to the actual facts. By way of example only, we recall a specific case where a franchisor uniformly instructed its sales representatives to tell prospective franchisees to write "None" in answer to a question over whether the sales representative had made financial performance representations ("FPRs"), while at the same time uniformly training their sales representatives to make FPRs outside of what is contained in the disclosure documents. In another case, a client franchisee answered a franchise questionnaire inquiry truthfully (that FPRs had been made by the sales team) and was told to change their answer to represent that no such representations had been made "so that the deal could be finalized." These questionnaires, acknowledgements, and the associated use of non-reliance clauses and other such disclaimers hinder access to the truth, deny the ability of legitimate claims to proceed, and insulate franchisors engaging in sale misconduct from liability. Requiring franchisees to lie about the facts seems at odds with a regulatory framework established to address widescale problems in the sale process associated with franchising long ago.

Of course, shame on franchisees who are gullible to such tactics. But shame on franchisors who prey upon the gullible. I join with others who have submitted comments that say, "let the facts fall where they may." If you allow franchisors the ongoing ability to use these tools, they will do what is in their best interest to protect themselves from suit even when the facts demonstrate claims for fraud and misrepresentation exist.

I ask that my comments be made part of the public record.

Very Truly Yours,

LAFFEY, LEITNER & GOODE LLC



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JSG/sa
Enclosure

cc: Mark M. Leitner (via Electronic Mail)
John W. Halpin (via Electronic Mail)
Jessica L. Farley (via Electronic Mail)
Andrea Seidt (via Electronic Mail)
Dale Cantone (via Electronic Mail)