
From: info@worldwisefranchise.com
Sent: Sunday, January 2, 2022 12:08 PM
To: NASAA Comments
Cc: Andrea.Seidt@com.state.oh.us; Dale Cantone
Subject: [EXTERNAL]REQUEST FOR PUBLIC COMMENT: FRANCHISE QUESTIONNAIRES
Attachments: Exhibit H to the Franchise Disclosure Document.pdf

North American Securities Administrators Association, Inc. (NASAA)

Ms. Andrea Seidt
Ohio Securities Commissioner
Ohio Department of Commerce

Dale Cantone
Chair, Office of the Attorney General, Division of Securities

Good day, Happy New Year, and thank you for this opportunity to express myself publicly as it is most appreciated.

My name is Kim Perrotta and I have been involved in franchising for a career that has now spanned 30+ years. As both Franchisor and Franchisee, I've been on both sides of the desk (and counter) for as long as I can remember. I've developed, executed, and designed franchising programs, franchise documentation consistent with regulations, and "sold" franchises both domestically and internationally. My background consists of all things franchised including franchise sales and development, franchisee support, operations, marketing, financial management, real estate, construction, franchise brand building, and brand acquisitions, with titles such as President, C.O.O., Country Manager, Managing Director, Regional, Area, and District Manager. I am passionate about working with the American Diabetes Association and the Congressional Diabetes Caucus for Diabetes Advocacy with Police Departments, First Responder EMTs, and in particular in conjunction with the Cleveland Clinic / Martin County Health for ongoing education and refresher courses. I am honored to also be a SCORE mentor and workshop presenter and an associate member with the American Association of Franchisees and Dealers (AAFD). Today, I am a Franchisee advocate and advisor, and what is commonly referred to as a franchise "broker, consultant, coach," etc.

As you're aware, franchise agreements are "adhesion" agreements by their very nature. Typically and considerably one-sided on behalf of the franchisor for the express purpose of maintaining the "strength" of their respective systems and marks. These agreements are replete with protections for the franchisor consisting of default provisions, termination provisions, integration clauses, non-disclosure provisions, binding arbitration in their chosen jurisdictions, post-term covenants, and the inability of Franchisees to sue or bring class-action suits against them. Moreover, many of these provisions and protections are all too often used against the Franchisee to place egregious pressure and force should the Franchisee "get out of line" with the franchisor. Threats by franchisors are routine in franchising and used to bring Franchisee's "inline". It becomes their ultimate "hammer" if you will.

With all of the aforementioned protective provisions on the franchisor's behalf, notwithstanding the many more than I've not mentioned, the "questionnaires" that are made part of contract exhibits to be executed only serve to add even more onerous and wholly unnecessary protections on the behalf of the franchisor. Some franchisors go far beyond what might be standard in these questionnaires with the addition of ridiculously outrageous added terms that do not belong. **Please see the attached example.**

Due to highly publicized misinformation concerning franchises by way of endorsements, columns, publications, franchise grading, vetting, profit and loss information, and reviews, potential Franchisees are fed a seemingly endless stream of

“positive press” that often flies in the face of information provided in the Franchise Disclosure Document. By the time a prospective Franchisee is prepared to execute agreements with a franchisor they are fully invested with time, effort, energy, research, and all the misinformation they will have come across. Unfortunately, in many instances, they are making their final decisions with their hearts and not their heads. They will often not understand the ramifications and “releases” they’re providing when, in the final hours, asked to sign the questionnaire that adds another layer of the Franchisor covering themselves even though they may have been provided with several “double winks” along the way to signing agreements. Imagine the pressure one might feel when again, in the final hours, they could be told if you do not sign this, we may not sell you the franchise.

While it is true that these over-the-top questionnaires are part of the FDD it is rare to have a Franchisee that fully understands these 200+ page disclosures and attachments when even if reviewed by a competent franchisee attorney they’ll be no negotiating nor carving out on the questionnaires. Again, the franchisor has been provided this document by franchise-centric attorneys who simply add them, with some modification, to the contract template they will often use.

In summary, I fully endorse the elimination of these egregious and arbitrary questionnaires knowing that on their face they are nothing more than anti-Franchisee tools to utilize in the event of a problem going forward that might even be supported by truth and evidence on behalf of the prospective Franchisee. It is but another example of the inequity in franchising by ethically absent franchisors.

Once again, I wish to thank you for the opportunity to express my opinion, and frankly, the opinion of many others who desire fairness, franchise equity, and standards that serve to preserve and equalize the rights of Franchisees.

