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Subject: [EXTERNAL]Comments on Proposed NASAA Model Franchise Broker Registration Act
Date: Thursday, June 13, 2024 6:23:53 PM

I write to comment on the Proposed NASAA Model Franchise Broker Registration Act (the “Proposed Act”).

I believe that the Proposed Act is a step in the right direction, but I have concerns that it is too limited. I think the concept that NASAA is chasing is either that (a) all persons who are involved in franchise sales should be required to register with the states, disclose relevant litigation and bankruptcy history, and similar information, or (b) (at a minimum) that the subset of those persons who are compensated for making those sales should be disclosed.

The purpose of those disclosures is to assure that state regulators and potential franchisees know who is selling franchises, know whether those persons have a financial interest in selling a particular franchise, and can get a sense of whether those persons might be given an incentive to exaggerate (or even to commit fraud) in order to receive financial incentives.

The definitions in the current version of the Proposed Act exclude all persons who are employees of a franchise broker or of a franchisor or subfranchisor or their affiliates. Some (but certainly not all) of these persons who are excluded from the definition of a “franchise broker” may be required to be listed in the franchisor’s (or subfranchisor’s) FDD, or may be required in some of the registration states to submit a sales agent disclosure form. But for many of them, the only information that a prospective franchisee may get is their name, address, and telephone number on an FDD receipt.

I represent both franchisors and franchisees, and my opinion is that the concept that NASAA should be aiming for is that (substantially) all persons who engage in franchise sales should be required to file with the states—either as an identified officer/director/etc. in Item 2 of the FDD, as a sales agent (submitting the necessary paperwork to represent only a single franchisor), or as a broker. The only persons I would exclude are individuals who (a) do no more than introduce a prospective franchisee to the franchisor, (b) are not compensated more than a \$500* finding fee for that introduction, (c) make no more than 3* such introductions during any consecutive 12-month* period, and (d) are not employed by an entity that benefits (directly or indirectly) from the person introduced becoming a franchisee.

* I am not wed to these particular numbers—they could easily be larger or smaller, but the idea is that this exclusion should be limited to persons who make introductions as an incidental matter, such as an existing franchisee who gets paid a modest fee for referring a customer or a friend to the franchisor.

The language may need work, but I think that the goal should be that disclosures (in some form—whether in Item 2 of the FDD, in a sales agent disclosure form, or in a to-be-drafted disclosure form for brokers and other persons) are required by employees of the franchisor (and of affiliates of the franchisor), area representatives, franchise brokers, broker networks, broker organizations, franchise sales organization, and everyone else who is involved in the sales process *unless* they fall into a very narrow exception intended to allow franchisees to be paid modest finders’ fees if all they do is make a small number of introductions.

As a hypothetical example of the need for broader disclosures, consider the possibility of a large company that has multiple subsidiaries offering franchises in numerous, unrelated fields. That hypothetical company could set up a new subsidiary called (for instance), “Independent Franchise Coaches, Inc.” that employs “coaches” who are dedicated to selling franchises of the various subsidiaries—but hold themselves out as independent guides to the entire universe of franchises. I believe that such an arrangement could be structured in a way that the “coaches” would not need to be listed in the FDD, in a sales agent application, or in a broker registration. But I believe those persons have the potential to be just as subject to the evils that NASAA is trying to address as any independent franchise broker.

Respectfully submitted,
Brian

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