

June 13, 2024

Via Email

North American Securities Administrators Association  
750 First Street NE, Suite 990  
Washington, DC 20002

**Re: Proposed NASAA Model Franchise Broker Registration Act**

Dear Sir/Madam:

I am the President of FranNet, LLC ("FranNet") and I write on its behalf in response to the North American Securities Administrators Association's ("NASAA") request for comment to its Proposed NASAA Model Franchise Broker Registration Act (the "Proposed Model Act"). By way of background, FranNet is a franchise consulting organization founded in 1987, and is itself a franchisor, which through its franchisees and associates (the "FranNet Consultants") represents multiple franchise organizations and attempts through its proprietary consulting techniques to match franchise prospects who will purchase a franchise from one of the franchise organizations it represents.

FranNet Consultants provide education and support to individuals who are interested in exploring self-employment as a career option through franchised businesses. FranNet Consultants recruit and meet with potential franchisees and exchange information with them to help them determine what type of franchise and which franchisors may be suitable fits for them. As part of the consulting process, the FranNet Consultant works with the franchise prospect and obtains the prospect's resume and pre-qualifies the prospect and gathers information as to the prospect's net worth and liquidity, prospect's future financial goals, fears, and challenges, etc.

FranNet Consultants then match prospective franchisees with franchisors who have franchise offers that best suit the candidate's goals, experience, and lifestyle. It is the franchisor, not the FranNet Consultant, who discloses the prospective franchisee with the franchisor's Franchise Disclosure Document.

The FranNet Consultant, referred candidate and franchisor then engage in a more specific discovery and educational process designed for the parties to engage in their due diligence process and decide if both candidate and franchisor wish to consummate a transaction. The typical length of time that a FranNet Consultant works with a prospective franchisee from initial intake through a completed franchise sale is approximately 5 months.

There are several aspects of the Proposed Model Act that are either confusing or unduly burdensome given the existing regulatory environment. Prospective franchisees are already overloaded with information and sometimes "less is more", especially if it provides more discreet and useful information to a particular prospective franchisee. FranNet believes that additional clarity and leveraging existing rules and regulations will lead to a more uniform approach, enhanced compliance, and more utility to prospective franchisees.

First, the proposed definition of “Franchise Broker Representative” is unclear as to whom the definition is intended to capture. Additional clarity or proposed examples would be helpful in order to ensure compliance with the franchise broker representative’s obligations under the Proposed Model Act.

Second, the Proposed Model Act should contemplate that franchise consulting organizations (such as FranNet) may meet the registration requirement by filing a single registration on behalf of all franchise brokers under its umbrella that engage in the offer and sale of franchises within the state, provided that it otherwise meets all of the disclosure obligations for each franchise broker. As provided for in the current Washington broker registration procedures, franchisor can then submit an “appointment of a franchisor broker by franchisor or subfranchisor” form to the state at the time the franchisor submits its franchise disclosure document to the state for registration. State examiners will then be able to cross-check the broker appointment forms with the broker registration, as Washington does now. Something similar appears to be contemplated in Section 7 of the Proposed Model Act, but a consolidated franchise broker notice when a broker organization is involved, rather than individual notices for each franchise broker, as appears to be called for in Section 7, should be specifically contemplated.

Similarly, placing the onus on franchisors to ensure broker compliance, as contemplated in the Proposed Model Act’s prohibited practices, will unduly discourage the use of franchise brokers and no doubt create disruption to existing contractual relationships. Far better in FranNet’s view is to place the onus of registration solely on the franchise broker and require only that franchisor’s perform such due diligence as necessary to truthfully submit an “appointment of franchise broker” form. In FranNet’s view, the franchisor’s responsibility (and potential liability) for franchise broker registration should go no further than submitting a required appointment form to the state identifying the franchise brokers it has appointed in the state. Any failure to register, or any misrepresentations in the franchise broker registration forms, should be the liability of the franchise broker alone.

