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*Via Email*

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***Re: NASAA Request for Public Comment re: Proposed NASAA Model Franchise Broker Registration Act (July 28, 2025)***

Dear NASAA Project Group:

The International Franchise Association (IFA) appreciates this opportunity to submit its views (the “Comment”) to the North American Securities Administrators Association (NASAA) in connection with NASAA’s revised Model Franchise Broker Registration Act dated July 28, 2025 (the “Revised Franchise Broker Act”).

**INTRODUCTION**

IFA is the world’s oldest and largest organization representing franchising. IFA members include franchisors in over 300 different industries, franchisees, and companies that support those franchise companies in marketing, law, technology, and business development. IFA’s members include franchise broker networks, franchise sales organizations (“FSO”), and franchisors that utilize the services of such franchise broker networks and FSOs.

On May 13, 2024, NASAA issued for public comment its proposed Model Franchise Broker Act (the “Original Franchise Broker Act”) that recommends registration and disclosure requirements for franchise brokers. IFA applauds NASAA’s efforts to increase transparency in the franchise sales process for the benefit of franchisees and franchisors first through the Original Franchise Broker Act and currently the Revised Franchise Broker Act. IFA has long supported greater transparency in the franchise sales process, as described in Article 11 of IFA’s Statement of Guiding Principles,<sup>1</sup> and most recently, IFA’s Responsible Franchising Principles.<sup>2</sup> IFA submitted comments (the “IFA Original Comment”) in support of the Original Franchise Broker Act, subject to IFA’s recommended amendments and clarifications described therein.<sup>3</sup> IFA also supported the passage of California Senate Bill 919 that amended the California Franchise Investment Law (the “CFIL”) to include express liability for franchise brokers who violate the CFIL as well as implement registration and disclosure requirements for franchise brokers.<sup>4</sup>

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<sup>1</sup> “Statement of Guiding Principles, (INT’L FRANCHISE ASS’N 2013), <https://www.franchise.org/aboutus/guiding-principles>.

<sup>2</sup> “Responsible Franchising Principles,” (INT’L FRANCHISE ASS’N 2024), <https://www.franchise.org/responsible-franchising>.

<sup>3</sup> International Franchise Association, Comment in Response to Proposed NASAA Model Broker Registration Act (Jul. 13, 2024), <https://www.nasaa.org/wp-content/uploads/2024/05/IFA-Response-to-NASAA-Model-Broker-Registration-Act-Final.pdf>.

<sup>4</sup> IFA Press Releases, IFA Praises Passage of California Franchise Seller Bill (Aug. 28, 2024), <https://www.franchise.org/2024/08/ifa-praises-passage-of-california-franchise-seller-bill/>.

In this Comment, like the IFA Original Comment, IFA proposes clarifying amendments to the NASAA's proposed franchise broker registration and disclosure regime to accurately reflect the landscape of third party franchise sellers and the practical circumstances related to franchisors' use of those third party franchise sellers. Additionally, this Comment reiterates the need to align the recommended registration and disclosure regime with the intended purpose of the Revised Franchise Broker Act: to provide greater transparency to prospective franchisees so they may evaluate not only the information related to the franchise opportunities they are considering but also the source of the information—whether broker, FSO, franchisor, franchisee consultant, or other party—and the incentives that influence them.

## **I. The Intended Purpose of the Model Franchise Broker Act**

Section I (Background) of the Revised Franchise Broker Act describes as a basis for NASAA promulgating a franchise broker registration regime a series of complaints about franchise brokers made by franchisees, franchisee advocates and recently, franchisors, but among them is the single point evidencing the need for a franchise broker registration and disclosure regime: **confusion about who the franchise broker represents**. Section I details other wrongdoings of franchise brokers while engaged in the offer of a franchise, including “misrepresentations to prospective buyers about a franchise offering to conclude a sale, most commonly by making unauthorized or misleading claims of revenue or profits”; “making of false or misleading earnings claims”; and instances of “prospective franchisees [receiving] unauthorized financial data, often from franchise brokers.” Each of the foregoing is a violation of existing law for which a franchise broker may be held liable and requires no further changes to state franchise registration and disclosure laws.

