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## Why Is the State Examiner Making Me Change That Disclosure? Dealing with the Unusual, Uncommon, or Atypical Comments That State Examiners Raise

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## Table of Contents

	<u>Page</u>
<b>I. Overview - Securing State Franchise Registration.....</b>	<b>1</b>
A. STATE JURISDICTIONAL ISSUES .....	2
B. STATE COVER PAGE AND RISK FACTORS .....	3
C. STATE ADDENDA .....	3
D. STATE REGISTRATION FILING REQUIREMENTS .....	4
E. STATE EXAMINER REVIEW PROCESS AND COMMENT LETTERS.....	4
F. STRATEGIES FOR MANAGING THE REGISTRATION PROCESS.....	5
G. COMMON FDD DISCLOSURE ITEMS THAT GENERATE COMMENTS AND/OR DELAY REGISTRATION .....	6
H. COMMON MISTAKES TO AVOID .....	7
<b>II. General Approach to Responding to Comment Letters.....</b>	<b>8</b>
<b>III. State-Specific Tips and Regulator Contact Information .....</b>	<b>8</b>
A. CALIFORNIA .....	8
B. HAWAII .....	11
C. ILLINOIS .....	12
D. INDIANA .....	14
E. MARYLAND .....	14
F. MICHIGAN .....	15
G. MINNESOTA .....	16
H. NEW YORK .....	16
I. NORTH DAKOTA .....	18
J. RHODE ISLAND.....	19
K. SOUTH DAKOTA .....	20
L. VIRGINIA .....	20
M. WASHINGTON.....	22
N. WISCONSIN.....	24
<b>IV. Conclusion.....</b>	<b>24</b>

**Exhibit A Sample State Risk Factors**

**Exhibit B NASAA Proposed State Cover Sheets**

**Exhibit C Initial State Registration Requirements**

## I. Overview - Securing State Franchise Registration

Fourteen (14) states impose some form of registration obligation on a franchisor. The state registration (or state approval of a franchise registration) by a state regulator essentially grants the franchisor the right to offer and sell franchises within that state. Registration is on a state-by-state basis, and a franchisor is only required to comply with a state registration requirement if an “offer” or “sale” will be deemed to be made in that state.<sup>1</sup>

Though each state is sovereign with respect to the enactment and enforcement of its own franchise sales law, the North American Securities Administrators Association (“NASAA”) – an international investor protection organization comprised of securities regulators – works to coordinate federal and state laws by proposing to the states for adoption uniform guidelines, laws, and model rules. Franchise regulators in California, Hawaii, Indiana, Maryland, Michigan, Minnesota, New York, North Dakota, Rhode Island, South Dakota, Virginia, Washington, and Wisconsin are members of NASAA through their affiliation with their state’s securities agency, which regulates franchising in the state. Franchise regulators in Illinois and Michigan are not NASAA members because there, franchising is regulated by the state attorneys’ general offices. But NASAA works closely with the attorneys general offices in these states on franchise-related issues. While NASAA has no *direct* authority over franchising, NASAA’s Franchise and Business Opportunity Project Group (a standing committee formed in the 1980s) substantially contributed to the franchise laws and registration procedures that exist today.

NASAA’s recommendations and policy initiatives traditionally have been given great weight by the states that regulate franchises and are sometimes incorporated by reference into state law. On April 27, 2009, NASAA adopted the 2008 Franchise Registration and Disclosure Guidelines (the “NASAA Guidelines”) as a model for states with franchise registration and disclosure laws.<sup>2</sup> The NASAA Guidelines generally follow the Amended Rule on Franchising (the “Amended Rule”) promulgated by the FTC on January 22, 2007. On May 8, 2017, NASAA adopted the NASAA Commentary on Financial Performance Representations (the “FPR Commentary”).<sup>3</sup>

Practitioners tasked with managing the franchise disclosure and registration process are advised to review the various state franchise registration and disclosure laws, the NASAA Guidelines, and the FPR Commentary prior to submitting a franchise registration application to a particular state. The NASAA Guidelines also contain certain

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<sup>1</sup> Certain sections of this Overview are based on sections regarding registration from the paper prepared by one of the authors for the Basics Track: Registration and Disclosure session for the 2018 IFA Legal Symposium.

<sup>2</sup> Commentary on 2008 Franchise Registration and Disclosure Guidelines, [www.nasaa.org/wp-content/uploads/2011/08/FranchiseCommentary\\_final.pdf](http://www.nasaa.org/wp-content/uploads/2011/08/FranchiseCommentary_final.pdf)

<sup>3</sup> NASAA Franchise Commentary Financial Performance Representations, <http://www.nasaa.org/wp-content/uploads/2017/05/Financial-Performance-Representation-Commentary.pdf>

forms that must be submitted in connection with applications for registration; these forms each bear a letter designation, A through H.

Franchise regulators do not review Franchise Disclosure Documents (“FDDs”) filed by franchisors to test the soundness of the franchise offer, but instead to confirm whether or not the FDD addresses the disclosure requirements of the NASAA Guidelines. By enforcing these requirements, state regulators aim to ensure that franchise prospects can compare franchise opportunities on an “apples-to-apples” basis. However, there is no central clearance system for processing franchise registration applications.

### **A. State Jurisdictional Issues**

As a threshold matter, it is important to remember that the laws of more than one state may apply to a single offer and sale of a franchise. When considering which state laws may apply, franchisors must determine whether or not an “offer” or “sale” will be deemed to be made in a particular state. Although the laws of the various states differ, whether or not the events listed below occurred within the state are often key factors in making this determination.

- Meetings between the franchisor and prospective franchisee at which the parties have substantive communications about the franchise opportunity.
- The offer to sell a franchise originates in the state (e.g., from the franchisor’s headquarters in the state).<sup>4</sup>
- The offer to sell a franchise is directed by the franchisor to the state and received by the prospective franchisee in the state where it is directed.
- The prospective franchisee accepts the offer to buy the franchise in the state.
- The offer or sale is made to a franchisee who is domiciled in the state. Under some state laws, the franchisee’s domicile in the state is enough. Under other state laws, the franchisee must be a domiciliary and operate the franchise business in the state.
- The offer or sale is made to a franchisee who resides in the state. Like domicile, in some states the franchisee’s residence in the state is enough; in other states the franchisee must be a resident and operate the franchise business in the state.

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<sup>4</sup> California, Hawaii, Illinois, Maryland, Michigan, Minnesota, Rhode Island, South Dakota, Virginia and Wisconsin each provide an exemption from registration for, or simply do not cover, “out-of-state” sales. These are sales made by a franchisor headquartered in one of these registration states to an out-of-state prospective franchisee who neither resides nor will operate the franchise business in the same state as the franchisor’s headquarters. The out-of-state sales exemption allows a franchisor to have its principal place of business in a registration state without having to register to sell franchises there as long as: (1) all sales activities are with a non-resident who will operate franchises in a different state, and (2) the franchisor complies with the Amended Rule and all other state franchise sales laws that apply to the transaction.

- The franchise business will be operated in the state or any portion of the franchise territory is in the state.
- The franchise contemplates or requires the franchisee to establish or maintain a place of business in the state.

## **B. State Cover Page and Risk Factors**

State administrators often require state-specific risk factors be added to the FDD in a State Cover Page. The current form of State Cover Page includes several standard risk factors and certain cautionary information. Typically, the inclusion of particular risk factors is based upon: (1) the state in which the franchise is being offered, (2) the dispute resolution provision selected by the franchisor, (3) whether minimum performance obligations are imposed, (4) whether any conditions are imposed on the owner's spouse, and (5) the financial condition and experience of the franchisor. An example of a set of risk factors commonly imposed by state administrators is attached as Exhibit A.

