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August 27, 2025

Comments To The Franchise and Business Opportunities Project Group ("Project Group") of the Corporation Finance Section ("Section") of the North American Securities Administrators Association, Inc. ("NASAA") on the Proposed NASAA Model Broker Registration Act (the "Model Act")

Via: NASAA Comments Inbox @ nasaacomments@nasaa.org

RE: Request for Public Comment on the Model Act

Thank you for the opportunity to comment on the Model Act. I have been in the franchising industry for 30 years. Over the course of that time, I have represented hundreds of single unit, multi-unit, area developer, area representative and master franchisees across the United States and in multiple foreign countries. I am the co-founder of a franchisor called "Simple Plan Franchising, LLC". I have Big Eight CPA, Fortune 500 finance, and Am Law 200 law firm experience. I am the founder of the law firm Aspen Legal, LLC.

Our comments follow:

We believe the adoption of the Model Act should be postponed and the text of the Model Act substantially revised for the following 11 reasons: (1) The Model Act / Regulation Violates Both The Text and the Spirit of Executive Order 14267; Reducing Anti-Competitive Regulatory Barriers; Issued April 9, 2025; (2) The Project Group's Cited Resources Do Not Support the Model Act; (3) Many of the Arguments for the Model Act Lack Intellectual Honesty; (4) A Number of the Most Verbal Proponents of the Model Act Appear to Have Conflicts of Interest; (5) The Model Act Demonstrates an Apparent Lack of Real Understanding of the Franchise Brokerage Industry; (6) The Model Act Purports To Govern An Entire Industry Without Any Real Guidance On What Will Be Required By Industry Participants and by Whom Thereby Rendering the Model Act Potentially Unenforceable Due to Vagueness and as Violative of the Due Process Clause of the United States Constitution (7) The Act Punishes Administrative Errors Easily Made With Disproportionate Penalties; (8)

The Model Act, If Adopted By One Or Several States, Violates The Dormant Commerce Clause Of The United States Constitution; (9) The Model Act Ignores That Actual Bad Acts Of Franchise Brokers Are Already Addressed By Existing Law; (10) The Act Does Not Fix Bad Franchising; ;and (11) The Creation of the Model Act Lacked Any Meaningful and Widespread Industry Participation.

The Proposed Act / Regulation Violates Both The Text and the Spirit of Executive Order 14267; Reducing Anti-Competitive Regulatory Barriers; Issued April 9, 2025 (the "Order"), a copy of which is attached hereto:

The purpose of the Order is to prevent and eliminate regulations that predetermine economic winners and losers and that reduce entrepreneurship and innovation (See, Section 1 of the Order).

The Order orders agency heads, in consultation with the Chairman of the Federal Trade Commission and the Attorney General, to identify (for revocation) regulations subject to their rulemaking authority, that (among other things) " . . . create unnecessary barriers to entry for new market participants . . . limit competition between competing entities or have the effect of limiting competition between competing entities . . [or] . . . create or facilitate licensure or accreditation requirements that unduly limit competition."

The proposed Model Act does every one of those things.

The franchisors cited by the Project Group as "franchise systems that work" (i.e., Popeye's and Dunkin' Donuts), have over 3,200 and 14,000 worldwide locations respectively. Systems like these "work", according to Senator Cortez, because of the support and systems they offer their franchisees. (See, Strategies to Improve the Franchise Model: Preventing Unfair and Deceptive Franchise Practices, available at www.cortezmasto.senate.gov/wpcontent/).

These same systems (and, generally, all franchise systems over a few hundred locations) do not need and therefore, do not use, independent franchisor brokers to grow.

The International Franchise Association ("IFA") which helped draft and was the largest proponent of the Model Act (See, https://www.franchise.org/2024/05/ifa-applauds-senate-passage-of-california-franchise-seller-bill/) consistently chooses as its "Hall of Fame Winners", executives who run some of the largest franchises in the world (See, https://www.franchise.org/hall-of-fame-award-winners/). Household names like Roark Capital Group, Jani-King International, Inc., Sport Clips, Little Ceasers, Domino's Pizza, Golden Corral, Hilton Hotels, Marriott Corporation, The Dwyer Group, Re/Max International, Subway, Econo Lodge, Dunkin' Donuts, Inc., Wendy's International, Pizza Hut, Inc., Holiday Inns, Inc., Baskin-Robbins Ice Cream, McDonald's Corp., KFC Corp, and Southland Corp. line the walls of IFA's "Hall of Fame". These executives represent companies with international footprints and are worth billions and billions of dollars, and do not have any experience with or any use for or need to use independent franchise

brokers for their growth. These systems support the IFA monetarily and influence the IFA tremendously.

New and smaller franchise systems must rely upon independent franchise brokers to grow. And independent franchise brokers do not pick and choose where a candidate is located.

Therefore, if the Model Act is adopted by all 50 States, the independent franchise broker will be subject to 50 different examinations, 50 different examination fees, 50 different application fees, 50 different amendment fees, 50 different renewal fees, 50 different continuing education programs, 50 different continuing education fees, and will potentially be put out of business if they don't meet 50 different financial qualifications / requirements.