What the Revised Model Franchise Broker Act can and should achieve is addressing the confusion among prospective franchisees about who the franchise broker represents. These excerpts from franchise broker websites illustrate why a prospective franchisee may be led to believe the franchise broker is working on its behalf:

- “Our team has completed industry and legal training client and franchisor training, and training to recognize strong profitability indicators as well as red flags, and more. We provide an abundance of tools to help you in your decision...” including courses made available on the site to “spot red flags” and assist in “vetting franchises and negotiation.”<sup>5</sup>
- “We help aspiring entrepreneurs and investors navigate the franchise discovery process—so you can confidently explore, evaluate, and invest in a franchise that fits your financial, personal and professional goals. ... We assess your skills, interest and goals to identify the best-fit franchise opportunities. ... We connect you with vetted funding partners and help you structure your business for growth. ... From your first consultation to franchise selection and beyond—we’re by your side every step of the way.”<sup>6</sup>
- “When you work with an independent franchise broker, you have a franchise expert by your side that guides you through the process...”<sup>7</sup>

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<sup>5</sup> Franchise Angels, LLC: <https://www.franchiseangelsllc.com/>.

<sup>6</sup> Integrity Franchise Group: <https://integrityfranchisegroup.com/>.

<sup>7</sup> Thoughtful Franchise Brokers: <https://thoughtfulfranchisebrokers.com/>.

There are examples of similar statements across hundreds of franchise broker websites. Some franchise broker websites disclose that their services are free because they are compensated by the franchisor when a franchise is sold; many other franchise broker websites offer no explanation of how the franchise broker is compensated.

Why does it matter if a prospective franchisee knows a franchise broker is not working on its behalf? Because often, the franchise broker is the single point of contact for a prospective franchisee for weeks or months prior to the prospective franchisee being introduced to the franchisor's development team (which may also be a third party, as discussed later in this Comment). During that time and across many virtual, verbal, written and in-person communications, information is exchanged between a franchise broker and prospective franchisee with the belief that the franchise broker represents the interests of the prospective franchisee in ensuring he or she finds the "right" match. And, that belief impacts the lens with which information is viewed by the prospective franchisee.

The purpose of the Revised Franchise Broker Act is to ensure the lens with which a prospective franchisee views information from a franchise seller—whether a franchise broker, FSO, franchisor's development personnel, or other person engaged in the offer or sale of a franchise, regardless of title—is the same: information provided by a person compensated when a franchise sale is completed. IFA agrees with NASAA that a pathway to achieving that intended purpose is through a registration and disclosure regime for franchise sellers engaged in the offer or sale of a franchise. But, as further explained in this Comment, IFA encourages NASAA to balance increased transparency through additional disclosures with increased (rather than decreased) prospective franchisee confusion resulting from disclosure overload.

Additionally, a perhaps unintended but equally significant purpose of the Revised Franchise Broker Act is stronger franchise relationships and stable franchise growth that begins with alignment of franchisee and franchisor expectations when the franchise agreement is signed. The significance of this alignment is the first of IFA's five Responsible Franchising Principles and was the driver of IFA's engagement in passing California Senate Bill 919. IFA recognizes there are bad actors in the third party franchise seller community just as there are bad actors in the franchisor and franchisee communities.

At the same time, NASAA must also consider the positive role that certain third party franchise sellers play in responsible franchise growth, particularly among emerging franchisors inexperienced in franchisee candidate selection and marketing of a franchise opportunity. Sustainable franchise growth benefits all key stakeholders to franchising—franchisees, franchisors, and suppliers—and ensures the franchise model may continue to be an integral driver of economic growth in the U.S. A balanced third party franchise seller registration and disclosure regime can play a key part in sustainable franchise growth.

## **II. IFA Comments to the Revised Franchise Broker Act**

### **A. Section 2: Definitions.**

In the Original IFA Comment, IFA noted concern with the misalignment of the definitions "Franchise Broker" and "Franchise Broker Representative" and the complex landscape of third party franchise sellers.<sup>8</sup> IFA acknowledges NASAA's attempt to reconcile the definitions of "Franchise Broker" and "Franchise Broker Representative" based on the Original IFA Comment and others' comments to the Original Franchise Broker Act, but the misalignment with the myriad of ways third party franchise sellers engage in the franchise sales process

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<sup>8</sup> *Supra* n. 3.

remains, perhaps more so given further diversification in the third party franchise seller space since the Original Franchise Broker Act was published.

