



June 12, 2024

Via Electronic Mail

North American Securities Administrators Association, Inc. (NASAA)

ATTN: Theresa Leets, Chair of The Project Group

Bill Beatty, Co-Chair of the Section

Erin Houston, Co-Chair of the Section

750 First Street, N.E.

Suite 990

Washington, D.C. 20002

***Re: Public Comment on the NASAA Model Franchise Broker Registration Act***

Dear NASAA Committee Members,

My name is Nicholas Neonakis and I am the founder and CEO of **The Franchise Consulting Company, Inc.** a franchise broker referral network with locations in the USA and operations in 16 countries. Our mission is to educate and facilitate those wishing to be engaged in business through franchising and to export American franchise concepts and the American way of doing business around the world. These aims are also espoused through the Franchise Brokers Coalition which is composed of highly respected franchise broker groups based in the USA that have come together to support American business in the franchise space.

I am very proud of the fact that, through our actions, we create thousands of jobs every year in the United States and have initiated multiple entities to support entrepreneurship throughout our country as well as exporting American brands worldwide. We work closely with the Department of Commerce through our international activities and are members of The International Franchise Association. Our unwavering aim is to support American business and interests worldwide.

Some of our proudest initiatives that were first in franchising are; First Responder Fran, Diversity Fran, The African American Franchise Council, The Latino Franchise Council and The Indian Franchise Council. We also have 15 veterans in our group who created The Veterans Franchise Council to support entrepreneurship in our veteran's community. These groups are designed to educate and celebrate entrepreneurship and accomplishments across the many communities in our country that have achieved success through franchising.

I have spent 22 years in franchising and have extensive experience across many facets of franchising. I say with pride that I love franchising and know that it lifts communities and people through the power of entrepreneurship. Business ownership is a fundamental right for every American to explore, it does not mean that it is the right thing for every American to own a franchise but creating layers of regulation for those

engaged in educating buyers in the name of transparency without a full understanding of the ramifications of these regulations hinders the ability of our country to create entrepreneurs which ultimately hurts our country.

Over the years, we have supported a wide range of efforts with entrepreneurs and government officials who are interested in creating public / private partnerships to address issues such as the treatment of diabetic foot wounds (which untreated caused over 75,000 amputations to occur last year), treatment of children's dental issues in underserved communities and other areas that promote public health and safety through the franchise model. These initiatives were based on the ability of a franchise system to provide services that otherwise might be lacking. These are the types of services that become reality when we harness the power of entrepreneurship in our country.

I feel strongly that the mission of The NASAA is in the public interest and the dialogue that you seek is in the furtherance of a noble cause and not to diminish the ability of our country to create innovative ways to move forward.

Therefore, I am submitting this letter in response to the NASAA's Request for Public Comment on the proposed Model Franchise Broker Registration Act to express my support, concerns and offer suggestions aimed at refining the proposed Act. I hope my comments will be taken into consideration as you finalize the draft version.

Ultimately, franchise brokers play a crucial role in the franchise sales process, serving as intermediaries who introduce prospective franchisees to franchisors. The vast majority of their efforts are unrewarded as a small percentage of individuals a broker works with will actually purchase a franchise. The brokers primary objective is to facilitate successful franchise matches, thereby fostering the growth of franchise systems and supporting entrepreneurial ventures. However, the proposed Act, as currently drafted, raises several issues that could inadvertently hinder the franchise sales process and impose undue burdens on brokers, franchisors, prospective franchisees and ultimately our economy.

## **Concerns and Suggestions**

### **1. The Role of Franchise Brokers**

Franchise brokers facilitate introductions between prospective franchisees and franchisors. They do not decide if a candidate is awarded a franchise, nor do they receive compensation unless a franchisor awards a territory to a candidate. Additionally, our brokers always advise prospective franchisees to seek legal counsel to ensure their interests are adequately represented. This crucial role must be understood to avoid unnecessary regulatory burdens that could disrupt the franchise discovery process.

### **2. Complexity of Disclosure Requirements**

The Act's requirement for extensive disclosure could overwhelm prospective franchisees, distracting them from critical aspects of evaluating a franchise opportunity. For instance, a prospective franchisee introduced to several franchisors might be inundated with numerous broker disclosure documents, leading to confusion and potential disengagement.

- **Proposed Modification:** Simplify the disclosure requirements to focus on key information relevant to the prospective franchisee's decision-making process. Ensure that disclosures are clear, concise, and provided at an appropriate stage in the franchise evaluation process.

### 3. Definition Clarity

The distinction between a ‘franchise broker’ and a ‘franchise broker representative’ is ambiguous, making it unclear who must register and disclose information under the Act.

- **Proposed Modification:** Clarify that only individuals who actively recommend franchise brands to prospective franchisees need to register. This will exclude non-commissioned roles that do not engage directly in franchise sales recommendations.

