



THE ILLINOIS FRANCHISE DISCLOSURE ACT AND RULES

**KNOW YOUR RIGHTS
AND RESPONSIBILITIES**



Lisa Madigan

Illinois Attorney General

FRANCHISE BUREAU
500 SOUTH SECOND STREET • SPRINGFIELD, IL 62706
217-782-4465 • TTY: 217-785-2771

Please call:

(217) 782-4465; TTY: (217) 785-2771

or write to:

Office of the Attorney General
Franchise Bureau
500 South Second Street
Springfield, Illinois 62706

Please visit our Web site where you will find this booklet and a franchise buyer's guide titled "Before You Buy a Franchise" and other information about the Illinois Attorney General's Office.

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A MESSAGE FROM THE ATTORNEY GENERAL

Franchising continues to provide unique opportunities to businesses that want to expand and to business buyers who want the benefit of the franchisor's leadership with a proven product or service.

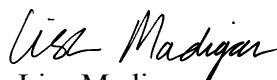
It is vital to your success as a franchisor or franchisee that you understand the obligations and rights set out in the Illinois franchise laws.

The Franchise Bureau of the Attorney General's Office administers the Franchise Disclosure Act with the goal of encouraging business development, while protecting the interests of the franchisor, franchisee and Illinois residents.

My office has cooperated with the other states regulating franchising and the Federal Trade Commission to streamline the requirements franchisors must meet in Illinois. Our registration and regulatory system has earned acclaim from both large and small businesses and is an important factor in the excellent franchising business climate in Illinois.

I am sure you will find this handbook helpful. My Franchise Bureau also stands ready to assist you, your attorney or accountant if there are any questions about your obligations or rights.

Sincerely,



Lisa Madigan

Illinois Attorney General

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INTRODUCTION

This publication provides in a single source, the Illinois Franchise Disclosure Act (“Act”) and the Rules (“Rules”) made pursuant to the Act. The Uniform Franchise Offering Circular (“UFOC”) disclosure document required by all states regulating franchises, and which format has been approved by the Federal Trade Commission (FTC), is part of the Illinois Rules in Appendix A, Illustration L.

For your convenience, a Table of Contents for the Act is cross-referenced to the Rules. The Rules have their own, separate Table of Contents. The text of the Act is provided in this publication without legislative references and the “notes” after some sections are not part of the Act, but represent some of the cross-references you may be interested in. There is also an index at the end of the reference book that applies to both the Act and the Rules.

If you have determined that the business entity you are concerned about is not a franchise, you may want to refer to the last part of this book where a brief reference is made to the Illinois Business Opportunity Sales Law administered by the Secretary of State. You will also find a brief reference to the Illinois Business Brokers Act, which may be of interest to Franchise Brokers as well as other business matchmakers.

An agreement claiming that the business will or will not be a franchise is not controlling. The entire contract must be reviewed to determine if it meets the statutory definition of a franchise.

Many other laws may apply to the business entity you would like to create, sell or buy, which makes it very important for you to consult with your attorney before committing your resources to a particular business.

The Attorney General and his staff are not permitted to give legal advice to individuals or business entities. The information that follows, including various notes or comments, is provided for your convenience and not for the purposes of providing legal advice. Every reasonable attempt has been made to proofread this publication for accuracy, but it is your responsibility to read the precise language of the Act and Rules in the official publications for which references have been provided.

The Act and Rules are current as of January 1, 2003.

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815 ILCS 705**

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FRANCHISE DISCLOSURE ACT OF 1987

815 ILCS 705/1-44 (1999)

705/1 SHORT TITLE

§1. This Act may be cited as the Franchise Disclosure Act of 1987.

705/2 FINDINGS AND PURPOSE

§2. (1) The General Assembly finds and declares that the sale of franchises is a widespread business activity. Illinois residents have suffered substantial losses where franchisors or their representatives have not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between the franchisor and franchisee, the prior business experience of the franchisor and other factors relevant to the franchise offered for sale.

(2) It is the intent of this Act:

- (a) to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered for sale; and
- (b) to protect the franchisee and the franchisor by providing a better understanding of the business and the legal relationship between the franchisee and the franchisor.

