



NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION, INC.

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March 14, 2022

Chair Ben Cardin
U.S. Senate Committee on
Small Business and Entrepreneurship
428A Russell Senate Office Building
Washington, D.C. 20515

Ranking Member Rand Paul
U.S. Senate Committee on
Small Business and Entrepreneurship
428A Russell Senate Office Building
Washington, D.C. 20515

Re: NASAA's Core Principles for Evaluating Federal Legislation Relating to Franchises

Dear Chair Cardin and Ranking Member Paul:

On behalf of the North American Securities Administrators Association, Inc. ("NASAA"),¹ I am writing to commend you and your colleagues for scheduling a hearing to examine the franchising industry and the role of the U.S. Small Business Administration ("SBA") in franchising. In addition, I am writing to urge you to consider NASAA's core principles for evaluating federal legislation relating to franchises.

At NASAA, we believe in prioritizing investor protection, encouraging responsible capital formation, and supporting inclusion and innovation in our capital markets. We have ample experience and expertise in the difficult work of maintaining an even playing field in our capital markets for investors and all types of investment products, professionals, practices, and technologies. As you may know, NASAA, the voice of state securities regulators, plays an important role in franchising regulation because many states regulate the offer and sale of franchises and approximately half of them require pre-sale registration of franchise offerings. The insights and opinions of state securities regulators regarding franchises reflect their positions on the frontlines of protecting Main Street investors and engaging with small business owners.²

¹ Organized in 1919, NASAA is the oldest international organization devoted to investor protection. NASAA's membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grassroots investor protection and responsible capital formation.

² NASAA has several sections, committees, and project groups that carry out and otherwise support its work. Since the 1980s, NASAA has had a group of approximately a dozen state securities regulators that work on various projects and tasks related to franchising. For at least the last 20 years, an employee of the Federal Trade Commission ("FTC") has served as an observer on NASAA's franchise project group. The current chair of the project group is Theresa Leets, Assistant Chief Counsel, Securities Regulation Unit, California Department of Financial Protection and Innovation. Dale Cantone, then-Deputy Securities Commissioner and Chief of the Franchise and Business Opportunities Unit of the Office of the Maryland Attorney General, Securities Division, served as the chair of the project group from 1997 to 2021. To locate NASAA resources relating to franchising, go to [Franchises Resources](#) at nasaa.org. See, e.g., [State Securities Agencies with Jurisdiction Over Franchise and Business Opportunities](#); [NASAA Seeks Public Comment on Proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments](#) (Dec. 7, 2021); [NASAA's Electronic Filing Depository Expands to Franchise Filings](#) (May 3, 2021); [New Franchise Disclosure Handbook Available from NASAA](#) (May 8, 2020); [Informed Investor Advisory: Franchises](#) (Jan. 31, 2011).

Like many state securities regulators, we at the Maryland Securities Division have worked hard the last several decades to protect investors in franchises through education, disclosure, and enforcement, among other regulatory tools. At each juncture, we have become more concerned and outspoken about the need for our federal partners to adjust and properly fund their regulatory regime so that it produces enhanced regulatory coordination, investor education, transparency, and enforcement.³

NASAA supports the efforts of the U.S. Senate Committee on Small Business and Entrepreneurship to shine a light on the opportunities for strengthening the franchising regulatory framework in the United States. As you do so, we urge you to consider the core principles outlined below and oppose legislative proposals that are inconsistent with these principles.

