

**From:** [Jim Nail](#)  
**To:** [NASAA Comments](#); [Theresa Leets](#); [bill.beatty@dfi.wa.gov](mailto:bill.beatty@dfi.wa.gov); [Erin Houston](#)  
**Subject:** [EXTERNAL]COMMENT on the Model Franchise Broker Registration Act  
**Date:** Wednesday, August 27, 2025 11:55:51 PM

---

Dear NASAA Team,

Thank you for the opportunity to comment on the proposed Model Franchise Broker Registration Act.

I come to the franchising industry after a long career in investment banking, fund management, and real estate development finance. I worked internationally for decades, including with blue chip firms such as Deutsche Bank Securities and Soros Fund Management; and upon returning to the United States I founded and co-managed a small Registered Investment Adviser as well. For about the past 6 years, I've worked as a franchise broker, applying my investment skill-set to help potential franchisees navigate the challenges of franchising.

I have never been sued, subjected to any regulatory discipline or investigation, or had a complaint filed against me in any of my professional capacities.

I hope I can bring a helpful perspective to discussion of the proposed Act. My primary impression is that the 2025 version of the Act is certainly a major improvement on the prior draft circulated in 2024, yet it still appears motivated by some of the same fundamental misunderstandings.

In order to keep this letter from expanding into unreadable dimensions, let me focus on just one primary misunderstanding at the very core of the Act. At the end of my comment, I will briefly mention another misunderstanding that seems highly pertinent to me.

### **Financial representations**

NASAA appears convinced that franchise brokers are harming the franchise business model by misleading people into investing into franchises that, in themselves, are perfectly good, if only brokers would tell the truth about their earnings.

Yet earnings representations are only permitted in Item 19 of each franchise's FDD.

Perhaps there are a handful of brokers out there who quote fabricated numbers that do not align with the Item 19, but I have never met such a broker or heard of one. If there are such foolhardy individuals, they must be glaringly obvious to their clients and the franchisors alike, since the correct Item 19 representations are *always* a major focus of discussion between the

franchisor and every potential franchisee.

The more prevalent reality of the industry is that franchisors carefully craft their Item 19 to present themselves in the best possible light. Surprisingly often, this involves skirting the edges of misrepresentation. Yet the information asymmetries are such that only the franchisor, not the broker, can genuinely know the truth behind the selected data.

In my own practice, I often call my clients' attention to the specific notes in franchises' Item 19 that could help correct a misleading first impression. For example, one very common dodge is that earnings numbers are given only per franchisee rather than per territory. It is worth pointing out to a potential investor, when this can be divined from the footnotes, that the average franchisee in such a system owns multiple territories, or that the territories with which certain cited earnings were achieved may have been many times larger than the ones currently being marketed.

Another popular approach is to elide the different ages of franchise units cited in the Item 19, blending the earnings outcomes of very long-established businesses with new ones. Sometimes the older units are actually corporate locations that were only converted into franchises recently, so in fact there may be no businesses originally launched as franchises that show any earnings whatsoever.

Some franchises distinguish between "full-time" and "part-time" franchisees, and in the footnotes one can discover a surprising circularity: that the definitional difference between them is not the amount of time they put in but the level of their earnings! In one FDD I've seen, the "part-time" franchisees under this earnings-based definition comprise roughly two-thirds of the total number of franchise units. The intent, and the effect, of such manipulations is to give incautious investors a dramatically exaggerated idea of the earnings potential represented by the opportunity.

This does not mean that the franchise is a bad one, necessarily; but it does mean that their Item 19 needs to be examined very carefully through further research, and potentially divided by some significant factor, to reflect the opportunity at hand with greater accuracy.

Similarly, Item 7 often understates the amount of capital that a franchisee might need to launch the venture. I always tell my clients to begin their estimates at the high end of the Item 7 range, but to make sure and provide for additional working capital, and also to question current franchisees carefully and research their local market conditions as well, to understand the real investment requirements of the business model.

Again, such misleading representations do not necessarily mean that the franchise is a bad one; but they do mean that the investor needs to do significant additional work to overcome

the franchisor's representations and get to a more accurate understanding.

*Nota bene*, this is not because brokers understate the numbers in Item 7 or the Item 19; it's because franchisors do.

And again note the deep information asymmetries involved. Only the franchisor knows the truth, and the franchisor is the only one who writes the Item 7 and Item 19 numbers that the other industry participants must rely upon.

It is hard to avoid the impression that brokers are a convenient scapegoat here. No doubt this is in part because the IFA, while presenting itself as a neutral industry representative, in fact represents franchisors.

### **Brokers versus FSOs**

Before closing, I would like to mention one more key point. Namely, the important distinction between franchise brokers and Franchise Sales Organizations (FSOs).

FSOs and their representatives are engaged in selling franchises on behalf of franchisors. They advise franchisors on marketing and receive delegated rights to qualify or disqualify candidates, to distribute the FDD on behalf of the franchisor, and in some cases even to award the franchise to candidates. In some cases FSOs even engage prior to the selling process, to help franchisors prepare and optimize their FDDs for selling purposes. It is not uncommon for FSOs to obtain equity stakes in their client franchises.

Brokers in contrast do not have any authority to represent the franchise. Brokers are not involved in preparing or structuring the FDD. They are not authorized to distribute the FDD to candidates, nor do they qualify or approve any candidates. Brokers are independent of the franchise, serving an educational and matchmaking function across a range of different franchises.

The broker's job is to identify potential franchisees, educate them about franchising, and introduce them to franchises that appear suitable in terms of the candidates' skill-set, financial capabilities, and interests.

I normally present 6 or 7 brands for my clients' consideration, after an extensive interview process to ascertain what might be appropriate for that client. I have never "sold" a franchise to anyone. I have never "offered" a franchise to anyone, because I do not have the authority to do so. After I make my introduction, the FSO and/or the franchisor makes all decisions. I merely try to help my clients do a good job of their due diligence.

Well, I will close here, having offered only those two points. I apologize for the length of this comment, and in case you have managed to read it to the end, allow me to thank you for your kind attention.

Sincerely,

Jim Nail, franchise broker, member of the FBA and the IFPG

**CAUTION:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.