On June 12, 2018, NASAA issued a proposal to amend the NASAA Guidelines to add additional disclosures and pages to the FDD by replacing the existing State Cover Page with three new pages of required disclosures. The new pages are intended to highlight specific risks inherent in the purchase of a franchise and certain differences between a franchised business and other businesses. The first new page would be titled "How to Use this Franchise Document" and would give prospects basic information to find answers to common questions and to navigate the FDD. The second new page would be titled "What You Need to Know About Franchising, Generally" and would include general information about franchising that many prospects do not appreciate until after they have entered into a franchise relationship. The third new page would be titled "Special Risks to Consider About *This* Franchise" and would generally replace the existing State Cover Page by requiring one standard risk factor based on dispute resolution outside of the franchisee's home state and allow states to require additional risk factors. As of this writing, the proposal has not yet been adopted by NASAA. The proposed new state cover pages are attached as Exhibit B.

## **C. State Addenda**

Every franchisor must comply with the specific disclosure requirements of each state the franchisor wishes to offer or sell franchises. However, this does not mean the franchisor must prepare a separate, state-specific FDD to address the requirements of each state. Instead, most franchisors prepare state-specific addenda to address: (1) disclosures required to advise prospects of that state's limited review of the franchisor's FDD and (2) modifications to the FDD (and to related agreements) that are necessary to (a) notify the franchisee of its rights under that state's franchise relationship laws such as the franchisee's rights in connection with termination and non-renewal of the franchise agreement, (b) preserve the franchisee's rights under state law from waiver or modification by the terms of the franchise or other agreement, and (c) disclose any

financial assurances the franchisor is required to provide as a condition of registration due to the franchisor's financial condition and/or years of franchising experience.<sup>5</sup>

#### **D. State Registration Filing Requirements**

Similar to the state-specific disclosure obligations, the state registration requirements differ from state to state. Most state regulators require that the franchisor submit its FDD along with various other standardized forms and documents. Franchisors also must provide specific information about any individual who sells franchises on the franchisor's behalf. Each state also has specific documentation requirements depending upon whether the filing is an initial registration, a renewal of an existing registration, an amendment to an existing application or an application for an exemption to the state's franchise laws. Finally, the method by which a franchisor submits its franchise application varies by state. Some states permit online filing, some states mandate online filing, and other states require paper filings and/or submissions on electronic media such as CD-ROM. Exhibit C summarizes the state-specific requirements to file an application for an initial franchise registration in each state that requires registration. The requirements in connection with renewals, amendments or applications for exemptions may differ from Exhibit C depending on the state.

#### **E. State Examiner Review Process and Comment Letters**

Most state franchise acts provide a limited period of time during which a state franchise administrator must approve or deny a franchise application. These rules generally provide that a FDD will be automatically registered when the statutory period expires unless: (1) the administrator has issued a stop order or obtained an injunction barring the registration or (2) the administrator has issued a comment or deficiency letter to the applicant describing the corrections or additional disclosure the franchisor must make to effect registration. The degree of scrutiny devoted to a franchise application varies significantly from state to state but can generally be divided into two distinct types: (a) full review states and (b) notice filing states.

Full review states are states in which the FDD and franchise application are subject to full review by a state administrator before a decision is made by the state whether or not to approve the franchisor's registration and include the following states: California, Hawaii, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode Island, Virginia and Washington. A franchise examiner's response to an application for registration in a full review state often takes the form of a comment letter or a deficiency letter addressed to the franchisor who submitted the application. The franchise administrator often requests additional information be provided by the franchisor and/or revisions be made

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<sup>5</sup> Depending on the franchisor's financial condition and years of franchise experience, a state may require a franchisor to provide financial assurances as a condition of registration. The specific financial assurance required varies by state, but typically a franchisor may satisfy the financial assurance by doing one of the following: (1) deferring collection of the initial franchise fee (or other initial fees) until the franchisor satisfies its pre-opening obligations and the franchisee commences operation, (2) escrowing payment of the initial fees, (3) posting of a surety bond, or (4) providing a guaranty of the franchisor's obligations to its franchisees from a parent or affiliate of the franchisor and attaching a copy of the audited financial statements of the guarantor to the FDD.

to the franchisor's FDD. State administrators may issue subsequent comment letters until all matters are resolved.

Notice filing states are states in which the franchise registration application is deemed registered, by statute, when the state receives all required information and include the following states: Indiana, Michigan, South Dakota, and Wisconsin. While administrators in these states have the authority to review the documents filed with the state and issue comments, they seldom, if ever do.

In addition to the states that require registration, there are six business opportunity states that require a franchisor to file a simple notice with a state agency in order to qualify for an exemption from the state's business opportunity law and include the following states: Florida, Iowa, Kentucky, Nebraska, Texas and Utah. The frequency with which the notice of exemption must be filed varies by state. Florida and Utah require an annual notice of exemption be filed each year, but Iowa, Kentucky, Nebraska and Texas only require a one-time exemption filing.<sup>6</sup>

## **F. Strategies for Managing the Registration Process**

Below are some best practice tips for expediting the franchise registration process:

- Ensure the FDD is compliant with the NASAA Guidelines;
- Make the FDD compliant with applicable state law by reviewing each state's individual state laws, regulations, guidelines and commentary;
- Comply with all state filing requirements in Exhibit C for initial registrations and use any forms prescribed by a particular state;
- Carefully review information to be incorporated into the FDD;
- Review the franchisor's financial statements to confirm the FDD contains the correct financial statements and that those financial statements are consistent with the information disclosed in the FDD;
- Confirm the accountant consent includes the prescribed statements;

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<sup>6</sup> In other business opportunity law states, exemption from the definition of a "business opportunity" depends on the franchisor awarding a license to the franchisee to use a federally (or state) registered mark as part of the franchised business, or offering a franchise in compliance with the Amended Rule. If a franchisor does not satisfy the conditions for exemption from the state business opportunity law, the franchisor will be deemed to be a "business opportunity seller" and must comply with all business opportunity pre-sale disclosure and registration requirements – which requirements are comparable to, though less complex than, the franchise registration process. This issue most frequently arises for a new franchisor that has not yet obtained a federal registration for its principal trademark. Business Opportunity Law compliance is outside the scope of this paper. See, Beata Krakus, Alexander Tuneski, *Caught in the Web of Federal & State Business Opportunity Laws: Managing & Avoiding the Entanglement of Regulations*, 36th Annual ABA Forum on Franchising (2013) for more information.

- Respond promptly and completely to all comment and deficiency letters and collect and review all information required to respond to each letter including any necessary references to the laws or regulations of that state;
- If any comment is unclear (or if the same comment is repeated in subsequent comment letters), contact the state administrator to seek clarification before responding to the letter;
- If two different state examiners make conflicting comments, provide details of the conflict to each examiner and ask each examiner to clarify so a potential resolution can be identified;
- Develop an understanding of each state’s particular requirements for responses to comment or deficiency letters such as providing blacklined copies of the entire FDD versus only changed pages;
- Address state-specific requirements as completely as possible, even though some may appear to be trivial and inconsequential to you, they are not to the applicable state;
- Address all comments in a single response that creates an appropriate record of correspondence and adequately responds to the content of each comment in the form required by the state administrator;
- Respect the state regulators and they will respect you; and
- Choose your battles wisely.

During the franchise registration process, a franchisor (or its counsel) should maintain a current “state status summary” detailing the franchise registration status in each state. The state status summary should be regularly shared with all franchise sellers to ensure that they have an accurate resource that they can consult before engaging in sales activities. The state status summary should include whether or not the FDD has been registered in a particular state as well as any other state-specific requirements for that state such as any requirement that the franchisor defer or escrow the collection of the initial fees until the franchisee opens for business.

#### **G. Common FDD Disclosure Items That Generate Comments and/or Delay Registration**

Below are some specific FDD disclosure items that most often seem to generate comments from state regulators.