### 4. Prohibited Practices and Administrative Burden

The Act places the onus on franchisors to ensure brokers are registered, which could be administratively burdensome, especially without a centralized database accessible to all franchisors.

- **Proposed Modification:** Establish a centralized, IFA-supported database for tracking franchise broker registrations. This database should be managed by an independent entity to ensure neutrality and comprehensive coverage.

### 5. Definition of ‘Material Change’

The Act lacks a clear definition of what constitutes a ‘material change,’ leading to potential over-reporting and administrative burden.

- **Proposed Modification:** Define ‘material change’ to include significant events such as changes in criminal history or new litigation. Minor changes should not require immediate updates, aligning with the annual application requirement.

### 6. Disclosure of Compensation

The requirement to disclose all compensation could be problematic, given the frequent changes in referral fees and the potential for confusion among prospective franchisees.

- **Proposed Modification:** Adopt a framework similar to California’s legislation, requiring disclosure of the general method of compensation rather than specific commission rates. This could include a typical referral fee range, avoiding the need for constant updates and reducing the risk of misunderstanding.

### 7. Recordkeeping Requirements

Requiring third-party franchise sellers to retain records for 10 years is excessive, given that standard recordkeeping requirements for other government agencies, like the IRS, the SEC and the FTC, are typically 3-7 years. The Federal trade commission FTC staff notes that the amended Franchise Rule’s instructions require franchisors to retain for each completed franchise sale “a copy of the signed receipt for at least three years.”

- **Proposed Modification:** Align the recordkeeping requirement with industry standards, recommending a 3-7 year period to reduce unnecessary administrative burden.

## Operational and Disclosure Framework Suggestions

### 1. Timing of Disclosure

Disclosures should be provided at a point in time when they are most relevant and useful to the prospective franchisee. Requiring disclosure too early in the process could cause confusion and deter prospective franchisees.

- **Proposed Modification:** Require that disclosures be provided within 14 days following the receipt and acknowledgment of a brand's Franchise Disclosure Document (FDD). This aligns with existing FDD regulations and ensures disclosures are timely and relevant.

## 2. Success-Based Referral Fee

Franchise brokers typically receive success-based referral fees. Requiring detailed compensation disclosures could complicate this process and reveal confidential business arrangements.

- **Proposed Modification:** Disclose the method of compensation, such as a success-based referral fee, without requiring specific commission rates. This approach protects confidential business information while ensuring prospective franchisees understand the compensation structure.

## 3. Confidentiality of Client Lists

Requiring franchise brokers to disclose client lists could raise significant privacy concerns and potentially expose clients to misuse of their information and potentially bring danger to franchise brokers. For example, our team in Mexico is concerned that they may be targeted by cartels based upon the public knowledge of what they make. While there is a low likelihood of this and it is an extreme example, it points to the unknown spillover effects that these new regulations may have. Would this have foreign brokers hesitate in offering US brands to their local markets? If a medical professional was required to disclose their patient lists broadly and in the public domain, it would likely violate multiple HIPAA statutes.

- **Proposed Modification:** Eliminate the requirement to disclose client lists. Instead, focus on ensuring prospective franchisees understand the broker's role and compensation structure without compromising client confidentiality.

## Additional Concerns

### 1. Impact on Emerging Franchisors

The Act's burdensome requirements could disproportionately impact emerging franchisors, stifling competition and reducing consumer choice. Established brands may not rely on brokers, but emerging brands do, and excessive regulation could hinder their growth.

- **Proposed Modification:** Tailor the requirements to support emerging franchisors by reducing administrative burdens and focusing on substantive disclosures that protect prospective franchisees without stifling innovation and competition.

### 2. Addressing Actual Bad Acts

The Act should focus on addressing actual bad acts by franchise brokers rather than administrative errors. This would enhance protection for prospective franchisees without penalizing brokers for minor infractions.

- **Proposed Modification:** Clearly define and address bad acts, such as misrepresentations or fraudulent behavior, rather than penalizing for registration or disclosure errors.

### 3. Insurance and Financial Requirements

The proposed financial and insurance requirements could be prohibitive for new broker applicants looking to enter the field, thereby limiting diversity and opportunity within the industry.

- **Proposed Modification:** Reevaluate these requirements to ensure they do not create barriers to entry for qualified individuals, while still maintaining necessary protections for prospective franchisees.

We respectfully request that NASAA extend the comment period and engage more thoroughly with all relevant stakeholders to develop a balanced and effective regulatory framework or to adopt an approach that is based upon precedent that has been developed over many years through state and federal agencies. This approach will ensure that the final document works for all parties and encourages, rather than discourages, people from considering franchise opportunities.

It is a significant task that you are engaged in to further entrepreneurship in our country and I applaud you for your measured and diligent efforts to create dialogue with all the relevant stakeholders.

Thank you for your attention to this matter. We look forward to working collaboratively with NASAA to achieve our shared goals of American prosperity through transparent practices in business ownership.

Sincerely,

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