

From: Jim Nail <j.nail@integrafranchise.com>
Sent: Tuesday, September 2, 2025 9:24 AM
To: Leets, Theresa@DFPI <Theresa.Leets@dfpi.ca.gov>
Cc: Sabrina Wall <s.wall@franchiseba.com>
Subject: Sabrina Wall, Franchise Brokers Association (NASAA model Act)

Dear Ms. Leets:

Thank you for your commitment to getting things right with the new proposed NASAA model franchise broker registration act. I'm a franchise broker, writing to you because Sabrina Wall, head of the Franchise Brokers Association, suggested I send you a short note. I know the formal comment period is over, but the points I'll be making may have something new or unique to offer for your personal attention.

I have some background in the securities industry, so I couldn't help noticing that the proposed Act follows one of the basic regulatory conventions for securities brokers and investment advisers. I'm thinking of the division between legal persons, which can be "brokers" or "investment advisers" in the securities world, versus natural persons, who can only be "representatives." This division makes sense for the securities industry, where the median broker-dealer firm has 11 employees, and where the larger broker-dealers employ over 500 registered representatives.

The new model Act for franchise brokers applies this same division, in what seems to be something of a misunderstanding of the franchise industry. At the same time, another, actually crucial distinction in franchising is not recognized at all in the proposed regulatory framework.

Franchise brokers today are largely one-person shops, though there are some larger groups. Even among the largest groups or associations of franchise brokers, it is very rare for anyone to be a salaried employee if they are working directly in advising potential franchisees. I know of none, although I don't exclude the possibility that there may be a few. Instead, almost everyone earns their fees on a commission basis from the franchisors, even if they may have a contractual arrangement requiring them to share some of the funds with another person.

The proposed importation of the distinction between "brokers" and "broker representatives" into franchising, given the industry's structure, is quite artificial and inefficient. It will essentially double everyone's registration requirements for no very tangible reason and involve a duplication of fees as well. For example, I will have to register my one-man company as a broker and then register myself as its representative. Most of us will be doing this, ie, registering twice, instead of just registering as brokers personally and then listing as information any dba or company names that may be associated with our professional activities.

In contrast, the proposed model Act does not recognize at all the very important distinction between franchise brokers and FSOs (Franchise Sales Organizations).

The fundamental, and crucial, difference is that franchise brokers are *independent*. We are not employees or agents of the franchisors. We help the potential franchisee form a shortlist of various brands and compare them with one another, and we coach our clients through the due diligence process to the best of our ability. Of course this shortlisting will only be among franchises with which the broker has referral arrangements. But most brokers have referral arrangements with at least a few hundred franchises that are completely unaffiliated with one another.

In contrast, FSOs are *representatives* of specific franchisors. They are given the brief of helping those companies attract candidates and sell franchises. Even the largest FSOs don't represent more than 25 companies. More commonly, an FSO will represent a handful or perhaps 10 or so franchises. The FSOs do have employees who earn salaries (plus sales bonuses) and are assigned the job of selling specific franchises within the FSO's client portfolio. The FSOs get deeply involved with their franchisor customers, advising on strategy, even helping rewrite FDDs. They sometimes take equity stakes in the franchisors. They qualify and disclose the candidate franchisee with the FDD on the franchisor's behalf. They are sales-focused organizations with very clear scripting, procedures, specialized websites providing marketing collateral for their client franchises, etc, etc.

I hope it is clear from this description that brokers and FSOs are almost diametrical opposites functionally. If you research the complaints that have occurred in the franchising space, I think you will find that the hard-sell tactics are

coming exclusively, or almost exclusively, from FSOs. It is counterproductive for a broker to behave that way, because it undermines their relationship of trust with the potential franchisee.

Well, I hope some of the above is of interest. I don't have a specific suggestion regarding the text or wording of the Act, because my issues are broader, pertaining to the basic conception of the proposed regulatory framework. I believe the Act as currently conceived is inappropriate and unhelpful for the franchising industry as it actually exists. I hope you and your colleagues will modify the Act in the interest of all industry participants.

Please feel very free to reach out anytime, and thanks again for your conscientious efforts.

Warm regards,
Jim Nail
(202) 556-4534 cellphone