705/3 DEFINITIONS

§3. As used in this Act:

(1) “**Franchise**” means a contract or agreement, either expressed or implied, whether oral or written, between two or more persons by which:

- (a) a franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services, under a marketing plan or system prescribed or suggested in substantial part by a franchisor; and
- (b) the operation of the franchisee’s business pursuant to such plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
- (c) the person granted the right to engage in such business is required to pay, directly or indirectly, a franchise fee of \$500 or more; [**Note: also see Rules 102 through 108**]

Provided that this Act shall not apply to any of the following persons, entities or relationships which may involve or acquire a franchise or any interest in a franchise:
[Note: also see Rules 200-202]:

- (i) any franchised business which is operated by the franchisee on the premises of the franchisor or subfranchisor as long as such franchised business is incidental to the business conducted by the franchisor or subfranchisor at such premises, including, without limitation, leased departments and concessions; or
- (ii) a fractional franchise. A “fractional franchise” means any relationship in which the person described therein as a franchisee, or any of the current directors or executive officers thereof, has been in the type of business represented by the franchise relationship for more than 2 years and the parties anticipated, or should have anticipated, at the time the agreement establishing the franchise relationship was reached, that the sales arising from the relationship would represent no more than 20% of the sales in dollar volume of the franchisee for a period of at least one year after the franchisee begins selling the goods or services involved in the franchise; or
- (iii) a franchise agreement for the use of a trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating a person who offers on a general basis, for a fee or otherwise, a bona fide service for the evaluation, testing, or certification of goods, commodities, or services.

(2) **“Franchisee”** means a person to whom a franchise is granted and includes, unless stated otherwise in this Act:

- (a) a subfranchisor with regard to its relationship with a franchisor and
- (b) a subfranchisee with regard to its relationship with a subfranchisor.

(3) **“Franchisor”** means a person who grants a franchise and includes a subfranchisor with regard to its relationship with a franchisee, unless stated otherwise in this Act. [Note: also see Rule 702]

(4) **“Subfranchise”** means any contract or agreement between a franchisor and a subfranchisor whereby the subfranchisor is granted the right, in consideration of the payment of a franchise fee in whole or in part for such right, to service franchises or to sell or negotiate the sale of franchises. Where used in this Act, unless specifically stated otherwise, “franchise” includes “subfranchise.”

(5) **“Subfranchisor”** means a person to whom the right to sell subfranchises is granted.
Note: also see Rule 702]

(6) **“Order”** means a consent, authorization, approval, prohibition, or requirement applicable to a specific case issued by the Attorney General Administrator.

- (7) **“Person”** means an individual, a corporation, a partnership, a joint venture, an association, a joint stock company, a trust, or an unincorporated organization.
- (8) **“Rule”** means any published regulation or standard of general application issued by the Administrator.
- (9) **“Sale”** or **“sell”** includes every contract or agreement of sale of, contract to sell, or disposition of, a franchise or interest in a franchise for value.
- (10) **“State”** means the State of Illinois.
- (11) **“Fraud”** and **“deceit”** are not limited to common law fraud or deceit.
- (12) **“Offer”** or **“offer to sell”** includes every attempt to offer to dispose of, or solicitation of an offer to buy, a franchise, any interest in a franchise or an option to acquire a franchise for value. **[Note: also see Definition (201)]**
- (13) **“Publish”** means publicly to issue or circulate by newspaper, mail, radio, or television, or otherwise to disseminate to the public.
- (14) **“Franchise fee”** means any fee or charge that a franchisee is required to pay directly or indirectly for the right to enter into a business or sell, resell, or distribute goods, services or franchises under an agreement, including, but not limited to, any such payment for goods or services, provided that the Administrator may by rule define what constitutes an indirect franchise fee, and provided further that the following shall not be considered the payment of a franchise fee:
- (a) the payment of a reasonable service charge to the issuer of a credit card by an establishment accepting or honoring such credit card;
 - (b) amounts paid to a trading stamp company by a person issuing trading stamps in connection with the retail sale of merchandise or services;
 - (c) the purchase or agreement to purchase goods for which there is an established market at a bona fide wholesale price;
 - (d) the payment for fixtures necessary to operate the business;
 - (e) the payment of rent which reflects payment for the economic value of the property;
or
 - (f) the purchase or agreement to purchase goods for which there is an established market at a bona fide retail price subject to a bona fide commission or compensation plan. The Administrator may by rule define what shall constitute an established market. **[Note: also see Rules 107, 108]**

(15) **“Disclosure statement”** means the document provided for in Section 16 of this Act and all amendments to such document.

(16) **“Write”** or **“written”** shall include printed, lithographed or any other means of graphic communication.

(17) (Blank).