- Include the correct “issuance date” on both the FTC cover page and receipt pages of the FDD.



- If the franchisee is required to make payments to the franchisor and/or one of its affiliates prior to opening for business, the amount of such payments must reconcile on the FTC Cover Page and Item 5.
- The amounts listed in the estimated initial investment table(s) in Item 7 must also reconcile with the FTC Cover Page.
- In Item 19, the franchisor should avoid making modifications to the required paragraphs. See FTC's FAQ #27.
- Tables 1-4 in Item 20 must reconcile, so that net franchise and company-owned numbers in tables 3 and 4 match the numbers in table 1.
- The lists of current and former franchisees must match the disclosures in Tables 1, 2, and 3 of Item 20, and the list of franchisees that have purchased franchises but are not yet open must match the numbers disclosed in Table 5 of Item 20.
- If the franchisor does not have sufficient net worth and/or working capital to satisfy its pre-opening obligations to its franchisees based on the number of projected openings for the next fiscal year based on Item 21 financial information disclosures for the franchisor, the state regulators will likely require financial assurances such as deferral of fees, escrows, etc. Franchisors in this position should plan to include the financial assurance it is willing to provide in its initial filing to avoid comments on this issue that will delay registration, and specifically highlight the issue in the cover letter to the registration package.
- In Item 21, the audited financial statements must be listed in side-by-side format, so that the results of the most recent fiscal year are shown next to the results of the prior fiscal year.

## **H. Common Mistakes To Avoid**

Below are some common mistakes that that most often seem to generate comments from state regulators:

- Failure to write the FDD in "plain English;"
- Including introductory paragraphs at the beginning of Item 2 and Item 6;
- Additional information in the business experience disclosure for franchisor's personnel in Item 2. For example, "Mary Smith, our president, is active in her church and community and coaches her daughter's little league team,"<sup>7</sup>

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<sup>7</sup> It is common for start-up franchisors to want to treat Item 2 as a sales tool, and as such include an extensive biography of the franchisor's personnel in that section, which is far beyond the scope of disclosures called for in Item 2.

- Lists of franchisor-defined terms in specific Items;
- Franchisor’s opinion about the merits of a specific lawsuit being included in Item 3 without including an opinion of counsel;
- Revising the standard Item 12 disclosure regarding an exclusive territory, or failing to include the required language when the franchisor does not grant an exclusive territory;
- Including additional language about state-specific laws *after* the table in Item 17;
- Failing to include required disclosures about renewals in Item 17.b, or regarding state-specific franchise laws in Item 17.v;
- Using an “issuance date” of the FDD that is before the date of the audited financial statements, or that is different from the date on the franchisor’s certification page;
- Failing to provide interim financial statements that are dated within 90 or 120 days (depending on the state) of the date of the franchisor’s application for registration in that state; and
- Failing to include financial statements that are prepared in accordance with GAAP.

## **II. General Approach to Responding to Comment Letters**

During their presentation, the authors of this paper will discuss responses to specific unusual, uncommon or atypical comments that have been raised by state examiners in the past. As a general rule, when dealing with unusual, uncommon or atypical comments, we advise franchisors (and their counsel) to (1) seek first to understand and then to be understood, (2) work with the examiners to try to find common ground, and (3) attempt to balance changes requested by the examiner with the franchisor’s business interests (including the impact the proposed changes may have on the franchisor’s FDD and franchise sales process) to successfully get registered in that state.

## **III. State-Specific Tips and Regulator Contact Information**

### **A. California**

California conducts a full review before it will register a franchise offering. In California, franchises are regulated by the Department of Business Oversight (“DBO”), which is overseen by the Commissioner of Business Oversight.<sup>8</sup> A franchisor seeking registration must file an application for registration with the DBO, unless it is exempt from

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<sup>8</sup> See Cal. Corp. Code §31004.

registration.<sup>9</sup> Before California will examine an application for registration, the application must be “complete.” An application is “complete” when it includes the correct filing fee (\$675 for a new registration; \$450 for a renewal), made payable to the Department of Business Oversight<sup>10</sup>; a complete FDD, in both clean copy and marked (blacklined) to show changes; and all required documents, as discussed below.<sup>11</sup> If a franchisor’s application is deemed “grossly deficient,” the DBO may deny the application.<sup>12</sup>

A complete application package must include: (1) a cover letter, which must clearly state the name of the applicant, the file number (Organization Identification Number “Org-ID”) if known, and the franchisor’s fiscal year-end date; (2) a copy of the FDD (clean and marked to show changes, as stated above), which includes the franchisor’s audited financial statements for the most recent fiscal year; (3) Uniform Franchise Registration Application (NASAA Form A) (4) certification of the FDD signed by an authorized officer, manager or general partner of the franchisor; (5) Customer Authorization of Disclosure of Financial Records<sup>13</sup>; (6) Uniform Consent to Service of Process (NASAA Form C); (7) Franchisor’s Costs and Sources of Funds Form (NASAA Form B) (also known as the “Supplemental Information Page”); (8) Franchise Seller Disclosure Forms (NASAA Form D) or Sales Agent Disclosure Forms for each person offering and selling the franchise in California<sup>14</sup>; (9) an Internet Advertising Exemption Notice<sup>15</sup>; (10) consent of auditor; and (11) financial assurance, if applicable (see Section 1(H) above). Finally, if the franchisor plans to use franchise-specific advertising in California, it should file such advertising with the DBO at least three business days before it begins using that advertising.<sup>16</sup>

The DBO has established an electronic filing portal called “DOCQNET.” A franchisor wishing to electronically file in California may do so by first registering for a DOCQNET account at <https://docqnet.dbo.ca.gov/>. A renewal application filed on DOCQNET must be filed before 5:00 PM pacific time on the last day of the renewal period, or will be considered late because the DOCQNET portal will treat it as having been filed the next business day.<sup>17</sup>

An application for registration is automatically effective in California thirty business days after the filing of a “complete application” (see discussion above for what makes an application “complete”) if no stop order or comment letter has been issued.<sup>18</sup> In addition

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<sup>9</sup> See Cal. Corp. Code §31110.

<sup>10</sup> See Cal. Corp. Code §31500. A franchisor must pay the new registration fee if the application is filed more than 110 days after the franchisor’s fiscal year-end, regardless of whether the franchisor has a previous registration in the state.

<sup>11</sup> See Cal. Corp. Code §§31116 and 31121.

<sup>12</sup> See Cal. Corp. Code §31115.

<sup>13</sup> Available at <http://www.dbo.ca.gov/forms/doc/DBO-QR500.265.pdf>.

<sup>14</sup> Either the NASAA Franchise Seller Disclosure Form or the California Sales Agent Disclosure Form is accepted. The California form is available at <http://www.dbo.ca.gov/forms/doc/franchise/DBO-310.111-Sales-Agent-Disclosure-Form.pdf>.

<sup>15</sup> Available at <http://www.dbo.ca.gov/forms/doc/franchise/Sample-Internet-Ad-Exemption.pdf>.

<sup>16</sup> See Cal. Corp. Code §31156.

<sup>17</sup> See

[http://www.dbo.ca.gov/Licensees/franchise\\_investment\\_law/expedite\\_franchise\\_renewal\\_2019.asp](http://www.dbo.ca.gov/Licensees/franchise_investment_law/expedite_franchise_renewal_2019.asp).