The intended purpose of the Revised Franchise Broker Act—to eliminate confusion among prospective franchisees about whom a third party franchise seller represents—is achieved only if franchise brokers, FSOs and other third party franchise sellers are aware of, understand, and comply with the registration and disclosure requirements therein. The definitions of “Franchise Broker” and “Franchise Broker Representative” seem further at odds with achieving that intended purpose than the definitions proposed in the Original Franchise Broker Act. As proposed, the definitions do not account for the realities of the engagement between a franchisor and third party franchise sellers.

i. Franchise Brokers. Some franchise brokers operate in their individual capacity while most franchise brokers operate under a legal entity. Some franchise brokers are single owner-operated and other franchise brokers have employees. Most franchise brokers operate within a franchise broker network whereby the franchise broker pays a monthly recurring membership fee for access to the franchise broker network’s database of franchise opportunities and other resources, including guidelines for evaluating franchisee candidates, negotiating terms of a franchise agreement, marketing collateral and strategies for closing a sale. Other franchise brokers operate independently and leverage lead generation resources for available franchise opportunities.

The services offered by franchise brokers vary as widely as the structures under which they operate. Some franchise brokers conduct only an initial consultation to understand a prospective franchisee’s interests and then present franchise opportunities for the prospective franchisee to evaluate on its own. Other franchise brokers guide the prospective franchisee through the entire franchise sales journey, including evaluating franchise opportunities, due diligence and validation, and negotiating franchise agreement terms. And, still other franchise brokers fall somewhere in the middle, offering more than an initial consultation but less than support through the entire franchise sales journey.

For the many franchise brokers operating within a franchise broker network, there is no contractual relationship between the franchise broker and the franchisor; rather, franchisors enter into a contractual relationship with the franchise broker network to include their respective franchise opportunities within the franchise broker network’s database of available franchises for franchise brokers to access in connection with the offer and sale of franchises. The franchise broker network negotiates the compensation structure to be paid by franchisors for the sale of a franchise by franchise brokers within the network (which may be in the form of commissions, multi-unit franchise incentives, and minimum annual sales incentives), the recurring membership fee the franchisor pays to be included in the franchise broker network’s database, and other types of compensation that may be paid by the franchisor to the franchise broker network. The franchise broker network typically has no interaction with prospective franchisees, and many prospective franchisees may be unaware that the franchise broker with whom they are engaged is part of a franchise broker network.

Under the proposed definitions of “Franchise Broker” and “Franchise Broker Representative” in the Revised Franchise Broker Act, a natural person who is the sole owner of a legal entity with no employees that engages in the business of the offer or sale of a franchise would then be required to register both as a Franchise Broker (for its legal entity) and Franchise Broker Representative (as a natural person “representing” a Franchise Broker) and provide disclosures to a prospective franchisee as both a Franchise Broker and Franchise Broker Representative. The franchise broker network of which the natural person is a member would also be a “Franchise Broker” subject to registration and disclosure requirements. In short, the practical effect of the registration and disclosure requirements in this example is that a prospective franchisee receives disclosures from a single

individual as both a Franchise Broker and a Franchise Broker Representative as well as disclosures from the individual's franchise broker network with whom the prospective franchisee has no contact. If the intended purpose of the Revised Franchise Broker Act is to eliminate confusion for prospective franchisees, the proposed definitions of "Franchise Broker" and "Franchise Broker Representative" run wholly counter to that intent.

ii. FSOs. In the franchise sales journey, an FSO can be a prospective franchisee's second point of contact (after a franchise broker), or first point of contact. Like franchise brokers, FSOs vary widely in the services provided for franchisor clients, ranging from initial vetting of a prospective franchisee to full outsourcing of the franchise development function for a franchisor, including due diligence of the prospective franchisee, leading discovery day, and negotiating franchise agreement terms. FSOs typically operate as legal entities employing development personnel to support the phases of the franchise sales journey from initial consultation through execution of the franchise agreement. FSOs may be compensated by franchisor clients in commissions, a share of royalties, equity in the franchisor, or other compensation structures. FSOs may also support franchisors in preparing and updating the franchise disclosure document.

An FSO, a legal entity, meets the definition of a "Franchise Broker" under the Revised Franchise Broker Act and must comply with registration and disclosure requirements. Are the FSO's employees then "Franchise Broker Representatives" subject to their own registration and disclosure requirements? What is meant by "*represents* a franchise broker in effecting or attempting to effect the offer or sale of a franchise"?