Literally hundreds of thousands of dollars in annual fees.

An independent franchise broker with a single franchise representative? Take the above number and double it. Each and every year.

A franchisor that is registered in all franchise registration States will spend under $15,000 a year in filing and renewal fees without any need for examination, continuing education, or their attendant fees. The Model Act, which the Project Group apparently believes will somehow improve franchising, makes every independent franchise broker responsible for annual fees 10 times larger than those incurred by franchisors who actually provide the FDDs, select their franchisees and enter into franchise agreements with those franchisees. It is a subset of those franchisors which all of the Project Group's cited resources point to as the real problem in franchising (as opposed to independent franchise brokers).

Independent franchise brokers may be members of large franchise brokerage networks. But each of them are small businesses. The Model Act is not designed to simply require disclosures from independent franchise brokers for the protection of potential franchisees. The Model Act is designed to create a financial barrier so great that independent franchise brokers will cease to exist. The destruction of the independent franchise brokerage industry is the destruction of the emerging / new market participant franchise systems they represent.

The Model Act creates unnecessary barriers to entry for new market participants, limits competition between competing entities, has the effect of limiting competition between competing entities, and creates or facilitates licensure or accreditation requirements that unduly limit competition, all prohibited by the Order and potentially implies other Federal and State laws which target anti-competitive activities of market participants.

The Project Group's Cited Resources Do Not Support the Model Act:

The Project Group's first cited resource is a Consent Order whereby a franchise development director employed by a franchisor, along with other employees of that franchisor made improper financial performance representations. (i.e., David Lopez, Dental Fix RX, LLC). That matter did not involve an independent franchise broker but did involve the subject franchisor's own employees.

The Project Group's second cited resource are statements, without any citation and without any evidence, that "[o]ver the years, state franchise regulators have received complaints from franchisees and franchise advocates about franchise brokers" and that "state franchise regulators have received complaints from franchisors about the role of franchise brokers in franchising and how unscrupulous franchise brokers are harming the franchise business model."

The Project Group's third cited resource is the Federal Trade Commission's Consumer Guide to Buying a Franchise which the Project Group apparently believes is filled with warnings about the evils of independent franchise brokers. In fact, that Consumer Guide simply offers alternatives to franchise brokers (i.e., suggests consumers instead rely on trade publications and on-line resources so that they can somehow be safe in buying a franchise), offers methods by which to verify an independent franchise broker's representations and provides that consumers should "watch out" for representations made that are not consistent with those contained in the applicable Franchise Disclosure Document (See, 3 A Consumer's Guide to Buying a Franchise, p. 4, available at: https://www.ftc.gov/system/files/documents/plain-language/591a_buying_a_franchise_sept_2020.pdf).

The Project Group's fourth cited resource is a 2020 report by US Senator Catherine Cortez Masto dealing with harmful practices in franchising. The Project Group states that "among her concerns was the role that franchise brokers play in the sale of franchises".

Senator Cortez Masto's report is 82 pages long. The report references franchise brokers in only 2 sentences. Senator Cortez Mato's report, in fact, concludes that bad franchising is caused by bad franchisors. The Senator's main concerns are that (1) franchisors use unfair contracts and agreements; (2) franchisor's provide inaccurate financials; (3) franchisors require overpriced products or services or fail to provide promised products or services; and (4) franchisors require that franchisees buy from preferred vendors and franchisors receive kickbacks as a result.

All one has to do is read the report to see that the Senator is not concerned about independent franchise brokers but is concerned about bad franchisors and that the vast bulk of her recommendations are completely ignored by the Model Act, the Project Group apparently deciding to use independent franchise brokers as a scapegoat for bad

franchising versus requiring the entire franchisor community to actually do something about bad franchising and bad franchisors' practices that cause bad franchising.

Perhaps this isn't a total surprise as the longest serving member of the IFA's Board of Directors; Michael Seid; has long been a critic of franchise brokers while demonstrating no working knowledge of how independent franchise brokers, franchise sales organizations and salespeople who are imbedded within a particular franchisor differ from each other in their roles, their authorities and their processes (See, e.g., https://www.entrepreneur.com/franchises/how-franchise-brokers-can-grow-or-destroy-your-nest-egg/290463).

This same IFA board member believes that only a small number of franchisors use franchise brokers. (See, e.g., https://msaworldwide.com/buying-a-franchise/what_do_franchise_brokers_do/). Again, the lack of experience with franchise brokering and the failure (or refusal) to reach out to and meaningly involve franchise brokers in the process of developing proposed regulation of same is staggering and yet Mr. Seid is a key proponent of the Model Act and the anti-competitive impacts of the Model Act to the direct benefit of the blue chip multi-national franchisors he purports to represent (and who don't use franchise brokers) through his company MSA Worldwide (Seem https://msaworldwide.com/our-clients/).