Sincerely and respectfully,

Kim Perrotta

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Exhibit H to the Franchise Disclosure Document

(insert franchise name(s) here)

FRANCHISEE DISCLOSURE ACKNOWLEDGMENT STATEMENT

As you know, (franchise name(s) (the “Franchisor”) and you are preparing to enter into a franchise agreement (the “Franchise Agreement”) for the establishment and operation of a (franchise name(s) here)

(franchise name(s) here) or “(insert franchise name(s) here) Restaurant (the “Franchised Business”).

The purpose of this Questionnaire is to determine whether any statements or promises were made to you by employees or authorized representatives of the Franchisor, or by employees or authorized representatives of a broker acting on behalf of the Franchisor (“Broker”) that have not been authorized, or that were not disclosed in the Disclosure Document or that may be untrue, inaccurate or misleading. The Franchisor, through the use of this document, desires to ascertain (a) that the undersigned, individually and as a representative of any legal entity established to acquire the franchise rights, fully understands and comprehends that the purchase of a franchise is a business decision, complete with its associated risks, and (b) that you are not relying upon any oral statement, representations, promises or assurances during the negotiations for the purchase of the franchise which have not been authorized by Franchisor. In the event that you are intending to purchase an existing Franchised Business from an existing Franchisee, you may have received information from the transferring Franchisee, who is not an employee or representative of the Franchisor.

The questions below do not apply to any communications that you had with the transferring Franchisee. Please review each of the following questions and statements carefully and provide honest and complete responses to each.

1. Are you seeking to enter into the Franchise Agreement in connection with a purchase or transfer of an existing Franchised Business from an existing Franchisee?

Yes _____ No _____

2. I had my first face-to-face meeting with a Franchisor representative on

_____, 20____.

3. Have you received and personally reviewed the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes _____ No _____

4. Do you understand all of the information contained in the Franchise Agreement, each addendum, and/or related agreement provided to you?

Yes _____ No _____

If no, what parts of the Franchise Agreement, any Addendum, and/or related agreement do you not understand? (Attach additional pages, if necessary.)

5. Have you received and personally reviewed the Franchisor's Disclosure Document that was provided to you?

Yes _____ No _____

6. Did you sign a receipt for the Disclosure Document indicating the date you received it?

Yes _____ No _____

7. Do you understand all of the information contained in the Disclosure Document and any state-specific Addendum to the Disclosure Document?

Yes _____ No _____

If No, what parts of the Disclosure Document and/or Addendum do you not understand? (Attach additional pages, if necessary.)

8. Have you discussed the benefits and risks of establishing and operating a Franchised Business with an attorney, accountant, or other professional advisor?

Yes _____ No _____

If No, do you wish to have more time to do so?

Yes _____ No _____

9. Do you understand that the success or failure of your Franchised Business will depend in large part upon your skills and abilities, competition from other businesses, interest rates, inflation, labor and supply costs, location, lease terms, your management capabilities and other economic, and business factors?

Yes _____ No _____

10. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the actual or potential revenues, profits or operating costs of any particular Franchised Business operated by the Franchisor or its franchisees (or of any group of such businesses), that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

11. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the amount of money you may earn in operating the franchised business that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

12. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the total amount of revenue the Franchised Business will generate, that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

13. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise regarding the costs you may incur in operating the Franchised Business that is contrary to or different from the information contained in the Disclosure Document?

Yes _____ No _____

14. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement or promise concerning the likelihood of success that you should or might expect to achieve from operating a Franchised Business?

Yes _____ No _____

15. Has any employee of a Broker or other person speaking on behalf of the Franchisor made any statement, promise or agreement concerning the advertising, marketing, training, support service or assistance that the Franchisor will furnish to you that is contrary to, or different from, the information contained in the Disclosure Document or franchise agreement?

Yes _____ No _____

16. Have you entered into any binding agreement with the Franchisor concerning the purchase of this franchise prior to today?

Yes _____ No _____

17. Have you paid any money to the Franchisor concerning the purchase of this franchise prior to today?

Yes _____ No _____

18. Have you spoken to any other franchisee(s) of this system before deciding to purchase this franchise?

Yes _____ No _____

If so, who?

19. Do you understand that the Franchise Agreement contains the entire agreement between you and us concerning the franchise for the (insert franchise name(s) here) franchise, meaning that any prior oral or written statements not expressly stated in the Franchise Agreement will not be binding?