Third, with respect to the content of broker disclosures, disclosing the compensation that the franchise broker will receive upon a sale of a franchise no later than disclosure of the franchise disclosure document is problematic for several reasons. As a threshold issue, the franchisor, not the franchise broker, is the party responsible for disclosure of the franchise disclosure document and the franchise broker may not precisely know when that it occurs, especially as not all franchisors have uniform practices as to when in the sales process that it discloses a prospect.

Moreover, the compensation that franchise broker may receive is a function of numerous factors and may even change during the prospect’s due diligence process. For example, a franchise broker may disclose to a prospect the compensation it may receive if the prospect purchases a new single unit, but the prospect’s intentions may change and he or she may decide to buy multiple units, or perhaps an existing unit being sold by a franchisee who the prospect came across in the course of their due diligence. All of these permutations may alter the compensation payable to the franchise broker. To inundate the prospective franchisee with constant updates as a potential transaction morphs throughout the process is to “lose the forest for the trees”, especially as the franchisor may also utilize a franchise sales organization as its salesperson(s), which will have its own franchise broker disclosure obligations.



In FranNet's view, the prospect is well served with disclosure as to "how" the franchise broker is compensated upon a sale of a franchise at the time of disclosure otherwise set forth in Section 5(1) of the Proposed Model Act. In FranNet's view, California SB919, finds the right balance by requiring disclosure of the "different ways a third-party franchise seller might be compensated for its services." Such disclosure puts the prospective franchisee on notice of franchise broker's pecuniary interest in the potential franchise sale and the range of compensation it may receive. The prospective franchisee can then give it what weight he or she believes it deserves when evaluating whether to proceed with the franchise broker at all, and in evaluating any proposed referrals that a franchise broker may recommend. Additional, or more specific disclosures are unnecessary, unduly burdensome, and likely counter-productive to the goal of the Proposed Model Act.

The prospective franchisee already receives a franchise disclosure document from a franchisor. Many prospective franchisees will receive these disclosure documents from multiple franchisors. The Proposed Model Act will have these same prospective franchisees receive broker disclosure forms from outside sales organization and franchisor brokers such as FranNet but also from franchise sales organizations that franchisors may engage to serve as the franchisor's salesperson(s). The broker disclosure forms should therefore be streamlined as much as possible to increase the likelihood that a prospect will review them. Adding additional subsequent disclosures tailored to every franchisor, or permutation along the prospect's franchise sales journey, will only serve to overwhelm the prospect and decrease the impact of the disclosures.

In a similar vein, one aspect of California SB919 that FranNet believes will lead to extraneous information that does not provide the prospect with relevant information, that the Proposed Model Act has an opportunity to address is the requirement for the franchise broker to provide the name and contact information for *all* franchisees to whom the broker sold a franchise anywhere in the United States during the last calendar year. Not only does this raise privacy concerns for those persons to be identified (as the broker's contact information is likely to be the prospect's home address and phone), but such a requirement provides the prospective franchisee with scant usable information.

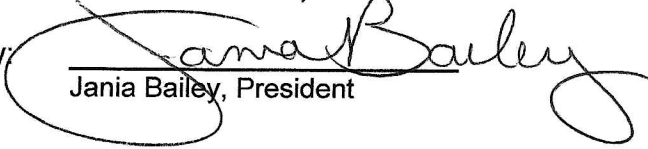
Rather, in FranNet's view, the Proposed Model Act should look to leverage a franchisor's existing franchise disclosure document that will ultimately be provided to a prospective franchisee, which already sets forth the contact information for its franchisees. For example, the franchise broker disclosure document contemplated to be delivered in Section 5(1) of the Proposed Model Act could require a statement that "upon request, the franchise broker will identify those franchisees set forth in the franchisor's FDD that the broker previously worked to place with the franchisor." This will both provide for a more streamlined disclosure statement, protect individual interests, and serve to provide a prospect with more relevant information if he or she is interested in specifically speaking with such persons.

FranNet and I thank you for your consideration of these comments. Do not hesitate to reach out to me if I can provide any additional information or if you wish to discuss these comments further.

Respectfully submitted,

FRANNET, LLC

By:

  
Jania Bailey, President

cc: Theresa Leets, Chair  
Bill Beatty, Co-Chair  
Erin Houston, Co-Chair