<sup>18</sup> See Cal. Corp. Code §31116.

to the general tips listed above, common mistakes or issues that will result in a comment letter being issued in California include:

- Failure to include a Customer Authorization for Disclosure of Financial Records or Internet Advertising Exemption, which are forms unique to California.
- Failure to address in the cover letter for a renewal application whether the franchisor has complied with Cal. Corp. Code Section 31109.1 if it claims an exemption under that section for negotiated sales.
- For start-up franchisors, failure to include financial statements that have been audited or reviewed by a certified public accountant.<sup>19</sup>
- Where the financial statements do not demonstrate that the franchisor has the ability to fulfill obligations to provide real estate, improvements, equipment, inventory, training or other items included in the offering, failure to provide sufficient financial assurance in the form of an escrow, initial fee deferral, surety bond, or parent guarantee.<sup>20</sup>
- If the franchisor's legal entity is a California entity, failure to have filed with the DBO a form Notice of Transaction Pursuant to Cal. Corp. Code Section 25102(f) and have paid the applicable fee.

Finally, to expedite handling of responses to comment letters, the DBO asks franchisors to "include a response Cover Letter that restates the comment and provides immediately below such comment an explanation of how the franchisor addressed such comment (e.g., what change was made to the application documents and where in the documents such change was made)."<sup>21</sup>

The Department of Business Oversight can be contacted by phone at (866) 275-2677 or (916) 327-7585, or by email at [ASK.DBO@dbo.ca.gov](mailto:ASK.DBO@dbo.ca.gov). For franchisors wishing to file their registrations by mail instead of through the DOCQNET portal, the DBO's physical addresses are<sup>22</sup>:

Department of Business Oversight One Sansome Street, Suite 600 San Francisco, CA 94104-4428	Department of Business Oversight 320 W. 4th Street, Suite 750 Los Angeles, CA 90013-2344
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<sup>19</sup> See 10 Cal. Admin. Code §310.112.2.

<sup>20</sup> See 10 Cal. Admin. Code §§310.113.1 – 310.113.5.

<sup>21</sup> See [http://www.dbo.ca.gov/Licensees/franchise\\_investment\\_law/Instruction-Franchise-Application.asp](http://www.dbo.ca.gov/Licensees/franchise_investment_law/Instruction-Franchise-Application.asp).

<sup>22</sup> The DBO prefers that inquiries are made to these sources, and that an individual examiner is contacted only after she or he has been assigned the application and has issued a comment letter. As a result, no individual examiner contact information has been included in this paper.

## B. Hawaii

Hawaii conducts a full review before it will register a franchise offering. The Business Registration Division of the Hawaii Department of Commerce and Consumer Affairs (“Business Registration Division”) regulates and oversees enforcement of Hawaii’s Franchise Investment Law. In order to register a franchise offering in Hawaii, a franchisor must file a complete application with the Business Registration Division.

An application for registration is “complete” when it includes all of the following:

- Cover letter clearly stating the name of the applicant, the enclosed documents, the fiscal year of the applicant, and an acknowledgment that the franchise filing will “expire three months after the fiscal year end”;
- Filing Fee: \$250 (Checks must be made payable to Hawaii Commissioner of Securities);
- A copy of the FDD (clean and a marked (blackline) showing all changes from the most recent filing, which includes the franchisor’s audited financial statements for the most recent fiscal year;
- Uniform Franchise Registration Application (NASAA Form A or Hawaii State Specific Application for Filing of Franchise<sup>23</sup>;
- Certification of the FDD signed by an authorized officer, manager or general partner of the franchisor;
- Franchisor’s Costs and Source of Funds (NASAA Form B)
- Uniform Consent to Service of Process (Hawaii state specific); and
- Consent of auditor (if franchisor is filing audited financials as part of the FDD)

An application for registration is automatically effective in Hawaii seven calendar days after the filing of a “complete application” (see discussion above for what makes an application “complete”) if no stop order<sup>24</sup> or comment letter has been issued.

In addition to the general tips listed above, common mistakes or issues that will result in a comment letter being issued in Hawaii include the failure to submit the Hawaii state specific Consent to Service of Process, along with the correct notary acknowledgement for the type of entity.

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<sup>23</sup> See [http://cca.hawaii.gov/sec/registration\\_forms/franchise\\_filings](http://cca.hawaii.gov/sec/registration_forms/franchise_filings).

<sup>24</sup> See HRS §482E-8.

Applications for initial FDD registration, annual renewals, and amendments are filed with the Business Registration Division at the address set forth below:

<i>Department of Commerce and Consumer Affairs</i> <i>Business Registration Division</i> 335 Merchant Street, Room 205 Honolulu, Hawaii 96813
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### **C. Illinois**

Illinois is not only the land of Lincoln but also the land of FDD reviews. Illinois will do a very thorough review of your FDD. Illinois does not have online filing. Illinois requires you to mail in the FDD, applications and check by mail. An application is considered complete when you mail in: (1) A Cover Letter; (2) Franchise Registration Application; (3) Seller Disclosure Forms; (4) Consent of Auditor Form; (5) A clean copy of the FDD (Franchise Disclosure Form); and (6) A CD containing all of the above. If it's a renewal filing instead of an initial filing, you also need to include a blackline of the previous year's FDD versus the current clean FDD. The application fee to register a new franchise in Illinois is \$500 and the application fee to register a renewal in Illinois is \$100.

After receiving your application, Illinois examiners will first look at the franchisor's financial statements. If the examiner does not like what they see, Illinois will deny the application. In the denial letter, Illinois will send a notification that they require a financial assurance before the application continue. This can be either a fee deferral, surety bond or impound. This guarantee of assurance is required before they will continue with the application at all.

#### **More on Financial Viability** - Avoiding imposition of financial assurances:

- The decision is based on a combination of multiple factors. Not just 1 or 2 financial points.
- They usually require Stockholders'/Members' Equity of \$100,000 minimum for Illinois.
- Stockholder/Member Distribution – Year-end distributions are great for reduced taxes, but it still impacts equity as it is an expense. This often results in an imposition of assurances.
- Debt/Equity Ratio: Illinois looks at 5 to 1 or less.
- Will also look at working capital.

Once you have successfully met their financial assurance requirements, they will review the rest of the FDD and application. This process generally takes 2 to 3 months. First-time filers can expect that they will more than likely get a comment letter.

**Other top review areas that generate the most comments:**

- Illinois will look at the franchisor’s compliance with NASAA’s Item 19 guidance, focusing particularly on the recently-issued FPR Commentary.
- In Item 12, exclusive/non-exclusive territories and franchisee/franchisor rights in territories need to be consistent with one another.
- The initial investment figures disclosed on the FTC Cover Page and Items 5 and 7 must be consistent. If the same numbers aren’t used, revisions are required. No explanations or variations will be accepted by examiners.
- Make sure the approved/required suppliers are disclosed in Item 8 and any relevant information consistency throughout the FDD.
- Items 8 and 11 fiscal year end financial information must be included.
- Item 20 numbers will be closely reviewed.
- Disclosure needs to be consistent between the items discussed in the FDD and Franchise and Area Development Agreements.
- Franchise/License sales. The term “license” can trigger a closer look at the franchisor. The state will also look for illegal franchise sales.
- Required financials – They are looking for three fiscal years, interim financials, audited, GAAP basis and externally prepared. They are also looking for interim financials and fiscal year end financials for those new franchisors that haven’t undergone an audit.

Renewals of registration in Illinois are due 120 days after the franchisor’s fiscal year end. The FDD is automatically effective upon receipt unless the state sends a stop order; but even with automatic effectiveness, Illinois may still issue a comment letter later in the year.

Contact information for Illinois is below.

Illinois Attorney General Chief, Franchise Division 500 S. Second Street Springfield, IL 62706 217.782-4465	Patty Hagner, Senior Franchise Examiner <a href="mailto:phagner@atg.state.il.us">phagner@atg.state.il.us</a> 217.782.4465
Kristi Vose, Franchise Examiner <a href="mailto:kvose@atg.state.il.us">kvose@atg.state.il.us</a> 217.782.4465	Toni Young, Franchise Examiner <a href="mailto:tyoung@atg.state.il.us">tyoung@atg.state.il.us</a> 217.782.4465

## D. Indiana

Indiana is a notice filing state. A franchisor is required only to file a notice with the Secretary of State, Securities Division, in the required format, if it wishes to offer or sell franchises in the state. The Securities Division does not review FDDs as part of the registration process.

