June 13, 2024

Via Electronic Mail

To: Theresa Leets, Chair of the Project Group

Bill Beatty, Co-chair of the Section

Erin Houston, Co-chair of the Section

**Re: Public Comments on Proposed NASAA Model Franchise Broker Registration Act (the "Act") To NASAA**

My name is Dan Guth, and I am an agent with Quantum Franchise Group, a member of the Franchise Broker Association, and recent graduate of the FTI training curriculum.

I appreciate the efforts to increase transparency and support the sentiment behind the proposed Act.

Regarding the Act, I have several concerns and suggestions that should be considered for the final draft. As it currently stands, there are likely to be some unintended consequences.

Below, are specific concerns and suggestions:

**Intended Goal of the Act:** The intended goal of the Act is to provide a layer of protection for prospective franchisees and franchisors in the franchise sales process. However, the repercussions of the Act on the franchise broker are not for "bad acts" but rather for registration, disclosure, and fee mistakes. The Act does not address actual bad acts of franchise brokers, does not fix bad franchising practices of franchisors, and makes lack of registration, disclosure, and payment "bad acts" without providing any further protection to the franchise candidate.

**Broadening Scope of the Industry:** The FRBA increases the industry's scope far beyond its current size and makes a large percentage of those with any role in or connected to the franchise sales and new franchisee establishment process "franchise brokers" or compensated "franchise broker representatives."

Suggestions: Reduce the definition of Franchise Broker and Franchise Broker Representative to exclude unintended parties.

**Reduces requirements of what is considered an "offer" and applies whether a sales transaction actually occurs**.

It uses language like "indirectly engage" in the franchise offer or sale of a franchise. This has a broad impact. It uses terms like "offer" of a sale which includes simply discussing the franchise opportunity. With no transaction required, this leaves the door open for anyone discussing franchising to require disclosure and registration under the Act.

Suggestions: Adding a definition to more clearly define an "offer" and "offer to sell" and to clearly identify what a sales transaction is and remove non-transactions from the disclosure requirements.

**Unwittingly Increases liability:** The Act increases the liability of a wide range of people and entities because it makes it illegal to sell without registration. But registration is required for all non-transactions. A large population of people who are not acting as franchise brokers will not know nor have reason to suspect that they are violating the registration requirements. The franchise broker or franchise broker generally lacks any authority or capacity to stop a sales transaction, control the transaction, influence it, or in many cases, even knowingly participate in it. This rests with the franchisors who are already issuing Franchise Disclosure Documents to all candidates.

**Disclosure requirements require excessive burden and easily create mistakes in disclosure compliance:**

Under the Act there are many parties required to disclose. The franchisor, the broker, the broker network, the franchise broker representative, and all the unintended parties are now placed under the definitions of "franchise broker" and "franchise broker representative". Franchises move in and out of broker inventory and in and out of business and commissions change daily.

Suggestions: Narrow down on what is required to be disclosed to create a more seamless and less burdensome compliance process.

Key Concerns

1. Frequency of Disclosure:

As stated above, the current required frequency of disclosure would impair the industry and cause harm to all those in franchising. A preferable disclosure rule to follow is the rule of New York. The New York disclosure law provides for actual franchise brokers to be registered and updated when a material change occurs.

2. Disclosure Document Timing:

The current requirement for early disclosure documents could confuse prospective franchisees. Buyers will not understand why they are getting inundated with a large number of disclosures. Aligning the timing of the disclosures with existing franchise disclosure law is one suggestion. Under current franchise law, the FDD is to be provided at least 14 days before a payment or signature.

3. Franchisees who refer someone to become an owner and receive more than $1,000 a year are considered a franchise broker:

Franchises grow through successful franchisees who discuss their success with their network to bring in more franchisees. Often, franchisees are compensated between $3,000 -$5,000 for the referral. This should be removed from the Act.

4. Financial or Insurance Requirements

Insurance companies have strict requirements for its usage and with the newly imposed law, our current insurance options may not be eligible for coverage. This makes it difficult to comply with the law. This should be removed from the Act.

5. 10-Year Record Keeping: Maintaining records for 10 years places a significant burden on brokers, especially those who have closed their businesses. This requirement needs reconsideration to avoid excessive strain on brokers. The IRS requires maintaining records for 3 years.

**Conclusion:**

NASAA should extend the comment period and engage with all relevant stakeholders to create a balanced and effective regulatory framework. This approach will ensure that the final document serves the interests of all parties and promotes, rather than deters, individuals from exploring franchise opportunities.

Thank you for your attention to this matter.

Sincerely,

Daniel Guth, MBA, FSC