

STATEMENT OF POLICY REGARDING OFFERS OF FRANCHISES ON THE INTERNET

Adopted May 3, 1998

I. COMMENTARY

The Franchise and Business Opportunity Committee (the "Committee") of the North American Securities Administrators Association ("NASAA") formed a subcommittee in 1997 to study issues related to the growing use of the Internet by franchisors. The Committee recognized that franchisors have been and will continue to use the Internet to communicate information about their franchise offerings. Many of those communications arguably could be construed to be an "offer" of a franchise that would require registration under state franchise registration and disclosure laws. Franchise administrators received requests for guidance from franchisors about the application of state registration requirements to offers of franchises made on the Internet. Franchisors that posted information on the Internet about their franchise offerings questioned the implications of using that form of communication, including whether they would be required to register under all state franchise registration laws, whether they would qualify for an exemption from registration, and whether the communication would be considered as a form of franchise "advertising."

The Committee believed that it was in the public interest for NASAA to foster a uniform approach regarding Internet communications that may constitute an "offer" of a franchise. The Committee recognized that the use of the Internet as a means of delivering information can benefit prospective franchisees. It also recognized that the Internet is unlike other forms of communication. Current state franchise registration laws do not specifically address the registration implications of using the Internet as a means of offering franchises. The Committee proposed that NASAA encourage states to take action to exempt Internet offers from state franchise registration requirements when the franchisor includes cautionary language with the Internet communications, does not direct the Internet communication to any person in the state, and does not sell a franchise in the state until the franchise offering is registered in compliance with state law.

On December 24, 1997, the Indiana Securities Commissioner issued Order No 97-0378 AO, captioned "In the Matter of Franchises Offered on the Internet, But Not Sold in Indiana." The Indiana Securities Commissioner's Order exempts Internet offers of franchises when the franchisor includes cautionary language with the Internet communication, does not specifically direct the Internet communication to any person in the state, and does not sell a franchise in the state as a result of the Internet offer.

The Committee drafted two proposed forms of exemption available for promulgation by state administrators depending on the requirements of their respective statutes. One form is a proposed interpretive order; the other is a draft regulation. The substance of the

exemption is the same in both forms. This Statement of Policy was adopted by the NASAA membership on May 3, 1998 in Washington, D.C. The exemption is based in large part on the approach taken in the NASAA Resolution Regarding Securities Offered on the Internet, adopted January 7, 1996 in Hilton Head, South Carolina. See NASAA Reports (CCH) ¶7040.

II. TEXT OF PROPOSED INTERPRETIVE ORDER REGARDING EXEMPTION OF CERTAIN OFFERS OF FRANCHISES MADE ON THE INTERNET

WHEREAS the [Administrator] (the "[Administrator]") is charged with the administration of [the Jurisdiction's Franchise Registration and Disclosure Law] (the "[Jurisdiction] Franchise Law");

WHEREAS, Section 27(a) of the [Jurisdiction] Franchise Law provides, in part, that "[t]he [Administrator] may promulgate rules, forms, and orders necessary or appropriate to administer the [Jurisdiction] Franchise Law..." (Citations are to the Model Franchise Investment Act, as adopted by NASAA on August 30, 1990, NASAA Reports (CCH) ¶4303 et seq.);

WHEREAS, Section 5 of the [Jurisdiction] Franchise Law provides that "[i]t is unlawful for any person to offer or sell a franchise unless the offer is registered under the [Jurisdiction] Franchise Law or is exempt from registration under Section 6 of the [Jurisdiction] Franchise Law;"

WHEREAS, Section 6(k) of the [Jurisdiction] Franchise Law provides that the following transactions are exempted from the registration requirements of the [Jurisdiction] Franchise Law: "[t]he offer and sale of a franchise that the [Administrator] by rule or order exempts when registration is not necessary or appropriate in the public interest or for the protection of prospective franchisees;"

WHEREAS, the [Administrator] recognizes that the Internet, the World Wide Web or similar proprietary or common carrier electronic system (collectively the "Internet") has facilitated greatly the ability of one person to communicate with a large number of persons, and that a communication made on the Internet may be directed not only to specific recipients but also to anyone with access to the Internet;

WHEREAS, the [Administrator] acknowledges that a communication made on the Internet about a franchise offering ("Internet Offer") may be construed as an "offer" to sell a franchise for purposes of Section 5 of the [Jurisdiction] Franchise Law; and

WHEREAS, the [Administrator] has determined that it is not necessary or appropriate in the public interest or for the protection of [Jurisdiction] franchisees to require the registration of an Internet Offer of a franchise that is not sold in [Jurisdiction] under certain conditions;

NOW, THEREFORE, [THE ADMINISTRATOR] ORDERS THAT:

1. " Pursuant to Section 6(k) of the [Jurisdiction] Franchise Law, Internet Offers of a franchise are exempted from the registration requirements of the [Jurisdiction] Franchise Law if the following conditions are observed:
 - (A) The Internet Offer indicates, directly or indirectly, that the franchise(s) is not being offered to the residents of [Jurisdiction];
 - (B) The Internet Offer is not directed to any person in [Jurisdiction] by or on behalf of the franchisor or anyone acting with the franchisor's knowledge; and
 - (C) No franchise(s) is sold in [Jurisdiction] by or on behalf of the franchisor until the offering has been registered and declared effective and [the Jurisdiction] Uniform Franchise Offering Circular has been delivered to the purchaser prior to the sale and in compliance with the [Jurisdiction] Franchise Law.
2. Nothing in this Order shall preclude a franchisor from relying upon any other applicable exemption pursuant to Section 6 of the [Jurisdiction] Franchise Law.
3. This Order shall remain in effect until modified or rescinded by the [Administrator].

SO ORDERED at City, State,
this _____ day of _____, _____

[Name of Administrator]

[Title of Administrator]

III. TEXT OF PROPOSED REGULATION CONCERNING EXEMPTION OF CERTAIN OFFERS OF FRANCHISES MADE ON THE INTERNET

(A) Any communication made through the Internet, the World Wide Web, or any other similar proprietary or common carrier electronic delivery system, of an offer to sell a franchise ("Internet Offer") is exempt from the registration provisions of the [Jurisdiction] Franchise Registration and Disclosure Law (the "[Jurisdiction] Franchise Law") where:

1. The Internet Offer indicates, directly or indirectly, that the franchise is not being offered to residents of [Jurisdiction];
2. The Internet Offer is not otherwise directed to any person in [the Jurisdiction] by or on behalf of the franchisor or anyone acting with the franchisor's knowledge; and
3. No franchises are sold in [the Jurisdiction] by or on behalf of the franchisor until the offering has been registered and declared effective and [the Jurisdiction] Uniform Franchise Offering Circular has been delivered to the offeree before the sale and in compliance with the [Jurisdiction] Franchise Law.

(B) Reliance on an exemption from registration under this regulation does not preclude a franchisor from relying on any other exemption provided under the [Jurisdiction] Franchise Law or these regulations.