The forms required for filing in Indiana are: (1) Uniform Franchise Registration Application; (NASAA Form A); (2) Uniform Consent to Service of Process (NASAA Form C); (3) one copy of the FDD on CD-ROM; (4) Franchise Seller Disclosure Forms (NASAA Form D), which must be submitted on CD-ROM; and (5) a check in the amount of \$500 (\$250 if a renewal) made payable to the Indiana Securities Division.

The Indiana Secretary of State, Securities Division, can be contacted by phone at 317-232-6681, or by fax at 317-233-3675. The physical address is as follows:

Indiana Secretary of State Securities Division 302 West Washington Street Room E111 Indianapolis, IN 46204
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## E. Maryland

Maryland conducts a full review before it will register a franchise offering. In Maryland, franchises are regulated by the Securities Division of the Maryland Office of the Attorney General (“Securities Division”). In order to register a franchise offering in Maryland, a franchisor must file a complete application with the Securities Division.

An application is complete when it includes all of the following:

- Cover letter, containing the assigned file number, if available, clearly stating the name of the applicant, the enclosed documents, the fiscal year of the applicant, a brief description of the changes;
- Filing Fee: \$500 (initial), \$250 (renewal), \$100 (amendment) (Checks must be made payable to *Maryland Office of the Attorney General*);
- A copy of the FDD, (clean and, if filing a renewal or an amendment, a marked blackline showing all changes from the most recent filing);
- The franchisor’s audited financial statements for the most recent fiscal year (phase-in of audited financial statements does not apply in Maryland);
- Uniform Franchise Registration Application (NASAA Form A);
- Certification of the FDD signed by an authorized officer, manager or general partner of the franchisor;
- Franchisor’s Costs and Source of Funds (NASAA Form B)



- Uniform Consent to Service of Process (NASAA Form C);
- Consent of auditor (if franchisor is filing audited financials as part of the FDD); and
- Two copies of all marketing materials used by franchisor in the offer or sale of franchises.<sup>25</sup>

An application for initial registration is considered filed only after the required application fee and all modifications, information, and disclosures reasonably required by the Commissioner have been received by the Securities Division, and if, no stop order or comment letter has been issued.<sup>26</sup>

In addition to the general tips listed above, common mistakes or issues that often result in a comment letter being issued by Maryland include:

- Failure to include both a paper copy and CD of the FDD; and
- Failure to include a notarized acknowledgement certifying that the documents on the CD are identical to the paper documents.

You can contact the Securities Division by phone at (410) 576-6360 or by e-mail at [securities@oag.state.md.us](mailto:securities@oag.state.md.us).

Your FDD registration application must be filed with the Securities Division at the following address:

Securities Division Office of the Attorney General 200 St. Paul Place, 20th Floor Baltimore, MD 2120
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## F. Michigan

Michigan is a notice filing state. A franchisor is required only to file a notice with the Attorney General, in the required format, if it wishes to offer or sell franchises in the state. The Attorney General does not review FDDs as part of the registration process.<sup>27</sup>

The form used to register in Michigan is called the “Notice of Intent.” The Notice of Intent should be on the franchisor’s letterhead and contain the following: (1) name of franchisor; (2) the name of the franchise (name under which the franchisor does business); and (3) the franchisor’s principal business address. While not required, the Attorney General requests that the franchisor also include a brief description on the type of business the franchisee will operate in the Notice of Intent. The Notice of Intent must

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<sup>25</sup> The marketing materials must be on file with Maryland for 5 days prior to use.

<sup>26</sup> Maryland Franchise Law, Business Regulation Article, §14-218(b)

<sup>27</sup> See MCL §445.1501 *et seq.*

be accompanied by a filing fee in the amount of \$250.00, payable to the State of Michigan. Registration lasts for one year.<sup>28</sup> The franchisor's FDD must also, immediately following the cover page, include a Michigan-specific notice in a form and format specified by Michigan law.<sup>29</sup>

The Michigan Office of Attorney General, Consumer Protection Division, can be contacted by phone at 517-335-7567, by fax at 517-335-1935, or by email at [cp\\_email@michigan.gov](mailto:cp_email@michigan.gov). The physical address is as follows:

Michigan Office of Attorney General Consumer Protection Division G. Mennen Williams Building 525 W. Ottawa Street P.O. Box 30213 Lansing, MI 48909
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## G. Minnesota

The Minnesota Department of Commerce-Securities Division is responsible for overseeing the franchise registrations in the State of Minnesota. In order to have your franchise registered in the state of Minnesota, you must send in your application and check by mail, but then you are required to file the FDD and redlines online. A complete package for registration in Minnesota must include: (1) Franchise Registration Application (includes a notarized Certification Statement); (2) Franchisor's Costs and Sources of Funds; (3) Consent to Service of Process; (4) Seller Disclosure Forms; (5) Consent of Auditor Form (must be on accountant's letterhead); (6) Franchise Disclosure Document (an audited financial statement is required for all initial and renewal applications). The application fee to register a new franchise in Minnesota is \$400 and the application fee to register a renewal in Minnesota is \$300.

Minnesota will conduct a full review of the franchisor's application before registration, and the comment letter process can typically take up to 2 months. Most of the state's comments are directed to fee deferral and financial assurance.

Contact information for Minnesota is below:

Department of Commerce Commissioner of Commerce 85 Seventh Place East, Suite 280 St. Paul, MN 55101-3165 651.539.1600	Flora Angui, Commerce Analyst 2 <a href="mailto:Flora.angui@state.mn.us">Flora.angui@state.mn.us</a> 651.539.1631
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## H. New York

New York conducts a full review before it will register a franchise offering. In New York, franchises are regulated by the New York Department of Law ("Department"). In order to register a franchise offering in New York, a franchisor must file a complete

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<sup>28</sup> See MCL §445.1507a.

<sup>29</sup> See MCL §445.1508.

application with the Department. An application is complete when it includes all of the following:

- Filing Fee: \$750 for initial filing and \$150 for renewal or amendment and checks must be drawn on a United States Bank and made payable to “The New York State Department of Law” and denominated in U.S. Dollars;
- Uniform Franchise Registration Application with Certification (New York Form A<sup>30</sup>);
- Franchisor’s Costs and Source of Funds (New York Form B<sup>37</sup>);
- Consent to Service of Process (New York Form C<sup>37</sup>);
- Consent of auditor if franchisor is filing audited financials as part of the FDD;
- Sales Agents Disclosure Form for each person offering/selling franchises in New York on behalf of the franchisor;
- Guarantee of Performance Form when financial statements of an affiliate are attached to FDD and the affiliate provides a guaranty of the obligations of the franchisor;
- One complete hard copy of the FDD and one read-only CD containing another copy of the FDD;
- Two copies of all marketing materials used by franchisor in the offer/sale of franchises.<sup>31</sup>
- a cover letter, which must clearly state the name of the applicant, the assigned file number (if known) if known, and the franchisor's fiscal year-end date;
- A stamped self-addressed envelope and a duplicate cover letter which the Department will stamp and return to the applicant as confirmation of receipt of the filing and notification of the registration file number; and
- If the registration is a renewal, a marked blacklined copy of the FDD, showing the changes to the last FDD filed with the Department.

New York will review the financial statements of the franchisor and may require additional risk factors be added based on that review such as the following:

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<sup>30</sup> <https://ag.ny.gov/sites/default/files/uniformfranchiseregistrationwithcertification.pdf>

<sup>31</sup> The marketing materials must be on file with the Department for 7 days prior to use.

THE FRANCHISEE OR AREA DEVELOPER WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM \$213,947, TO \$397,037. THESE AMOUNTS EXCEED THE FRANCHISOR, STOCKHOLDERS EQUITY AS OF FEBRUARY 2, 2018, WHICH IS \$100,000.

