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A Franchise Law Firm ---Est. 2006.

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December 30, 2021

North American Securities Administrators Association
750 First Street., NE
Washington, DC 20002

Re: Proposed Statement of Policy Regarding Use of Franchise Questionnaires and Acknowledgements

Dear Sir or Madam:

These comments are submitted in response to the proposed NASAA Statement of Policy Regarding Use of Franchise Questionnaires and Acknowledgements ("Statement of Policy"). I am a franchise attorney with many years of experience representing both franchisors and franchisees. I am also Adjunct Professor of Franchise Law at Case Western Reserve University. With Bruce Napell and Dan Oates, I co-authored the paper ("Dueling Perspectives on Selected Franchise Agreement Provisions") cited in your letter seeking public comment.

I applaud NASAA's proposed policy, as far as it goes. In my 30 years of franchise law practice, I have seen such exculpatory documents go from the exception to the norm. But they are by no means the only unreasonable hurdles used to discourage franchisees from litigating claims against their franchisors. It is not unusual, for example, to require mediation in a faraway location as a precondition to asserting a claim, and then to require that the claim subsequently be arbitrated in this same faraway location with three arbitrators; such requirements are thinly disguised strategies to raise the initial cost of filing a claim to potentially prohibitive levels. If the franchise business is successful, no claims based on pre-sale fraud are ever brought. It is only the unsuccessful franchisees who contemplate litigation, and they are precisely the ones least able to afford expensive dispute resolution procedures.

The current proposed Statement of Policy would be a positive step in the protection of franchise buyers. If the Statement of Policy is adopted, we may assume it will find its way into law or regulation in states currently requiring franchise registration or notice based on NASAA rules or policies. Hopefully, courts or arbitrators in other states will also

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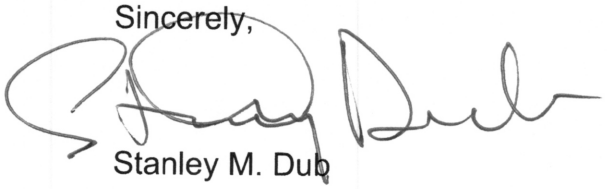
find the Statement of Policy persuasive. But the larger problem remains the absence of any enforceable requirement to provide an FDD or other disclosure document in most states. It is long past time to acknowledge that the FTC plays no role today in enforcing its disclosure rules, and that no franchise disclosure document is required by separate state legislation in roughly thirty five states. (cf., Stanley Dub, *In Support of a New Uniform Franchise Disclosure Act; If Not Now, When*? 39 Franchise L. J. 387). In these states there is currently no remedy available to a franchise buyer if he or she never receives an FDD or other disclosure document. It has additionally been estimated that as many as 50% of all franchise buyers sign their franchise agreements without having the agreement or FDD reviewed by an attorney! Whatever the number, the increasing prevalence of electronic disclosure undoubtedly exacerbates this tendency, as how many non-lawyers would bother to print an FDD package that might run to several hundred pages in length?

Investment regulators considering passage of this Statement of Purpose should recognize they are only debating a band-aid remedy for certain kinds of franchisor overreaching, and that much larger systemic problems are going untreated.

Sincerely,



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