The Project Group's fifth cited resource were unknown and unnamed "industry advisors" purportedly made up of "franchisee and franchisor advocates" who "noted that franchise brokers currently have no education or ethical standards" and "also suggested that there is no clear path to recovery by defrauded franchisees against a franchise broker who is alleged to have engaged in deceptive practices."

Both statements are inaccurate.

As to the "no education or ethical standards" statement, just one example of its falsity is the fact that the FBA was formed specifically to provide legal, business and ethical education and support to franchise brokers. Many thousands of hours of recorded and live presentations have been made to hundreds of independent franchise broker members by leading franchise legal, business and ethical experts since the FBA's inception (See, e.g., https://www.entrepreneur.com/franchises/how-franchise-brokers-can-grow-or-destroy-your-nest-egg/290463 referencing the FBA's Certification Program and Training as a counter to Michael Seid's comments on a franchisor's imbedded sales person who allegedly made misrepresentations about his employer / franchisor).

Many of the other larger franchise brokerage networks also have extensive legal, business and ethics trainings for their independent franchise broker members. And yet the Project Group's "industry advisors" failed to make inquiry into the extensive nature or content of that training in falsely stating that independent franchise brokers have "no education or ethical standards".

The second; that "there is no clear path to recovery by defrauded franchisees against a franchise broker who is alleged to have engaged in deceptive practices"; is also inaccurate.

Oddly, the long-existing remedy in every State within the United States is actually referenced in the industry advisors' own false statement (i.e., "fraud").

To recover for fraud or misrepresentation in every State, the damaged party must show:

1. **A false representation of a material fact:** The defendant made a false statement of fact, which can be verbal, written, or even implied through actions. This representation must be **material**, meaning it was significant enough to influence the plaintiff's decision to act.

2. **Knowledge of falsity (or reckless disregard for the truth):** The defendant either knew the representation was false, had no belief in its truth, or was reckless as to whether it was true or false.

3. **Intent to induce reliance:** The defendant made the false representation with the intention of inducing the plaintiff to rely on it.

4. **Justifiable reliance:** The plaintiff actually relied on the false representation.

5. **Resulting damage or loss:** The plaintiff suffered harm or damages as a direct result of their reliance on the false representation.

These elements are the same to recover for misrepresentation in ALL 50 STATES and this remedy has been around for hundreds of years. Further, this remedy is exactly the type of remedy that redresses all of "bad acts" which the Project Group and its "industry advisors" allege are made by independent franchise brokers, franchise sales organizations and salespeople embedded within a particular franchisor.

In addition to intentional or negligent misrepresentation as a long-recognized and existing path to recovery for franchisees, all States have deceptive practices acts and many States have little FTC Acts and/or State franchise legislation, which, in addition to an action for misrepresentation, provide relief to damaged franchisees.

The Project Group's sixth cited resource is, oddly, commentary by Keith Miller on Franchise Questionnaires and Acknowledgements used, not by independent franchise brokers, but by and included in the FDDs of franchisors. See, Public Comment of Keith R. Miller on franchisors' use of franchise questionnaires and acknowledgements (Copy attached hereto).

Mr. Miller holds himself out to be a "franchisee advocate" (presumably one of the Project Group's "industry advisors) and is a franchisee of the franchise system Subway (See, e.g., https://www.banking.senate.gov/imo/media/doc/Miller%20Testimony%207-17-191.pdf and Subway Ignores Screams For Help From Its Franchisees found at

https://nypost.com/2024/12/02/business/subway-risks-being-gobbled-up-by-this-fast-growing-rival/).

Mr. Miller's commentary targets franchisors as responsible for bad franchising practices (as opposed to independent franchise brokers).

Further, Mr. Miller's good franchisee / bad franchisor approach has apparently caused him to misunderstand the protection that franchise questionnaires and acknowledgements attached to franchisors' FDDs can do for prospective franchisees.

Mr. Miller writes: "Which gets us to the topic at hand. What is the purpose of questionnaires or acknowledgments? Well, it's obvious, to shield the franchisor from any liability or responsibility for improper information the prospect franchisee receives. It's really that simple. Yet, how wrong is that? I have spoken to so many franchisees, contacting me in their time of need, desperate that they relied on information they received, and now are losing everything they have. We have to remember that when a franchisee invests in a franchise, with personal guarantees, they are often putting ALL their assets at risk. Being given false information can financially ruin them. This is why this is so important. If only some of these franchisors and their lawyers cared about the pain inflicted on a failed franchisee, at times caused by improper disclosure." Frankly, Mr. Miller seems to be more angry with than helpful to the topic / problem at hand.

Why wouldn't a franchisor, independent franchise brokers and the franchising industry want to know that a prospective franchisee was given information by someone in the sales process that was NOT consistent with the information contained in the FDD? Why wouldn't a franchisor, independent franchise brokers and the franchise industry want to know if the prospective franchisee was relying on information that was NOT consistent with the information contained in the FDD? Why can't a franchisor use that information to STOP the sales process and figure out what the prospective franchisee was told and what the prospective franchisee was relying on BEFORE the prospective franchisee puts "ALL their assets at risk"?