Following the example in subsection (i) where a prospective franchisee is presented with three separate disclosures: one for an individual as a Franchise Broker Representative, one for the individual's company as a Franchise Broker, and one for the individual's franchise broker network, also as a Franchise Broker, the same prospective franchisee will also receive disclosures for the FSO as a Franchise Broker and each employee of the FSO with whom the prospective franchisee engages during the franchise sales process. In short, the practical implementation of the disclosure requirements proposed under the definitions of "Franchise Broker" and "Franchise Broker Representative" are unworkable and counter to the intended purpose of eliminating confusion for prospective franchisees about whom the franchise broker represents.

iii. Recommended Revision of Section 2. In addition to the practical challenges created by the proposed definitions of "Franchise Broker" and "Franchise Broker Representative," the Revised Franchise Broker Act incorporates the decades-old definition of "franchise broker" included in the Illinois Franchise Disclosure Act that could not have considered the current landscape of third party franchise sellers, as well as a modified version of the definition of "salesperson" included in the Illinois Franchise Disclosure Act for its definition of "Franchise Broker Representative" that excludes reference to persons employed by a franchise broker, yet the examples provided in the Revised Franchise Broker Act suggest that an employee of a Franchise Broker may meet the definition of a "Franchise Broker Representative."

Additionally, the examples provided to illustrate who may be considered a "Franchise Broker" and "Franchise Broker Representative" capture only the structure of FSOs and some franchise brokers, ignoring entirely franchise broker networks, franchise brokers that operate in their individual capacity under a single owner legal entity and further, the complications of satisfying the registration and disclosure requirements where a franchisor engages both a broker network (with hundreds of franchise brokers) and an FSO to perform the various functions of the franchise sales process.

The landscape of third party franchise sellers does not fit within the definitions proposed in the Revised Franchise Broker Act. Rather than attempt to fit a square peg into a round hole, IFA suggests establishing a list of criteria that—if met—trigger registration and disclosure requirements under the Revised Franchise Broker Act, similar to the criteria that demonstrate whether a commercial arrangement is a franchise under the FTC Franchise Rule, regardless of whether the arrangement is characterized by the parties as a “franchise.”

For example:

Section 2 of the Revised Franchise Broker Act may be amended to delete the definitions of “Franchise Broker” and “Franchise Broker Representative.” The following may be added as a new Section 3 of the Revised Franchise Broker Act:

*Where a person, other than a franchisor, subfranchisor and their respective affiliates, and each of their officers, directors and employees:*

- *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 in connection with its engagement in the business of the offer or sale of a franchise,*

*such person is a “third party franchise seller” and is subject to the registration requirements set forth in this Act.*

The term “third party franchise seller” more accurately describes the various third parties that may participate in the franchise sales process on behalf of a franchisor, including franchise brokers, franchise broker networks, FSOs, and franchise consultants. The exclusion for current franchisees from the registration and disclosure requirements based on a maximum referral fee is unnecessary; rather, a current franchisee *should not* be subject to registration and disclosure requirements where the franchisee merely refers a candidate to the franchisor or its third party franchise seller and conversely, *should* be subject to registration and disclosure requirements where it engages in the business of the offer and sale of a franchise for which it receives or is promised a fee, commission or other form of consideration in connection with its engagement in such business. The amount of the fee received is not the threshold question; whether the franchisee engages in the business of the offer and sale of a franchise is the threshold question.

#### B. Section 3: Prohibited Practices.

IFA recommends that references to “franchise broker” in subsection (1) be replaced with “third party franchise seller.” Subsections (2), (4) and (5) should be deleted. Section 3 should be retitled Section 4.

Additionally, the liability imposed on franchisors in subsection (3) fails to contemplate the franchise broker network structure in which a franchisor has no visibility into the franchise brokers who may present its franchise opportunity to a prospective franchisee unless and until the prospective franchisee is interested in continuing in the franchise sales process with respect to such franchise opportunity. Also, as noted in the Original IFA Comment, until such time as a national database exists where by a franchisor and subfranchisor may efficiently access all then-current third party franchise seller registrations, IFA recommends removing subsection (3) from this Section, particularly considering that any attempt by a franchisor to confirm with a prospective franchisee in writing the scope and substance of its engagement with any third party franchise seller in the early stages of the franchise sales process would run afoul of NASAA’s Statement of Policy Regarding the Use of Questionnaires and Acknowledgments.

Retaining subsection (3) is likely to have a chilling effect on franchisors' use of third party franchise sellers, depriving the franchise community of the positive contributions and mentorship that responsible third party franchise sellers make to sustainable franchise system growth.