Yes _____ No _____

20. Do you understand that you are bound by the non-compete covenants (both in-term and post-term) and that an injunction is an appropriate remedy to protect the interests of the (INSERT FRANCHISE NAME(S) HERE) system if you violate the covenant(s)? Further, do you understand that the term "you" for purposes of the non-compete covenants is defined broadly, such that any actions in violation of the covenants by those holding any interest in the franchisee entity may result in an injunction, default and termination of the Franchise Agreement?

Yes _____ No _____

21. Do you own, possess or have rights to any trade secrets or confidential information relating to or involving recipes, restaurants, pizza or Italian food?

Yes _____ No _____

If yes, please identify all of your trade secrets and/or confidential information:

22. Do you understand that if the Franchise Agreement terminates for any reason you will not be able to own, participate or work in any restaurant business involved in: 1) selling pizza, pasta, calzones or Italian food; 2) featuring the overall (insert franchise name(s) here) concept; 3) looking similar to a (insert franchise name(s) here) concept, with similar décor (granite countertops, wood trim, booths, pictures of New York, display of products at counter, display of pizza oven and prep table) or menu items (pizza or Italian food) to (insert franchise name(s) here) restaurants; or 4) selling pizzeria type products for a period of 5 years?

Yes _____ No _____

23. Do you understand that part of (insert franchise name(s) here) trade dress and concept is offering XX” pizzas, individual giant slices of pizza, Neapolitan pizzas, New-York style pizzas, Italian food, New York pictures, New York themed names on menu items, granite countertops, booths, stained concrete, exposed ceilings, exposed brick, wood trim and a viewable pizza oven and prep table area?

Yes _____ No _____

If you have answered No to question 9, or Yes to any one of questions 10-17, please provide a full explanation of each answer in the following blank lines. (Attach additional pages, if necessary, and refer to them below.) If you have answered Yes to question 9, and No to each of questions 10-17, please leave the following lines blank.

I signed the Franchise Agreement and Addendum (if any) on _____, 20____, and acknowledge that no Agreement or Addendum is effective until signed and dated by the Franchisor.

Please understand that your responses to these questions are important to us and that we will rely on them. By signing this Questionnaire, you are representing that you have responded truthfully to the above questions. In addition, by signing this Questionnaire, you also acknowledge that:

A. You recognize and understand that business risks, which exist in connection with the purchase of any business, make the success or failure of the franchise subject to many variables, including among other things, your skills and abilities, the hours worked by you, competition, interest rates, the economy, inflation, franchise location, operation costs, lease terms and costs and the marketplace. You hereby acknowledge your awareness of and willingness to undertake these business risks.

B. You agree and state that the decision to enter into this business risk is in no manner predicated upon any oral representation, assurances, warranties, guarantees or promises made by Franchisor or any of its officers, employees or agents (including the Broker or any other broker) as to the likelihood of success of the franchise. Except as contained in the Disclosure Document, you acknowledge that you have not received any information from the Franchisor or any of its officers, employees or agents (including the Broker or any other broker) concerning actual, projected or forecasted franchise sales, profits or earnings. If you believe that you have received any information concerning actual, average,

projected or forecasted franchise sales, profits or earnings other than those contained in the Disclosure Document, please describe those in the space provided below or write "None".

C. You further acknowledge that the President of the United States of America has issued Executive Order 13224 (the "Executive Order") prohibiting transactions with terrorists and terrorist organizations and that the United States government has adopted, and in the future may adopt, other anti-terrorism measures (the "Anti-Terrorism Measures"). The Franchisor therefore requires certain certifications that the parties with whom it deals are not directly involved in terrorism. For that reason, you hereby certify that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, is:

- (i) a person or entity listed in the Annex to the Executive Order;
- (ii) a person or entity otherwise determined by the Executive Order to have committed acts of terrorism or to pose a significant risk of committing acts of terrorism;
- (iii) a person or entity who assists, sponsors, or supports terrorists or acts of terrorism; or
- (iv) owned or controlled by terrorists or sponsors of terrorism.

You further covenant that neither you nor any of your employees, agents or representatives, nor any other person or entity associated with you, will during the term of the Franchise Agreement become a person or entity described above or otherwise become a target of any Anti-Terrorism Measure.

Acknowledged this ____ day of _____, 20__.

Sign here if you are taking the franchise as an Sign here if you are taking the franchise as a

CORPORATION, LIMITED LIABILITY

INDIVIDUAL COMPANY OR PARTNERSHIP

Signature Print Name of Legal Entity

Print Name By:

Signature

Signature Print Name

Print Name Title

Signature