Instead of proposing that any franchise sale must STOP once the prospective franchisee informs a franchisor of that inconsistent information and of that reliance, Mr. Miller's position results in franchisors remaining in the dark as to representations made to the prospective franchisee (i.e., don't ask, don't tell), marching the franchisee and the franchisor toward a litigated result that no one wanted in the first place.

Finally, the Project Group's seventh cited resource is from a law firm (i.e., Dady & Gardner) that has made many millions of dollars suing franchisors. On its own website, the firm proudly states that they "have never represented a franchisor" (See, https://www.dadygardner.com/).

The resource cited (a copy of which is attached hereto) is simply another comment letter supporting prohibition by franchisors from using questionnaires and

acknowledgments. It suffers from all the same weaknesses as does the Miller commentary on questionnaires and acknowledgments, but it goes two steps further.

First, it claims without evidence that franchisors and franchise brokers routinely tell prospective franchisees not to hire an attorney to review the FDD.

But every FDD provides multiple warnings and directs all prospective franchisees to hire an attorney to review and advise on the FDD.

Second, the reason why a firm like Dady & Gardner would argue against a form whereby a prospective franchisee would disclose to the franchisor that that prospective franchisee was NOT induced by representations which are inconsistent with the FDD is because that's exactly how the firm earns its money, suing franchisors for fraud / misrepresentation. The firm is, in fact, trying to protect its revenue stream as such written disclosures by prospective franchisees relied upon by franchisors serve as a defense to a claim for fraud / misrepresentation (See, above analysis of fraud / misrepresentation requiring a material misrepresentation which is relied upon by the plaintiff in order to recover plaintiff's damages).

Many of the Arguments for the Model Act Lack Intellectual Honesty:

Misstatements coupled with mischaracterizations of the resources cited by the Project Group are problematic. The arguments based upon those misstatements and mischaracterizations lack intellectual honesty and fail to address any of the problems with franchising cited in the resources purportedly relied upon.

The inaccuracies in the arguments and the inaccurate implications to be drawn from those arguments are the most frustrating.

The Project Group, for example, implies that NASAA has received many complaints regarding franchise brokers. We have reviewed complaints received by NASAA over the past 24 months. A small minority of those complaints were actually about alleged bad acts of independent franchise brokers.

A Number of the Model Act's Most Verbal Proponents Appear To Have Conflicts of Interest:

As indicated by the Project Group's own cited resources and the resources' own public statements and websites, many proponents of the Model Act appear to have a conflict of interest in championing legislation that destroys or establishes unsurmountable barriers for new market entrants into the franchising industry.

The Model Act Demonstrates An Apparent Lack of Real Understanding of the Franchise Brokerage Industry

The Model Act lumps independent franchise brokers, franchise sales organizations and franchise salespersons imbedded with the franchisors into one category that must be regulated by the same rule in a "one size fits all" approach.

The Model Act disregards the differences between these franchise industry participants and their roles, authorities and processes.

Independent franchise brokers do not select the opportunity that a candidate is interested in. Independent franchise brokers do not provide an FDD to any candidate. This is done by the franchisor. Franchise brokers never offer a franchise to a candidate. Franchise brokers never approve any candidate as a franchisee. These acts are all one through the FDD and/or solely by the franchisor.

In fact, franchisors contractually prohibit franchise brokers from doing any of these acts. Franchise brokers are prohibited from selecting a franchise for a candidate, providing any FDD to any candidate, offering a franchise to any candidate, or approving any candidate as a franchisee.

The same is NOT true with franchise sales organization or a salesperson imbedded within a particular franchisor. The Model Act treats all of these industry participants the same.

The adoption of the Model Act should be postponed until true participation from participants within the industry attempted to be regulated is obtained (versus "franchisee and franchisor advocates").

The Model Act Purports To Govern An Entire Industry Without Any Real Guidance On What Will Be Required And By Whom , Rendering it Potentially Unenforceable Due to Vagueness and Violative of the Due Process Clause of the United States Constitution:

Registration fees, amendment fees, renewal fees, examination fees, continuing education fees, bonding or insurance requirements and a form of required disclosure statement are all undefined and not provided by the Model Act. The Project Group is suggesting legislation for all States to govern the entire franchise brokerage industry without providing any guidance as to what the actual requirements and costs may be.

Further, the Model Act defines a "franchise broker" as "any person that directly or indirectly engages in the business of the offer or sale of a franchise and receives, or is

promised, a fee, commission, or other form of consideration from a franchisor, subfranchisor, or franchisee, or an affiliate of a franchisor, subfranchisor, or franchisee.

What is "indirect engagement" in the business of the offer or sale of a franchise? Since franchisee attorneys assist their clients in purchasing franchises and receive fees from candidates / franchisees in doing so, are franchisee attorneys governed by the Model Act? How about lending sources that franchisors refer candidates to for financing a franchise purchase if they also receive a fee, commission or some "other form of consideration" from a franchisor, subfranchisor, franchisee or an affiliate of any of the above? How about an accountant? The referral itself is some form of consideration isn't it?

