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Subject: [EXTERNAL]Public Comment on Broker Rule
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As a introduction to my comments, I note that franchise agreements often contain arbitration clauses for dispute resolution. These arbitration clauses are not inclusive enough to include resolution against brokers, which can constitute an additional barrier to dispute resolution by franchisees. If the franchise agreement contains an arbitration clause, any claim against the broker cannot be brought in the same arbitration absent consent by all involved. In addition, often dispute resolution must wait until claims against the franchisor is resolved. For this reason alone, additional broker regulation, disclosure and education are desirable to reduce claims against brokers, and to ensure the broker is available to answer where the franchisor is not.

I would suggest stronger disclosure than as stated in the proposed Rule regarding by whom the broker is compensated. Like real estate brokers, disclose whether the broker representative, is a “buyer’s broker” or a “seller’s broker” because the representatives sometimes hold themselves out as “consultants” and this label connotes that the consultant is loyal to the franchise prospect. I note that real estate broker commissions are transparent to the parties. The proposed Rule in my opinion does not go far enough to give transparency to the franchise candidate of the franchise broker compensation in the proposed sale.



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