As an alternative, NASAA may consider a required disclosure in the franchise disclosure document for franchisors who elect to use third party franchise sellers for the offer and sale of franchises similar to disclosures currently required in Washington: “**Advisory Regarding Franchise Brokers.** Under the Washington Franchise Investment Protection Act, a “franchise broker” is defined as a person that engages in the business of the offer or sale of franchises. A franchise broker represents the franchisor and is paid a fee for referring prospects to the franchisor and/or selling the franchise. If a franchisee is working with a franchise broker, franchisees are advised to carefully evaluate any information provided by the franchise broker about a franchise.”

#### C. Section 4: Registration.

IFA supports the registration requirements set forth in Section 4 (to be retitled Section 5), subject to replacement of the terms “franchise broker” and “franchise broker representative” with “third party franchise seller.” IFA is particularly supportive of NASAA's efforts to establish certification and continuing education requirements for third party franchise sellers. IFA continues to invest in its mission to protect franchising through education of franchisors, franchisees and third party franchise sellers, including through its franchise sales compliance training (i.e. FranGuard) and its third party franchise seller certification course launching this Fall. IFA welcomes the opportunity to collaborate with NASAA to develop educational content for all parties engaged in the offer or sale of a franchise.

Additionally, IFA reiterates its comments in the Original IFA Comment with respect to the financial and insurance requirements described in subsection (4).

#### D. Section 5: Disclosure Obligation.

IFA supports disclosure by third party franchise sellers in the form attached to the Original IFA Comment as Exhibit A.

Additionally, whereas registration requirements under Section 4 should apply broadly to all third party franchise sellers, disclosure obligations should be limited to the natural persons who satisfy the criteria for a third party franchise seller and who are engaged in any in-person, virtual, telephonic, or electronic communications with a prospective franchisee about a specific franchise opportunity. Where the natural person is a franchise broker, the third party franchise seller disclosure document should include disclosures for such person individually, its legal entity (if any), and the franchise broker network of which it is a member, if applicable. Where the natural person is an employee of an FSO, the third party franchise seller disclosure document should include disclosures for such person individually, other principals, officers, directors and employees of the FSO who satisfy the criteria for a third party franchise seller, and the FSO.

This approach balances providing transparency to a prospective franchisee about the third party franchise seller with whom the prospective franchisee is directly engaged while avoiding disclosure overload by the prospective franchisee who may otherwise be presented with half a dozen or more separate third party franchise seller disclosure documents.

Subject to the above revisions, IFA supports the disclosure obligations set forth in Section 5 (to be retitled Section 6), provided the terms “franchise broker” and “franchise broker representative” are replaced with “third party franchise seller.”

E. Sections 6 (Recordkeeping Obligation), 7 (Fees) and 8 (Rules, Forms, Orders and Interpretive Opinions).

IFA supports the recordkeeping obligations and fees set forth in Sections 6 and 7 (to be retitled Sections 7 and 8) as well as the authority granted to the director to promulgate, amend and rescind rules, forms and orders as necessary to carry out the provisions and intended purpose of the Revised Franchise Broker Act set forth in Section 8 (to be retitled Section 9), provided the terms “franchise broker” and “franchise broker representative” are replaced with “third party franchise seller.”

F. Franchise Sales Advertisement.

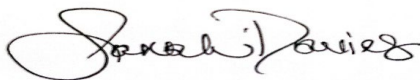
The IFA Original Comment requested that NASAA incorporate into its revisions of the Original Franchise Broker Act the requirement that franchise sales advertisements published by third party franchise sellers comply with regulations applicable to franchise sales advertisements, specifically with respect to financial performance representations. While franchisors that include financial performance representations in franchise sales advertisements must identify the franchise disclosure document containing the financial performance representations, third party franchise sellers frequently publish franchise sales advertisements that include financial performance representations but fail to identify a brand (and, by extension, the franchise disclosure document containing the financial performance representations). It is therefore impossible for a prospective franchisee to determine whether the financial performance representation is accurate and consistent with the financial performance representation presented in the franchise disclosure document for the brand.

IFA reiterates its request that NASAA include franchise sales advertising requirements applicable to third party franchise sellers in the Revised Franchise Broker Act and subsequent revisions thereto.

**CONCLUSION**

In sum, IFA supports NASAA’s Revised Franchise Broker Act, subject to the recommended revisions and clarifications described in this Comment. Thank you for the opportunity to submit our views, and for considering our perspective.

Respectfully submitted,



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Sarah Davies  
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International Franchise Association