The Model Act provides that a "franchise broker does not include . . . a franchisor . . . [or] the officers, directors, or employees of a franchisor, a subfranchisor, or an affiliate of a franchisor or subfranchisor". Does this mean that a franchise broker that is imbedded with a franchisor and given an officer's title (e.g., Vice President of Franchise Development) does not need to comply with the Model Act? This would be an odd result in that imbedded franchise brokers are usually the subject of the complaints the Project Group cites as requiring the Model Act in the first place.

Does Frannet (one of the largest networks of franchise brokers in world) simply avoid the Model Act all together as that network is set up as a franchisor and, according to its CEO, "its brokers are not involved in the sale of a franchises"? Is it that easy to avoid the Model Act? (See, https://www.franchisetimes.com/franchise_legal/california-lawmakers-consider-new-franchise-broker-disclosure-requirements/article_c059e18a-e5ee-11ee-92d6-375caf02e02e.html#:~:text=Also%20a%20franchisor%2C%20FranNet%20created,in%20the%20bill's%20final%20language).
Because of its vagueness and loopholes, failure to comply with the Model Act will put a large number of folks out of business without ever knowing whether or not they were supposed to comply with it in the first place and, if so, what they were supposed to do to be in compliance. This is the classic case of State regulation violating the due process clause in a civil setting. The loss of liberty and property without ever knowing how to keep it.

The Act Punishes Administrative Errors Easily Made With Disproportionate Penalties:

Independent franchise brokers represent many franchisors. Independent franchise brokers are compensated differently by different franchisors. Franchisors are added to and leave an independent franchise broker's representation routinely. Compensation to franchise brokers changes routinely. Franchise brokers offer various services and referrals to candidates. Services and referral sources and compensation to and from them change continually. Questions that a candidate may ask a franchise broker change depending upon the type of opportunity that the candidate is exploring (e.g., home based versus

brick and mortar, business to business versus business to consumer, services versus products). Compensation and its types and amounts paid to or realized by franchise broker networks vary depending upon the contractual relationship with their broker members, their franchisor clients, their suppliers, their sponsors, etc. That compensation is continually changing. Despite all of this, the Act requires that third-party franchise sellers continually update this information in real time or face elimination from the industry.

The Model Act, If Adopted By One Or Several States, Violates The Dormant Commerce Clause Of The United States Constitution

Independent franchise brokerage, by its very nature, is practiced on an interstate basis. An independent franchise broker has no idea and no control where the next candidate will be from. Further, an independent franchise broker has no control over where a franchisor is based, which States a franchisor would like to sell franchises in or which territories are open to prospective franchisees.

Independent franchise brokers are not like real estate brokers who have to be within the vicinity of their inventory. That's just not how franchise brokerage works.

If adopted by one or several States, the burdens on interstate commerce that the Model Act will place heavily outweigh the States' interests in collecting a plethora of fees from each franchise broker.

The Model Act should, instead, require reciprocity among the States (e.g., if you comply with the California law you will be in compliance with all States' laws) OR should register and govern the independent franchise brokerage industry, if at all, at the NATIONAL level, with national compliance meaning compliance in each of the States.

The Model Act Ignores That Actual Bad Acts Of Franchise Brokers Are Already Addressed By Existing Law:

An independent franchise broker is the sales agent of the franchisor he or she represents. There are already laws to recover damages from sales agents and their principals for their bad acts, misrepresentations and/or omissions committed (See, the legal theory of "respondeat superior" (i.e., a principal is responsible in all States for the acts of its agent) and prior discussion in this commentary).

Focusing on the sales agents in the Model Act does not expand any remedies already available to misguided franchisees for damages proximately caused by the actual bad acts of sales agents (e.g., independent franchise brokers) and potentially acts as an exoneration of the principals (i.e., franchisors) who knowingly entered into a principal / agency relationship with those sales agents

and who knowingly appointed them with authority as their sales agents to begin with.

The Act Does Not Fix Bad Franchising:

There are many thousands of franchisors. Bad franchising exists despite the protections of the FTC Rule, the FDD or the actions of independent franchise brokers (e.g., Burgerim, Subway, Mrs. Fields, Sbarro, Quizno's, Krispy Kreme). Item 7 misrepresentations. Item 19 misrepresentations. Greedy acts by franchisors. These all are occurring despite the FTC Rule, the FDD disclosure and the FDD registration requirements. Finding a scapegoat in independent franchise brokers may take the heat off bad franchisor actors, but does not fix the problems of bad franchising and the damages it causes to franchisees. Actually addressing the issues presented in the Project Group's resources (e.g., the Cortez Report) would be a positive start.

Lack of Industry Participation / Conclusion:

Before any legislation which has the potential of eliminating a franchise-related industry (i.e., the independent franchise brokerage industry) is approved or adopted, true and widespread industry participation, input, and investigation into what programs, educations and standards do, in fact, exist should be sought (and welcomed).