THE FRANCHISOR IS AT AN EARLY STAGE OF DEVELOPMENT AND HAS A LIMITED OPERATING HISTORY. THIS FRANCHISE IS LIKELY TO BE A RISKIER INVESTMENT THAN A FRANCHISE IN A SYSTEM WITH A LONGER OPERATING HISTORY.

If a franchisor uses franchise brokers in the offer or sale of franchises in New York, those franchise brokers must be registered with the Department prior to the offer or sale of a franchise in any state, so it is important to register brokers early with the state of New York.

In addition to the general tips listed above, a few practical tips for registration in New York include:

- Be careful about calling the Department too often to ask about the status of a filing or the timing of a review because it may delay your registration; and
- Be sure you submit the proper form of marked blackline because the Department requires that your blackline reflect all changes that have been made to the version of the FDD that was last approved by the Department.

All franchise applications should be submitted to the following address:

Margaret Kurta, Principal Accountant New York State Department Of Law Investor Protection Bureau 120 Broadway, 23rd Floor New York, NY 10271
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## I. North Dakota

North Dakota conducts a full review before it will register a franchise offering. In North Dakota, franchise offers and sales are regulated by the Securities Department.<sup>32</sup> Franchise offerings are registered for a period of one year from the date the registration is declared effective, unless the Securities Commissioner specifies a different time by order or rule.<sup>33</sup>

A complete package for registration in North Dakota must include: (1) a cover letter, which must state the name of the applicant, the file number if known; (2) a copy of the FDD blacklined to show changes from the previously-registered version (in hard copy, CD-ROM or USB flash drive), which includes the franchisor's audited financial statements for the most recent fiscal year; (3) Uniform Franchise Registration Application (NASAA Form A) (4) certification of the FDD signed by an authorized officer, manager or general partner of the franchisor; (5) Uniform Consent to Service of Process (NASAA Form C);

<sup>32</sup> See N.D.C.C. §51-19-01 et seq.

<sup>33</sup> See N.D.C.C. § 51-19-07.

(7) Franchisor’s Costs and Sources of Funds Form (NASAA Form B) (also known as the “Supplemental Information Page”); (8) Franchise Seller Disclosure Forms (NASAA Form D); (9) consent of auditor; (10) financial assurance, if applicable (see below); and (11) filing fee payable to the North Dakota Securities Department (\$250 for an initial registration, \$100 for renewal).<sup>34</sup> Finally, if the franchisor plans to use franchise-specific advertising in North Dakota, it should file such advertising with the Securities Department at least five business days before it begins using that advertising.<sup>35</sup>

In addition to the general tips listed above, common mistakes or issues that will result in a comment letter being issued in North Dakota include:

- If the franchisor is a start-up and has submitted unaudited financial statements, failure to provide an accepted form of financial assurance.<sup>36</sup>
- Failure to include a North Dakota addendum that addresses each of the state-specific issues in N.D.C.C. 51-19 et seq.

The contact information for the North Dakota Securities Department is:

North Dakota Securities Department Franchise Examiner/Budget Administrator 600 East Boulevard Avenue State Capitol, 5th Floor Bismarck, ND 58505-0510	Diane Lillis. North Dakota Securities Department Phone: (701) 328-4712, Fax: (701) 328-0140, Email: <a href="mailto:dlillis@nd.gov">dlillis@nd.gov</a>
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## J. Rhode Island

Rhode Island is essentially (but not technically) a notice filing state because while the state will review the application and financial statements, comment letters are relatively rare. Under the Rhode Island Franchise Investment Act, a franchisor must register its FDD with the Rhode Island Department of Business Regulation, Securities Division before offering or selling a franchise in the state. Rhode Island allows online filing of franchise applications. A complete package for registration in Rhode Island must include: (1) Franchise Registration Application; (2) Application for Exemption from Registration Requirements as a Franchisor; (3) Consent to Service of Process; (4) Franchise Seller Disclosure Form; and (5) Guarantee of Performance. The initial application fee is \$600, and the renewal fee is \$300. Rhode Island also charges a \$25 online application fee for filing online.

Contact information for Minnesota is below:

Department of Business Regulation 1511 Pontiac Avenue, Bldg. 68-2 Cranston, RI 02920 401.462.9527	Daniel Gregory Daniel.gregory@dbr.ri.gov 401.462.9527
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<sup>34</sup> *Id.*

<sup>35</sup> See N.D.C.C. §51-19-10.

<sup>36</sup> See “Franchise Funds Packet” <http://www.nd.gov/securities/sites/default/files/resources/Franchise%20Funds%20Packet.pdf>.

## **K. South Dakota**

South Dakota is a notice filing state. In order to register in South Dakota, a franchisor must file a Franchise Notice Filing Application with the South Dakota Department of Labor & Regulation, Division of Insurance – Securities Regulation (“Division”) and submit all of the following:

- Filing Fee: \$250 for an initial application and \$150 for renewal with check made payable to “South Dakota Department of Labor and Regulation;”
- One clean copy of the FDD on CD-ROM;
- Uniform Consent to Service of Process (NASAA Form C).

The Division does not review the contents of the FDD, as a whole, but it will review the franchisor’s financial statements as part of the registration process and may require financial assurance based on the financial condition of the franchisor. The Notice filing is effective upon receipt by Division and expires one year following the date of the Division’s receipt of the application.

In addition to the general tips listed above, franchisors should not submit a renewal in South Dakota more than 30 days prior to the date of expiration of the current registration because renewal applications filed more than 30 days prior to the current expiration date will be returned and will not be deemed effective.

The South Dakota Department of Labor & Regulation, Division of Insurance – Securities Regulation, can be contacted by phone at 605.773.3563 (ask for Securities Regulation), or by fax at 605.773.5369. The physical address is as follows:

South Dakota Department of Labor & Regulation, Division of Insurance – Securities Regulation 124 S. Euclid Avenue, 2nd Floor Pierre, SD 57501
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## **L. Virginia**

Virginia conducts a full review before it will register a franchise offering. In Virginia, franchise offers and sales are regulated by the State Corporation Commission.<sup>37</sup> Franchise offerings are registered for a period of one year from the date the registration is declared effective, unless the Commission extends the period, which it can do for up to 45 days.<sup>38</sup>

To register in Virginia, all filings (regardless of whether they are initial, renewal, or amendment filings) must include: (1) a cover letter, which must state the name of the applicant, the file number if known; (2) a clean copy of the FDD and a copy that has been

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<sup>37</sup> See Virginia Code §§13.1-560 and 561.

<sup>38</sup> See Virginia Code §13.1-561.

blacklined to show changes from the previously-registered version, which includes the franchisor's audited financial statements for the most recent fiscal year; (3) Uniform Franchise Registration Application (NASAA Form A) (4) corporate acknowledgment signed by an authorized officer, manager or general partner of the franchisor; (5) consent of auditor; (6) a guarantee of performance, if applicable (see below); and (7) filing fee payable to the Treasurer of Virginia (\$500 for an initial registration, \$250 for renewal).<sup>39</sup> If the filing is for an initial registration, the franchisor must also include: (8) Uniform Consent to Service of Process (NASAA Form C); (9) Franchisor's Costs and Sources of Funds Form (NASAA Form B) (also known as the "Supplemental Information Page").<sup>40</sup> All submissions must be accompanied by a CD-ROM containing electronic copies of the documents submitted. Finally, if the application is filed more than 120 days after the end of the franchisor's fiscal year, the franchisor must also submit unaudited interim financial statements dated within the most recent 120 days.<sup>41</sup>

The State Corporation Commission has provided tips for expediting registration in the state. Specifically, the state has requested that franchisors: (a) do not bind their documents with anything other than rubber bands and paperclips; (b) do not use colored slip sheets between each submitted form; write the franchisor's name and, if known, file number on the CD-ROM disc and use protective cases for the discs; and (d) for renewals, file 30 days before the expiration date and address the cover letter to the examiner who was assigned to the file during the prior year.