(18) **“Marketing plan or system”** means a plan or system relating to some aspect of the conduct of a party to a contract in conducting business, including but not limited to

- (a) specification of price, or special pricing systems or discount plans,
- (b) use of particular sales or display equipment or merchandising devices,
- (c) use of specific sales techniques,
- (d) use of advertising or promotional materials or cooperation in advertising efforts;

provided that an agreement is not a marketing plan or system solely because a manufacturer or distributor of goods reserves the right to occasionally require sale at a special reduced price which is advertised on the container or packaging material in which the product is regularly sold, if the reduced price is absorbed by the manufacturer or distributor.

(19) **“Administrator”** means the Illinois Attorney General. [**Note: also see Rule 112**]

(20) (a) An **offer to sell** a franchise is made in this State when the offer either originates from this State or is directed by the offeror to this State and received at the place to which it is directed. An offer to sell is accepted in this State when acceptance is communicated to the offeror in this State; and acceptance is communicated to the offeror in this State when the offeree directs it to the offeror in this State reasonably believing the offeror to be in this State and it is received at the place to which it is directed.

- (b) An **offer to sell** a franchise is not made in this State merely because the franchisor circulates or there is circulated in this State an advertisement in (i) a bona fide newspaper or other publication of general, regular and paid circulation which has had more than 2/3 of its circulation outside this State during the past 12 months, or (ii) a radio or television program originating outside this State which is received in this State. [**Note: also see definition §3(12) of this Act; and Rules 115 and 306**]

(21) **“Franchise broker”** means any person engaged in the business of representing a franchisor in offering for sale or selling a franchise and is not a franchisor or an officer, director or employee of a franchisor with respect to such franchise. A franchisee shall not be a franchise broker merely because it receives a payment from the franchisor in consideration of the referral

of a prospective franchisee to the franchisor, if the franchisee does not otherwise participate in the sale of a franchise to the prospective franchisee. A franchisee shall not be deemed to participate in a sale merely because he responds to an inquiry from a prospective franchisee. **[Note: also see §5(3) and §13 of this Act; and Rules 116, 202 b), c) & d); 900 and 901]**

(22) **“Salesperson”** means any person employed by or representing a franchise broker in effecting or attempting to effect the offer or sale of a franchise.

705/4 JURISDICTION AND VENUE

§4. Any provision in a franchise agreement that designates jurisdiction or venue in a forum outside of this State is void, provided that a franchise agreement may provide for arbitration in a forum outside of this State. **[Note: also see Rule 608]**

705/5 PROHIBITED PRACTICES

§5. (1) Sale of unregistered franchise unlawful. It is unlawful for any person to offer or sell any franchise required to be registered under this Act unless the franchise has been registered under this Act or is exempt under this Act. **[Note: also see Rules 115 and 306]**

(2) Failure to deliver a disclosure statement unlawful. It is unlawful for any person to offer or sell any franchise which is required to be registered under this Act without first providing to the prospective franchisee at least 14 days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 14 business days prior to the receipt by such person of any consideration, whichever occurs first, a copy of a disclosure statement meeting the requirements of this Act and registered by the Administrator, together with a copy of all proposed agreements relating to the sale of the franchise. For the purposes of this Act, delivery of a disclosure statement to a general partner of a partnership shall constitute delivery to the partnership and its partners and delivery of a disclosure statement to a principal officer of a corporation shall constitute delivery to the corporation and its shareholders. **[Note: also see Rule 109]**

(3) Sale of franchise by unregistered franchise broker unlawful. It is unlawful for any franchise required to be registered under this Act to be offered for sale or sold in this State by a franchise broker subject to this Act who is not first registered under this Act unless exempt from registration. **[Note: also see §3(21) and §13 of this Act; Rules 900 and 901]**

(4) Filing of untrue report unlawful. It is unlawful for any person to make or cause to be made any untrue statement of a material fact in any application, notice, or report filed with the Administrator, or to omit to state in any application, notice, or report any material fact, or to fail to notify the Administrator of any material change in such application, notice, or report, as required by this Act.

705/6 FRAUDULENT PRACTICES

§6. In connection with the offer or sale of any franchise made in this State, it is unlawful for any person, directly or indirectly, to: [**Note: also see Rules 300 through 304**]

- (a) employ any device, scheme, or artifice to defraud;
- (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

For the purposes of this Section 6, a sale of a franchise is made in this State when:

- (i) an offer to sell or buy a franchise is made in this State and accepted within or outside of this State, or
- (ii) an offer to sell or buy a franchise is made outside of this State and accepted in this State, or
- (iii) the offeree is domiciled in this State, or
- (iv) the franchised business is or will be located in this State.