And yet, when the FBA asked questions and asked for clarity regarding the California's new franchise broker registration law (upon which the Model Act is based), IFA board member Michael Seid publicly (via LinkedIn) asked if people should be concerned about using the services of an FBA broker, implying that the FBA must have something to hide (apparently, because the FBA wanted clarification regarding the California law and its impact on the franchising industry).

When I personally participated in a phone call between the FBA and IFA's general counsel to ask for clarifications regarding California's, IFA's counsel refused to engage in any meaningful conversation, stating, instead, that she wasn't FBA's counsel and therefore, could not interpret the law for the FBA (which neither I nor the FBA was asking for in the first place).

This is not meaningful involvement by franchise brokers in developing rules which the Project Group wants the entire franchise brokerage industry to be governed by (with each of 50 States adding their own potential twists and fees). This is, at best, unprofessionalism and arrogance of those who demand to govern, believing their opinions and those of their "franchisee and franchisor advocates" are beyond reproach (and beware those who may question them).

The independent franchise brokerage industry is not opposed to (say) national disclosure requirements to better help potential franchisees understand how industry participants are paid, what other resources are available to potential franchisees, etc. But that industry is opposed to its own financial and regulatory destruction, particularly in light of the fact that (a) existing law provides ample opportunities to recover against bad franchise broker actors (see, above discussion); (b) all the issues discussed above relating to the processes in developing the Model Act and the processes and pre-dispositions of the proponents of the Model Act; and (c) the widespread negative impacts of the Model Act to the independent franchise brokerage industry, to new-market franchisor participants, to entrepreneurialism and to potential franchisees who are forced to consider only traditional and large franchisor market participants.

Very Truly Yours,

Eric R. Riess

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CC:

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Presidential Documents

Executive Order 14267 of April 9, 2025

Reducing Anti-Competitive Regulatory Barriers

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Purpose.* Federal regulations should not predetermine economic winners and losers. Yet some regulations operate to exclude new market entrants. Regulations that reduce competition, entrepreneurship, and innovation—as well as the benefits they create for American consumers—should be eliminated. This order commences the process for eliminating anti-competitive regulations to revitalize the American economy.

Sec. 2. *Definitions.* (a) "Agency" has the meaning given to it in section 3502 of title 44, United States Code, except that it does not include the Executive Office of the President or any components thereof.

(b) "Agency head" means the highest-ranking official of an agency, such as the Secretary, Administrator, Chairman, or Director, unless otherwise specified in this order.

Sec. 3. *Rescinding Anti-Competitive Regulations.* (a) Agency heads shall, in consultation with the Chairman of the Federal Trade Commission (Chairman) and the Attorney General, complete a review of all regulations subject to their rulemaking authority and identify those that:

(i) create, or facilitate the creation of, de facto or de jure monopolies;

(ii) create unnecessary barriers to entry for new market participants;

(iii) limit competition between competing entities or have the effect of limiting competition between competing entities;

(iv) create or facilitate licensure or accreditation requirements that unduly limit competition;

(v) unnecessarily burden the agency's procurement processes, thereby limiting companies' ability to compete for procurements; or

(vi) otherwise impose anti-competitive restraints or distortions on the operation of the free market.

(b) Within 70 days of the date of this order, agency heads shall each provide to the Chairman and the Attorney General a list of regulations identified by the categories specified in subsection (a) of this section. Agency heads shall also include a recommendation as to whether each of the listed regulations warrants rescission or modification in light of its anti-competitive effects. For recommended modifications, agency heads shall briefly specify what modification is appropriate. For regulations that are anti-competitive by design, agency heads shall provide a justification for their anti-competitive effects if the agency head is not proposing rescission or modification.

(c) In conducting the review required by subsection (a) of this section, agency heads shall prioritize review of those rules that satisfy the definition of "significant regulatory action" in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), as amended.

(d) Within 10 days of the date of this order, the Chairman shall issue a request for information (RFI) that seeks public input on the identification of regulations that fall within the categories specified in subsection (a) of this section, as well as comments explaining the proposed classifications. The request shall remain open for 40 days. Upon the close of the RFI

period, the Chairman shall convey any relevant responses to the agency with rulemaking authority over the identified regulation.

(e) Within 90 days of receipt of the agency lists specified in subsection (b) of this section, the Chairman, in consultation with the Attorney General, the Assistant to the President for Economic Policy, and the relevant agency heads, shall provide to the Director of the Office of Management and Budget (OMB Director) a consolidated list of regulations that warrant rescission or modification in light of their anti-competitive effects, along with recommended modifications. The Chairman may include on the consolidated list regulations not originally included on an agency list if such regulations fall within at least one of the categories outlined in subsections (a)(i)–(vi) of this section.

(f) Upon receipt of the consolidated list described in subsection (e) of this section, the OMB Director, through the Administrator of the Office of Information and Regulatory Affairs, shall consult with the Chairman, the Attorney General, the Assistant to the President for Economic Policy, and the relevant agency heads to decide whether to incorporate the proposed rescissions or modifications into the Unified Regulatory Agenda developed pursuant to Executive Order 14219 of February 19, 2025 (Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative).

