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To: [NASAA Comments](#)
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Subject: [EXTERNAL]Comments to Model Broker Act
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Attachments: [image001.png](#)

Hello,

I'm writing to provide comments on the proposed Model Broker Act. On an overarching level, our primary concern is that there are a lot of general terms that will necessitate supplemental definitions, regulatory language, etc. from each state, and if several states approach this in a different way, it could lead to a very disjointed framework with very high compliance costs. In particular, anything that NASAA can do to facilitate a centralized repository for tracking registrations and continuing education requirements (much like the goals of the EFD Portal) would be incredibly helpful, and we would be happy to work with NASAA and provide our recommendations based on our experience with franchisor registrations. Additionally, we have a few overarching comments regarding the initial draft language and we appreciate your consideration of these comments as you prepare the next version.

1) Definition of Franchise Brokers – The suggested definition of franchise brokers includes anyone that “directly or indirectly” engages in the offer or sale of a franchise and receives any consideration from a franchisor. The preamble to the Franchise Broker Act contemplates that a “franchise broker” also includes individuals that locate or evaluate the qualifications of franchisees or manage the prospect pipeline for franchisors, in addition to more traditional sales functions. However, as the primary concerns regarding brokers revolve around representations to franchisees as well as confusion over who they represent, we believe that the definition should be limited to individuals or entities that interact with franchisee prospects, even if such interaction is indirect.

2) Franchisee Referral Fee Threshold – The definition of who will be deemed to be a franchise broker carves out current franchisees of the franchisor, but only if the franchisee does not receive more than \$1,000 in referral fees or other consideration in a calendar year. While we agree that some sort of threshold is necessary to guard against franchisees that effectively take on a second job selling franchises, we think this \$1,000 threshold is too low as it could interfere with a franchisor's bona fide referral program and increasing this threshold to \$10,000 would not undermine the intent of this requirement.

3) Franchisor Liability – As noted above, the Franchise Broker Act provides for franchisor liability if the franchisor uses an unregistered broker or broker representative. We believe that adding a knowledge component would be prudent as it insulates franchisors that unknowingly use a broker that they reasonably believe to be registered (e.g., if a broker has its registration suspended and fails to notify the franchisor).

4) Vicarious Liability for Broker Networks – With the growing influence of larger broker networks and franchise sales organizations (FSOs), we believe that it's important for any applicable statute to consider the consequences that a prohibited act of one individual broker representative would have on the registration status of an entire network. At a minimum, we believe that broker networks should have the ability to cure certain technical defects of their individual brokers (such as

failure to pay a renewal fee). More generally, we think that adding clarity around the interrelated liability of individual broker representatives and broker networks in the next draft of the statute will help the impacted groups get a better understanding of the processes and procedures they will need to implement.

5) Recordkeeping Timeframe – Similar to the referral fee threshold, we are not opposed to requiring that franchise brokers maintain accurate records about their sales activities. However, the 10-year requirement imposed by the Franchise Broker Act seems excessive and we would recommend reducing this to 5 years.

Regards,

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