705/7 SALE BY FRANCHISEE AND EXTENSION OR RENEWAL OF EXISTING FRANCHISE

§7. There shall be **exempted** from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the offer or sale of a franchise by a franchisee for its own account if the sale is not effected by or through a franchisor. A sale is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove a different franchisee or requires payment of a reasonable transfer fee.

There shall be **exempted** from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the extension or renewal of an existing franchise or the exchange or substitution of a modified or amended franchise agreement where there is no interruption in the operation of the franchise business by the franchisee.

705/8 EXEMPTIONS

§8. There shall be exempted from the provisions of Sections 5, 10, 11, 13 and 15 of this Act the offer and sale of a franchise if the prospective franchisee qualifies as one of the following:

any bank as defined in Section 3(a)(2) of the Securities Act of 1933 [15 U.S.C. § 77c] whether acting in its individual or fiduciary capacity or as an insurance company as defined in Section 2(13) of that Act [15 U.S.C. § 77b].

[Note: also see §3(1)(i),(ii)&(iii) of this Act; Rules 117 and 202; 815 ILCS 715/10.1 and 720/1.1(2)]

705/9 EXEMPTIONS FROM DISCLOSURE STATEMENT AND REGISTRATION REQUIREMENTS GRANTED BY ADMINISTRATOR

§9. The Administrator may by rule or order provide that any information required by Section 16 of this Act to be included in the disclosure statement need not be included in respect of any class of franchises if he finds that the requirement of such information is inapplicable to such class and that disclosure fully adequate for the protection of prospective franchisees is otherwise required to be included within the disclosure statement.

The Administrator may by rule or order, and subject to such terms and conditions as he may prescribe, exempt any franchise, franchisor, subfranchisor, or franchise broker from Sections 5, 10, 11 and 13 of this Act if he finds that the enforcement of this Act is not necessary (1) in the public interest, or (2) for the protection of any class of prospective franchisees, or (3) by reason of the investment involved, or (4) because of the limited character of the offering.

[Note: also see Rule 201]

The disclosure statement required by Section 16 need not be furnished to a franchisee who has already been furnished with a copy of such disclosure statement in connection with a prior purchase of a franchise by such franchisee, provided that no material amendments have been made to such disclosure statement since it was furnished to such franchisee.

705/10 REGISTRATION AND ANNUAL REPORT

§10. No franchisor may sell or offer to sell a franchise in this State if (1) the franchisee is domiciled in this State or (2) the offer of the franchise is made or accepted in this State and the franchise business is or will be located in this State, unless the franchisor has registered the franchise with the Administrator by filing such form of notification and disclosure statement as required under Section 16.

The registration of a franchise shall become effective on the 21st day after the date of the filing of the required materials, unless the Administrator has denied registration under subdivision (a)(3) of Section 22.

Annually, but not later than one business day before the anniversary date of the registration, the franchisor shall file the disclosure statement updated as of a date within 120 days of the anniversary date of the registration. **[Note: also see §6(b) and §11 of this Act; and Rules 118, 119, 120, 600, 603, 610, 701 and 702]**

705/11 AMENDMENTS

§11. Within 90 days of the occurrence of any material change in any facts required to be disclosed, a franchisor whose franchise is registered under this Act shall amend its disclosure statement and shall deliver the amended disclosure statement in accordance with the requirements of subsection (2) of Section 5 and Section 16 of this Act to any prospective franchisee, including prospective franchisees to whom a disclosure statement was previously delivered if the material change relates to or affects the franchisor or the franchise offered to such prospective franchisees.

The amended disclosure statement shall be filed with the Administrator. An amendment shall not be required if the terms of the franchise agreement merely reflect changes from the franchisor's registered franchise made pursuant to negotiations between the franchisee and the franchisor.

The fact that the franchise is considered to be registered is not a finding that the amended disclosure statement complies with the standard of disclosure required by this Act. **[Note: also see Rules 110 and 114]**

705/12 PERIOD OF EFFECTIVENESS

§12. The registration of a franchise and the disclosure statement used in connection therewith shall continue to be effective unless the Administrator issues an order suspending, terminating, prohibiting or denying the sale or registration of the franchise under this Act.