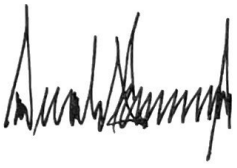
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
April 9, 2025.

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January 4, 2022

Sent to: NASAAComments@nasaa.org

Andrea Seidt
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RE: Request for Public Comment on the Proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments

Thank you for the opportunity to comment on the proposed statement of policy (SOP) regarding the use of franchise questionnaires and acknowledgments. I have been a Subway franchisee since 1988. I have served on the North American Association of Subway Franchisees (NAASF) board and was its first president in 2000-2001. I have served on the Coalition of Franchisee Associations (CFA) board since 2010 and served as its chair for 6 years. In 2018 I formed my consulting company, Franchisee Advocacy Consulting. I also serve as the Director of Public Affairs and Engagement for the American Association of Franchisees and Dealers (AAFD). Simply put, I have spent many years representing franchisees and working on issues to protect franchisees.

I am in full support of NASAA's proposed SOP. I have heard far too many stories of franchisees receiving financial data outside of the FDD. If we look at an industry in which approximately 35% of FDDs contain no financial representation, we are to believe that the buyers of those franchises bought the franchise with no knowledge of revenues or costs. That's not really believable. The fact of the matter is that improper financial data is given in many ways. It may come from directly from the franchisor, but in a subtle way. I few examples I have heard are as follows:

- On Discovery Day, we toured a company owned outlet. In the kitchen of that outlet, a large white board showed sales projections.
- When talking about required equipment, I was told we needed a Coke Freestyle dispenser because that what was needed for a restaurant with sales of $1.4 million.
- The only franchisees that would talk to me were ones supplied by the franchisor, and they were the top performing outlets, not representative of the chain.
- I was told I had the potential to be part of the Million Dollar Club. (no franchised outlet ever achieved that number.)
- The franchisor supplied me with a trade magazine article that included sales numbers.

- I was supplied a spreadsheet for my loan application that gave me financials.

In addition to franchisors giving improper financial representations, it's often third parties that get involved. Franchise brokers or consultants often provide these numbers. You have to assume they got the information from the franchisor. Loan brokers or consultants also provide this information. Since many franchisors provide the access to the loan broker, you again have to assume the franchisor provided them with information and knows how it is being used.

Which gets us to the topic at hand. What is the purpose of questionnaires or acknowledgments? Well, it's obvious, to shield the franchisor from any liability or responsibility for improper information the prospective franchisee receives. It's really that simple. Yet, how wrong is that? I have spoken to so many franchisees, contacting me in their time of need, desperate that they relied on information they received, and now are losing everything they have. We have to remember that when a franchisee invests in a franchise, with personal guarantees, they are often putting ALL their assets at risk. Being given false information can financially ruin them. That is why this is so important. If only some of these franchisors and their lawyers cared about the pain inflicted on a failed franchisee, at times caused by improper disclosure.

It's time the industry stands up and takes responsibility. It's not okay to sell a franchise with improper information. And, it's not okay to shield responsibility by having franchisees quickly sign off on questionnaires and acknowledgments. Our industry needs to be better than this. I encourage NASAA to adopt the proposed SOP.

Sincerely,

Keith R. Miller
Principal, Franchisee Advocacy Consulting

DADY & GARDNER, P.A.

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January 5, 2022

North American Securities Administrators Association, Inc.
NASAAComments@nasaa.org

Re: Proposed Statement of Policy Regarding the Use of Franchise Questionnaires and Acknowledgments

To Whom It May Concern:

I am writing in support of the newly-proposed NASAA Rule that addresses and limits questionnaires and checklists that disclaim fraud and seek to limit claims under state franchise laws. I believe this it is a Rule that should have been enacted long ago. I fully support the proposed Rule.

Franchising is a business system that is based upon the theory that the franchisor has a successful business system that it believes can be replicated and used by inexperienced individuals to turn these individuals into successful businesspersons. The common refrain heard in franchise sales is, "Be in business for yourself, but not by yourself," which is intended to convey the message that your franchisor will be of a great deal of help to you and, while you might otherwise not be capable of running a successful business, we (as your franchisor) are so capable that we will help you succeed.

I have been a franchise attorney for almost 27 years. During that time, my experience has been that prospective franchisees generally sign up for franchises without ever consulting a franchise attorney. In fact, almost all prospective franchisees never consult an attorney at all before signing their 10-year or 20-year franchise agreements and others consult a distant relative who practices divorce law and offers little insight.

It is generally the case that the prospective franchisee's two greatest sources of "assistance" in buying a franchise are (1) the franchisor and (2) a franchise broker whose compensation is dependent upon the prospect signing up. The most common statement from these two sources regarding franchisee attorneys is that the franchisee should not hire an attorney since (A) the franchisee can trust the franchisor, and (B) the franchisor will not negotiate the franchise agreement's terms anyway (this statement is sometimes combined with the statement that to

negotiate better terms with this prospect would be illegal and the franchisor would be committing a crime by negotiating better terms with the prospect).