In addition to the general tips listed above, common mistakes or issues that will result in a comment letter being issued in Virginia include:

- If the notes to the audited financials contain a "going concern" opinion (meaning that the auditor expresses doubt as to the franchisor's ability to continue operating as a going concern), Virginia will refuse to register the franchisor.
- Failure to submit financial statements that are prepared according to GAAP.
- If the audited financials demonstrate that the equity of the shareholders in the franchisor is less than the franchisees' total estimated investment, the franchisor must include a risk factor on the state cover page that says "THE FRANCHISEE WILL BE REQUIRED TO MAKE AN ESTIMATED INITIAL INVESTMENT RANGING FROM [low number] TO [high number]. THIS AMOUNT EXCEEDS THE FRANCHISOR'S STOCKHOLDERS EQUITY AS OF [end of last fiscal year], WHICH IS [amount]."
- If, in response to a comment letter, corrections to the FDD disturb the pagination from the version originally submitted to the state, the franchisor must submit a complete clean copy of the FDD on a CD-ROM in PDF format.
- If the franchisor's audited financial statements reflect that a high percentage of the franchisor's assets are intangible, the franchisor must include a risk factor

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<sup>39</sup>See [https://www.scc.virginia.gov/srf/bus/franch\\_instr.aspx](https://www.scc.virginia.gov/srf/bus/franch_instr.aspx); Virginia Code §13.1-561.

<sup>40</sup> *Id.*

<sup>41</sup> See Va. Adm. Code §5-110-30.

on the state cover page that says “THE FRANCHISOR’S FINANCIAL CONDITION, AS REFLECTED IN ITS FINANCIAL STATEMENTS (SEE ITEM 21) CALLS INTO QUESTION THE FRANCHISOR’S FINANCIAL ABILITY TO PROVIDE SERVICES AND SUPPORT TO YOU.”

The State Corporation Commission, Securities Division, has an address of 1300 E. Main Street, 9th Floor, Richmond, Virginia 23219. The examiners’ names and phone numbers are listed below.

Patricia Duvall, Senior Examiner Phone: (804) 371-9276	Denise A. Williams, Examiner Phone: (804) 371-9468
Sharon Smith, Senior Examiner Phone: (804) 371-9414	Griffin McGuire, Senior Examiner Phone: (804) 371-9319
Brad Riggs, Examiner Phone: (804) 371-9885	

### **M. Washington**

The state of Washington has a thorough review process for franchise registration. All filings now must be made online. A franchisor seeking registration will need to file: (1) Franchise Registration Application; (2) FDD (Franchise Disclosure Document); (3) Seller Disclosure Forms; (4) Consent of Auditor Form; (5) Any Advertising (all advertising must be filed with the Division at least five days prior to use). The application fee to register a new franchise in Washington is \$600 and the application fee to register a renewal in Washington is \$100.

Comment letters are common in Washington. Although registration is automatically effective in the state within 30 days, it is commonplace for the state examiner assigned to the file to request the franchisor to provide a “Waiver of Effectiveness,” stating that the franchisor will not sell franchises in the state until the registration is approved.

Franchisors should pay close attention to deadlines in Washington. Permits expire exactly one year from the date they were issued, and if the franchisor’s goal is to keep the same expiration date from year to year, it must file at least 15 business days prior to that expiration date. Example: if the franchisor’s initial filing is made in March 2018 and a permit is received with an April 15, 2018 date, to prevent gaps in the registration the franchisor should file by March 26, 2018.

Other tips for registering in Washington:

- The penalty for missing a renewal deadline is more than just the extra \$500 filing fee. It also means the FDD will be treated like a new application and will get a full review by an examining attorney. This adds several weeks/months to the process and pretty much guarantees a comment letter.
- Try to keep your changes from year-to-year at a minimum, especially Item 19. Renewals that are heavily blacklined are often referred to an examining



attorney which (like missing the renewal deadline) will add a significant delay in the renewal and will likely lead to a comment letter.

- Unless you have a very compelling reason, don't call/email the examiners to ask them to speed up their review.
- Remember that April is the renewal season for state examiners as well. At any given time, an examiner may each have backlog of 40-60 FDDs to review. When you get a comment letter, it's very helpful to respond comment-by-comment in the order the comments were issued. If you change or fix something based on a comment, but don't explain to the examiner what you did, you are much more likely to get a response comment letter.
- Never use the following arguments on an examiner (they hear these constantly):
  - "Another state let us do it this way." Remember that franchise laws and rules vary widely between the states and that each state is sovereign. Usually, this will end up in the state examiner contacting the other state to request that other state require the same change. State examiners also use their own ListServ to discuss problems they find in FDDs.
  - "You let another franchise do this." Similar to the last argument, this usually just results in the examiner requiring the other franchise make the same change.
  - "You didn't make us do this last year." Even state examiners reserve the right to get smarter.
- Unless there is a genuine problem, respond directly to the examiner and don't cc other examiners, the examiner's boss, or the agency's administrator. This is usually perceived as a slight to the examiner and will often backfire (results in delay reviews and long comment letters).
- The law firms or franchisors that show appreciation to state examiners when a permit is issued are often remembered in the future (mainly because it is extremely rare). Building some political capital with the state examiner could be extremely useful should you need help later on.

Washington's contact information is as follows:

Department of Financial Institutions Securities Division 150 Israel Road SW Tumwater, WA 98501 360.902.8760	Daniel J. Goodman: <a href="mailto:Daniel.goodman@dfi.wa.gov">Daniel.goodman@dfi.wa.gov</a> 360.902.8785
Nathan Quigley <a href="mailto:Nathan.quigley@dfi.wa.gov">Nathan.quigley@dfi.wa.gov</a> 360.902.8797	Michelle Webster, Esq. <a href="mailto:Michelle.webster@dfi.wa.gov">Michelle.webster@dfi.wa.gov</a> 360.902.8736
	Rhonda Mires, Program Specialist <a href="mailto:Rhonda.mires@dfi.wa.gov">Rhonda.mires@dfi.wa.gov</a>

## **N. Wisconsin**

While Wisconsin is considered a franchise registration state, its review process is not nearly as rigorous as some other registration states. In order to register a franchise in Wisconsin, a franchisor must file and register its FDD online with the Securities Division of the Wisconsin State Department of Financial Institutions. Wisconsin does not distinguish between initial registrations or renewals, and the filing fee is \$400.

Wisconsin registrations are handled online. A complete application includes: (1) FDD (Franchise Disclosure Document); (2) Franchise Name (The full legal name of the franchisor); Trade Name (The "Doing Business As" name of the franchisor, if applicable); (3) Franchisor's Principal Business Address (The franchisor's principal business address in the U.S. If a foreign franchisor does not have a U.S. business address, use its principal business address in its home jurisdiction); (4) Application States (The states in which this application is or will be shortly on file); (5) Contact Person (The name, address, telephone, facsimile number and email address of the contact person for this registration filing and all communication regarding this filing will be via the e-mail address of the contact person); (6) Contact for Service of Process (The name and address to contact with any notice, process or pleading served under the uniform consent to service of process); and (7) Officer Authorization (The uniform consent to service of process must be authorized by a corporate officer). Registrations are effective immediately after filing.

Wisconsin's contact information is as follows:

Department of Financial Institutions Division of Securities 201 W. Washington Avenue Madison, WI 53703 608.266.3364 Franchise Information: 608.266.0448
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## **IV. Conclusion**

When dealing with unusual comments, it is important for franchise practitioners to work closely with the examiners to try to find common ground. Finding balance is the best path to achieving registration in any given state.