- 1. Congress should protect the authority of state securities regulators.** For over a century, state securities regulators have been on the frontlines of work to make our capital markets safer, more efficient, and more inclusive. Today, we continue to work hard to ensure that the latest market practices, including practices in the franchising marketplace, occur within the well-established regulatory framework for supporting investor protection and responsible capital formation in the United States. Those of our members who also regulate the offer and sale of franchises bring an equal measure of commitment to investor protection and sound franchising practices. We oppose federal legislation that preempts or otherwise restricts the authority of state securities regulators, including our administration of state franchise laws.
- 2. Congress should foster better regulatory coordination.** Regulators, particularly state securities regulators and the FTC, communicate about and agree on many issues. However, more can be done to foster better regulatory coordination. *First*, federal entities, including the U.S. Department of the Treasury, the FTC, the U.S. Government Accountability Office, and the SBA, must seek input from state securities regulators on relevant franchise regulatory matters before issuing reports, especially reports to Congress. *Second*, commissions, working groups, task forces, and similar bodies working on franchising and related issues must include representation from state securities regulators. If a member of Congress wanted to act now to promote enhanced regulatory coordination, by way of example, she or he could introduce legislation to amend the enabling statute for the Financial Literacy and Education Commission (“FLEC”) to include representation from NASAA and explicitly include franchise education as an area of emphasis for FLEC.⁴
- 3. Congress should foster easier, more informed decision-making.** Presently, people who want to invest in a franchise face a difficult, time-consuming process for researching opportunities. The average investor, who may be seeking to operate a small business with

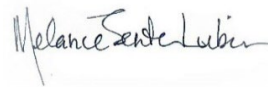
³ See, e.g., [Testimony of Dale Cantone](#), Reviewing the Franchise Rule: An FTC Workshop (Nov. 10, 2020); [Prepared Statement of Dale Cantone](#), then-Deputy Securities Commissioner and Chief of the Franchise and Business Opportunities Unit of the Office of the Maryland Attorney General, Securities Division, Before the Subcommittee on Commerce, Trade, and Consumer Protection of the Committee on Energy and Commerce, U.S. House of Representatives (June 25, 2002).

⁴ See 20 U.S.C. Ch. 77, [Financial Literacy and Education Commission](#).

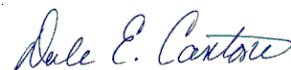
little or no prior business experience, must spend considerable time reviewing the relevant disclosure documents, which typically are lengthy and full of legalese.⁵ In our view, it should not be so time-consuming and hard to invest safely in a franchise. If a member of Congress wanted to act now to foster easier, more informed decision-making, by way of example, she or he could introduce legislation that achieves at least three goals. *First*, the bill would fund an FTC-led effort to explore ways to make franchise disclosure documents easier to read and understand for average franchise investors. *Second*, the bill would direct the FTC to work with NASAA to require that all franchise disclosure documents include meaningful financial performance representation disclosure, wherever feasible. At present, that all-important item of disclosure is not required under the FTC Franchise Rule, even though it is the single most important piece of disclosure that prospective franchise investors desire, and that they should have to make an informed investment decision.⁶ *Third*, the bill would ban the use of waivers. Prospective franchise investors should never be required or asked to waive their rights under applicable franchise laws, nor should they be required or asked to sign a mandatory arbitration agreement.⁷

Thank you for your consideration of NASAA’s comments. Should you have any questions, please do not hesitate to contact me or Kristen Hutchens, NASAA’s Director of Policy and Government Affairs, and Policy Counsel, at khutchens@nasaa.org.

Sincerely,



Melanie Senter Lubin
NASAA President
Maryland Securities Commissioner



Dale E. Cantone
Senior Assistant Attorney General
Maryland Securities Division

⁵ See [NASAA Comment to FTC Franchise Rule Regulatory Review](#) (May 13, 2019) (calling for the FTC to improve the readability of disclosures) (“Over the last twenty-five years, [the Franchise Disclosure Documents] have become longer and more complicated. According to one noted franchisee lawyer, “[i]t is now not unusual for the entire [FDD], including all related attachments, to exceed 300 pages. In fact, it is not unheard of for a[n FDD] to exceed 500 pages, or 7.5 pounds, of material.” Some FDDs even exceed 1,000 pages of material.”).

⁶ See FTC, [Transcript: Reviewing the Franchise Rule: An FTC Workshop](#) (Nov. 10, 2020) (participants explained that the present regulatory scheme allows a franchisor to not disclose financial performance representations to prospective franchisees but still make a similar disclosure to banks to facilitate loans).

⁷ See [NASAA Letter to the Leadership of the U.S. Senate Committee on Banking, Housing, and Urban Affairs Regarding Mandatory Arbitration Agreements in Our Capital Markets](#) (Mar. 8, 2022).