As a result, the typical franchise transaction involves a prospect who has no legal representation, and who has no experience at all in the business of the franchisor's system. The prospect is discouraged from seeking legal representation and is told that the franchisor will take care of everything – the franchisor has a proven business system which is successful, and the franchisor will train the franchisee to be successful as well.

The prospect then must take a "leap of faith" and put all his or her trust in the franchisor. The prospect may have saved a five-figure or six-figure savings account. All of that money will go into the franchise (with somewhere between $10,000 and $100,000 going directly to the franchisor as a franchise fee, which is shared with the broker). In addition, today's prospects are encouraged to take their assets that are exempt from their creditors (their home equity, their retirement accounts) and put them all at risk on the new venture. The $400,000 accumulated in the 401(k) account through 30 years of labor from ages 20-50 was put there so that the prospect would have a chance to have a decent retirement at age 65, no matter what other financial problems might befall them. That money has, instead, now been pushed into the pot as a proverbial "all in" play. This result, again, is because the prospect fully trusts the franchisor, and, of course, everything that the franchisor has represented or predicted. Most prospective franchisees accept what they are told as true.

Against this background, when the prospect is (at last) given a franchise agreement that has been presented as "non-negotiable," franchisor attorneys across the country now argue that the prospect (who in his or her mind has already committed to placing all of his or her net worth into this deal) should be required to go through a 10-20 question checklist and make sure that the franchisor has not violated the law in presenting the opportunity to the prospect. This is absurd. As is stated in the description of the proposed Rule, it is not the prospective franchisee's obligation to ensure that the franchisor has not violated the law. That is the franchisor's obligation.

The prospective franchisee at that very moment has (in his or her mind) agreed to dedicate everything they own and everything they can borrow to acquiring this franchise. It is their gold mine, their chance to be a success in business. They have usually been told not to hire an attorney, and they almost always have never hired a qualified attorney before this point in time. Against this background, it is impossible to believe that the prospect will wade through the paperwork presented to them and suddenly say, "Wait a minute. It appears that you have violated state franchise laws!" Yet this is what courts generally believe – that the prospect has done its own legal work and understands what it is signing. Even worse, some franchisor attorneys have begun to suggest that the prospect is committing affirmative fraud by signing a checklist or questionnaire with responses that are not true! Franchise agreements are beginning to contain contract

provisions stating that the prospect understands that the prospect is liable to the franchisor for incorrect information contained in checklist responses.

Of particular concern is the use of checklists and questionnaires to void state franchise act protections. Many state legislatures have decided that certain false, misleading, and/or deceptive acts should be actionable. There are often even criminal penalties available under these state franchise laws; that is how important they are. Yet, by the use of questionnaires and checklists, the franchisor is now asking the prospective franchisee to insulate (and maybe even indemnify) the franchisor for the franchisor's violations of these state laws. This is not only a prohibited waiver of state law (and violates the state law's anti-waiver provision), but it flips the basis for the franchisee-protection statute on its head. State legislatures have determined that franchisors have an advantage on franchisees and that franchisees need legal protection from franchisors. This should be the end of the inquiry. Instead, what is the franchisor's response to these statutes? The franchisor gets the franchisee to agree that the protections do not apply, then argues in court that the franchisee is a sophisticated person who does not need any state statutory protection. Many courts, remarkably, have decided that the law does not protect someone whom the state legislature has specifically deemed in increased need of protection!

As Judge Schiltz stated in the *Lady of America* case, this sort of analysis of state franchise acts cannot be abided, given the clear purpose of the acts (to protect franchisees):

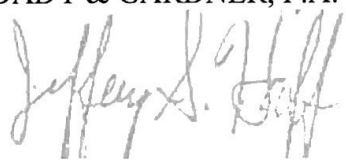
> ***The Court recognizes that, under its broad interpretation of § 80C.21, franchisors cannot use contractual provisions to protect themselves from being sued for misrepresentation under the Minnesota Franchise Act. Consequently, even scrupulously honest franchisors will have to defend against some misrepresentation claims that would not be brought — or that would be quickly dismissed — if contractual disclaimers were enforceable. But under the interpretation of § 80C.21 advocated by Lady of America — that is, under a rule in which courts give effect to contractual disclaimers regardless of whether franchisors have actually made false statements of material facts — a certain number of franchisees who have been lied to will have no redress against dishonest franchisors. The Minnesota legislature has decided to burden franchisors, and protect franchisees, and this Court is bound to enforce that decision.***

Rather than adopt the commonsense rule of *Lady of America*, many courts have chosen, instead, to protect dishonest franchisors and to burden franchisees. This newly-proposed Rule will help swing the law back to a commonsense position and not one that provides a "get out of jail" card to "dishonest franchisors."

I fully support this Rule.

Sincerely,

DADY & GARDNER, P.A.



Jeffery S. Haff

JSH/ses
cc: Andrea Seidt, Section Chair (Andrea.Seidt@com.state.oh.us)
Dale Cantone, Project Group Chair (dcantone@oag.state.md.us)