705/13 REGISTRATION OF FRANCHISE BROKERS

§13. A franchise broker shall not offer or sell a franchise which is required to be registered under this Act unless the franchise broker first registers under this Act by filing an application in a form prescribed by the Administrator and a consent to service of process, if required, and shall file with the Administrator, for each salesperson who represents the franchise broker in the offer or sale of franchises which are required to be registered under this Act such information as the Administrator may by rule require. The Administrator may prescribe rules governing the sale of a franchise by a franchise broker including qualifications, conduct, suspension, termination, prohibition or denial of the registration of a franchise broker. The registration of a franchise broker shall be effective for a period of one year from the registration date, and may be renewed for periods of one year, unless the Administrator by rule or order prescribes a different period. **[Note: also see Rules 900-901 and Appendix B]**

705/14 EFFECT OF REGISTRATION

§14. The fact that a franchise has been registered by the Administrator is not a finding by the Administrator that the disclosure statement filed with the Administrator in connection with that registration is in any way true, accurate or complete in substance or on its face, or to be held to mean that the Administrator has in any way passed upon the merits or given approval to such

franchise. It is unlawful to make, or cause to be made, to any prospective franchisee any express or implied representation contrary to the foregoing or to advertise or represent that the Administrator approves of or recommends any franchise.

705/15 ESCROW OF FRANCHISE FEES; SURETY BONDS

§15. If the Administrator finds that a franchisor has failed to demonstrate that adequate financial arrangements have been made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items to be included in the establishment and opening of the franchise business being offered, the Administrator may by rule or order require the escrow or impoundment of franchise fees and other funds paid by the franchisee until such obligations have been fulfilled, or, at the option of the franchisor, the furnishing of a surety bond as provided by rule of the Administrator, if he finds that such requirement is necessary and appropriate to protect prospective franchisees. [Note: also see Rules 500 and 502-508; and Appendices C, D, E and F]

705/16 FORM AND CONTENTS OF DISCLOSURE STATEMENTS

§16. The disclosure statement required under this Act shall be prepared in accordance with the Uniform Franchise Offering Circular Guidelines as adopted and amended by the North American Securities Administrators Association, Incorporated.

All statements in the disclosure statement shall be free from any false or misleading statement of a material fact, shall not omit to state any material fact required to be stated or necessary to make the statements not misleading, and shall be accurate and complete as of the effective date thereof. [Note: also see Rules 118-119, 600, 603-606, 701 and 702]

705/17 PARTICIPATION IN TRADE ASSOCIATIONS

§17. It shall be an unfair franchise practice and a violation of this Act for a franchisor to in any way restrict any franchisee from joining or participating in any trade association.

705/18 DISCRIMINATION

§18. It shall be an unfair franchise practice and a violation of this Act for any franchisor to unreasonably and materially discriminate between franchisees operating a franchised business located in this State in the charges offered or made for franchise fees, royalties, goods, services, equipment, rentals or advertising services, if such discrimination will cause competitive harm to a franchisee who competes with a franchisee that received the benefit of the discrimination, unless and to the extent that any classification of or discrimination between franchisees is:

- (a) based on franchises granted at different times, and such discrimination is reasonably related to such differences in time;
- (b) related to one or more programs for making franchises available to persons with insufficient capital, training, business experience or education, or lacking other

qualifications;

- (c) related to local or regional experimentation with or variations in product or service lines or business formats or designs;
- (d) related to efforts by one or more franchisees to cure deficiencies in the operation of franchise businesses or defaults in franchise agreements; or
- (e) based on other reasonable distinctions considering the purposes of this Act and is not arbitrary.

705/19 **TERMINATION OF A FRANCHISE**

- §19.** (a) It shall be a violation of this Act for a franchisor to terminate a franchise of a franchised business located in this State prior to the expiration of its term except for “good cause” as provided in subsection (b) or (c) of this Section.
- (b) “Good cause” shall include, but not be limited to, the failure of the franchisee to comply with any lawful provisions of the franchise or other agreement and to cure such default after being given notice thereof and a reasonable opportunity to cure such default, which in no event need be more than 30 days.
- (c) “Good cause” shall include, but without the requirement of notice and an opportunity to cure, situations in which the franchisee:
- (1) makes an assignment for the benefit of creditors or a similar disposition of the assets of the franchise business;
 - (2) voluntarily abandons the franchise business;
 - (3) is convicted of a felony or other crime which substantially impairs the good will associated with the franchisor’s trademark, service mark, trade name or commercial symbol; or
 - (4) repeatedly fails to comply with the lawful provisions of the franchise or other agreement.

