



FOCUS ON FRANCHISING

ALERT

NASAA URGES REVISIONS TO STATE FRANCHISE DISCLOSURE REGULATIONS

By Elizabeth D. Sigety

The North American Securities Administrators Association (NASAA), in its continued efforts to provide a more uniform approach to franchise regulation, is proposing to adopt a statement of policy encouraging states to revise their franchise regulations governing the delivery of franchise disclosure documents. As is the case with many state franchise regulations, such regulations do not correspond with the Federal Trade Commission's Amended Franchise Rule announced in February 2007 (the FTC Rule) and differ from state to state, which can place undue burden on a franchisor and offers little extra protection to a franchisee.

The FTC Rule eliminated past requirements that a franchise disclosure document be presented at the earlier of the first personal meeting between the franchisor and the prospective franchisee or 10 business days prior to the execution of an agreement with the franchisor. Instead, it replaced both of these requirements with the present 14 calendar day trigger, which requires a franchisor to present its franchise disclosure document 14 calendar days prior to the execution by the prospective franchisee of any binding agreement with the franchisor. In addition, NASAA recommends adoption of a new policy that requires

a franchisor to provide the franchise disclosure document earlier than the 14 calendar day trigger date if a prospective franchisee makes a reasonable request prior to the trigger date for such document.

The regulations of many states still maintain a delivery requirement with an equal or shorter period than the 14 calendar day approach.¹ As the FTC Rule preempts a shorter disclosure period, the result in these states is that a franchisor still must follow the FTC's 14 calendar day approach. However, in states that still maintain the first personal meeting/10 business day requirement, this could result in a potentially longer disclosure period than 14 calendar days so the franchisor must comply with both requirements.² This dual requirement can cause confusion and extra burden on the franchisor with no significant protection for the prospective franchisee. In addition, the first in-person (face-to-face) meeting requirement has become obsolete and can be confusing due to the increase in electronic disclosure and communication.

Finally, NASAA's recommendation that a franchisor provide a franchise disclosure document to a prospective franchisee upon reasonable request

¹ California, Hawaii, Illinois, Indiana, Minnesota, North Dakota, South Dakota, Virginia and Wisconsin.

² Maryland, Michigan, New York, Rhode Island and Washington.

provides prospective franchisees the opportunity to review this document earlier in the sales process. As there are many considerations that influence a prospective franchisee's decision to purchase a franchised business, this can often help move the sales process forward and provide a prospective franchisee with the information and time he or she needs to make an informed decision.

NASAA is accepting comments to its proposal until August 18, 2009. If you wish to comment or for

more information about this proposal, visit NASAA's web site at www.NASAA.org/home/index.cfm.

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