## Exhibit A

### Sample State Risk Factors

Please consider the following RISK FACTORS before you buy this franchise:

1. THE FRANCHISE AGREEMENT REQUIRES YOU TO RESOLVE DISPUTES WITH US BY MEDIATION, ARBITRATION OR LITIGATION ONLY IN [insert state]. OUT-OF-STATE MEDIATION, ARBITRATION OR LITIGATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE TO MEDIATE, ARBITRATE OR LITIGATE WITH US IN [insert state] THAN IN YOUR OWN STATE.
2. ALL OWNERS OF THE FRANCHISE AND THEIR SPOUSES WILL BE REQUIRED TO SIGN PERSONAL GUARANTIES. THIS REQUIREMENT PLACES THE PERSONAL AND MARITAL ASSETS OF THE FRANCHISE OWNER(S) AT RISK.
3. YOU MUST MAKE MINIMUM ROYALTY OR ADVERTISING PAYMENTS, REGARDLESS OF YOUR SALES LEVELS. YOUR INABILITY TO MAKE THE PAYMENTS MAY RESULT IN TERMINATION OF YOUR FRANCHISE AND LOSS OF YOUR INVESTMENT.
4. THE FRANCHISOR IS AT AN EARLY STAGE OF DEVELOPMENT AND AS A LIMITED OPERATING HISTORY. THIS FRANCHISE COULD BE A HIGHER RISK INVESTMENT THAN A SYSTEM WITH A LONGER OPERATING HISTORY.
5. THE FRANCHISOR HAS LIMITED FINANCIAL RESOURCES WHICH MIGHT NOT BE ADEQUATE TO FUND THE FRANCHISOR'S PRE-OPENING OBLIGATIONS TO EACH FRANCHISEE AND PAY OPERATING EXPENSES.
6. THE FRANCHISOR WAS FORMED IN [month / year] HAS LITTLE OPERATING HISTORY OR RECORD OF PERFORMANCE. A FRANCHISEE'S ESTIMATED INITIAL INVESTMENT RANGING FROM [insert Item 7 range] EXCEEDS THE FRANCHISOR'S TOTAL STOCKHOLDER'S EQUITY OF [insert stockholder's equity from financial statements] at [insert ending date of financial statements].
7. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.

## Exhibit B

### NASAA Proposed State Cover Sheets

#### How to Use This Franchise Disclosure Document

Here are some questions you may be asking about buying a franchise and tips on how to find more information:

<b>QUESTION</b>	<b>WHERE TO FIND INFORMATION</b>
<b>How much will I earn?</b>	Item 19 may give you information about outlet sales, costs, profits or losses. You should also try to obtain this information from others, like current and former franchisees. You can find their names and contact information in Item 20 and Exhibit [ ].
<b>How much will I need to invest?</b>	Items 5 and 6 list fees you will be paying to the franchisor and at the franchisor's direction; Item 7 lists the initial investment to open, and Item 8 describes the suppliers you must use.
<b>Does the franchisor have the financial ability to support my business?</b>	Item 21 and Exhibit [ ] include financial statements. Review these statements carefully.
<b>Is the franchise system stable and growing or shrinking?</b>	Item 20 summarizes the 3-year history of the number of company-owned and franchised outlets.
<b>Will my business be the only [XYZ] business in my market?</b>	Item 12 and the "territory" provisions in the franchise agreement describe whether the franchisor and other franchisees can compete with you.
<b>Does the franchisor have a troubled legal history?</b>	Items 3 and 4 tell you whether the franchisor or its management have been involved in material litigation or bankruptcy proceedings
<b>What's it like to be [an XYZ] franchisee?</b>	Item 20 and Exhibit [ ] list current and former franchisees. You can contact them to ask about their experiences.
<b>What else should I know?</b>	These questions are only a few things you should look for. Review all 23 Items and all Exhibits in this disclosure document to better understand this franchise opportunity. See the table of contents.

## What You Need To Know About Franchising *Generally*

Consider these facts about franchising before investing in any franchise:

1. **Losses and personal liability.** You may have to pay royalties and other fees even if your franchise is losing money.
2. **Additional investment.** The franchise agreement may allow the franchisor to change its manuals and business model without your consent. These changes may require you to make additional investments in your franchised business or may adversely impact the operation of your franchised business.
3. **Operating restrictions.** The franchise agreement may prohibit you from operating a similar business both during the term of the franchise and after the franchise ends. If so, you would be unable to operate a similar business after the franchise ends even if you still have obligations to your landlord or other creditors.
4. **When your franchise ends.** Your franchise agreement may not permit you to renew. Even if it does, most franchise agreements do not allow you to renew on the same terms and conditions. You may have to sign a new agreement with different terms and conditions in order to continue to operate your franchised business.
5. **Supplier Restrictions.** You may have to buy or lease items from the franchisor or a limited group of suppliers the franchisor designates. These items may be more expensive than similar items you could buy on your own.

### Some States Require Registration

Your state may have a franchise law that requires franchisors to register before offering or selling franchises in the state. Registration does not mean that the state recommends the franchise or has verified the information in this document. To find out if your state has a registration requirement, or to contact your state, use the agency information in Exhibit [ ].

Your state also may have laws that require special disclosures or amendments be made to your franchise agreement. If so, you should check the State Specific Addenda. See the Table of Contents for the location of the State Specific Addenda.

## Special Risks to Consider About *This Franchise*

Certain states require that the following risk(s) be highlighted:

1. **Out-of-State Dispute Resolution.** The franchise agreement requires you to resolve disputes with the franchisor by mediation and arbitration only in [State]. Out-of-state mediation and arbitration may force you to accept a less favorable settlement for disputes. It may also cost more to mediate or arbitrate with the franchisor in [State] than in your own state.

[If applicable] Certain states may require other risks to be highlighted. If so check the “State Specific Addenda” pages for your state.

### Exhibit C

State	Initial Franchise Application Filing Requirements	Filing Fee	Electronic Filing
California	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Customer Authorization of Disclosure of Financial Records, California Internet Advertising Exemption Notice, Franchise Seller Disclosure Forms, and 1 copy of the FDD.	\$675	Permitted
Hawaii	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 2 copies of the FDD.	\$250	N/A
Illinois	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, 1 paper copy of the FDD and 1 copy of the FDD on CD-ROM (in PDF format).	\$500	N/A
Indiana	Uniform Franchise Registration Application, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms on CD-ROM (if more than 1 or 2), and 1 copy of the FDD on CD-ROM.	\$500	N/A
Maryland	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 1 copy of the FDD (all documents must be in paper and on a CD-ROM).	\$500	N/A
Minnesota	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 1 paper copy of the FDD and 1 copy of the FDD on CD-ROM (in PDF format).	\$400	Permitted
New York	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Uniform Franchise Consent to Service of Process, Consent of Accountant, Franchise Seller Disclosure Forms, 1 copy of the Franchisor's financial statements, and 2 copies of the FDD.	\$750	N/A
North Dakota	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 1 copy of the FDD on CD-ROM.	\$250	N/A
Rhode Island	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 1 copy of the FDD.	\$600	Online or CD-ROM only
South Dakota	Franchise Notice Filing Application, Uniform Franchise Consent to Service of Process, and 1 copy of the FDD on CD-ROM.	\$250	N/A
Virginia	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, and 1 copy of the FDD (all documents must be in paper and on CD-ROM).	\$500	N/A
Washington	Uniform Franchise Registration Application, Franchisor's Costs and Sources of Funds, Consent of Accountant, Uniform Franchise Consent to Service of Process, Franchise Seller Disclosure Forms, and 2 copies of the FDD.	\$600	Permitted

Wisconsin	Uniform Franchise Registration Application, Uniform Franchise Consent to Service of Process, and 1 copy of the FDD.	\$400	Required
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