705/20 **NONRENEWAL OF A FRANCHISE**

§20. It shall be a violation of this Act for a franchisor to refuse to renew a franchise of a franchised business located in this State without compensating the franchisee either by repurchase or by other means for the diminution in the value of the franchised business caused by the expiration of the franchise where:

- (a) the franchisee is barred by the franchise agreement (or by the refusal of the franchisor at least 6 months prior to the expiration date of the franchise to waive

any portion of the franchise agreement which prohibits the franchisee) from continuing to conduct substantially the same business under another trademark, service mark, trade name or commercial symbol in the same area subsequent to the expiration of the franchise; or

- (b) the franchisee has not been sent notice of the franchisor's intent not to renew the franchise at least 6 months prior to the expiration date or any extension thereof of the franchise.

705/21 **FRANCHISE ADVISORY BOARD**

§21. There is created in the Office of the Administrator a Franchise Advisory Board. The Franchise Advisory Board shall consist of such members as the Administrator deems appropriate to advise him on franchising and franchise related matters. The members shall be persons who have knowledge and experience in franchising. The members of the Franchise Advisory Board shall serve at the pleasure of the Administrator. The Franchise Advisory Board from time to time shall make recommendations concerning the administration and enforcement of this Act. Members of the Franchise Advisory Board shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in their official capacities. The Board shall select its own chairman, establish rules and procedures, and keep a record of matters transpiring at all meetings.

705/22 **ENFORCEMENT**

- §22.** (a) The Administrator may suspend, terminate, prohibit or deny the sale of any franchise or registration of any franchise, or franchise broker or salesperson if it appears to him that:
- (1) there has been a failure to comply with any of the provisions of this Act or the rules or orders of the Administrator pertaining thereto; or
 - (2) that the disclosure statement or any amendment thereto includes any false or misleading statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or
 - (3) that the disclosure statement filed in conjunction with an initial registration under Section 10 is materially deficient. A disclosure statement is "materially deficient" if it fails to comply with the requirements of the Uniform Franchise Offering Circular Guidelines referred to in Section 16; or
 - (4) that the sale of the franchise would constitute a misrepresentation, deceit or fraud upon prospective franchisees; or
 - (5) that any person in this State is engaging in or about to engage in false, fraudulent or deceptive practices or any device, scheme, or artifice to defraud

in connection with the offer or sale of the franchise; or

- (6) that any person identified in the disclosure statement or any person engaged in the offer or sale of the franchise in this State has been convicted of an offense, is subject to an order or civil judgment or is a defendant in a proceeding required to be described in the disclosure statement and the involvement of such person creates an unreasonable risk to prospective franchisees; or
- (7) (blank); or
- (8) (blank); or
- (9) that the franchisor's enterprise or method of business includes or would include activities which are illegal where performed.

In no case shall the Administrator, or any person designated by him, in the administration of this Act, incur any official or personal liability by issuing an order or other proceeding or by suspending, denying, prohibiting or terminating the registration of a franchise broker or salesperson, or by denying, suspending, terminating or prohibiting the registration of franchises, or prohibiting the sale of franchises, or by suspending or prohibiting any person from acting as a franchise broker or salesperson.

The Administrator may exercise any of the powers specified in Section 31 of this Act.

- (b) The Administrator, with such assistance as he may from time to time request of the state's attorneys in the several counties, may institute proceedings in the circuit court to prevent and restrain violations of this Act or of any rule or order prescribed or issued under this Act. In such a proceeding, the court shall determine whether a violation has been committed, and shall enter such judgment or decree as it considers necessary to remove the effects of any violation and to prevent such violation from continuing or from being renewed in the future. The court, in its discretion, may exercise all powers necessary for this purpose, including, but not limited to, injunction, revocation, forfeiture or suspension of the charter, franchise, certificate of authority or privileges of any corporation, association, limited partnership or other business organization operating under the laws of this State, dissolution of domestic corporations or associations, suspension or termination of the right of foreign corporations or associations to do business in this State, or restitution or payment of damages by a franchisor to persons injured by violations of this Act, including without limitation an award of reasonable attorneys fees and costs.

**705/23 HEARINGS AND NOTICE OF ORDER
SUSPENDING, TERMINATING, PROHIBITING OR
DENYING SALES OR REGISTRATION**

§23. The Administrator may summarily issue an order prohibiting, suspending, terminating or denying the sale of a franchise or registration of a franchise or franchise broker if such order is within the public interest and Section 22 of this Act, provided the Administrator shall promptly notify the person or entity affected, in writing, of the entry of an order under this Act and of the reasons therefor. Upon receipt of a written request from such person or entity, the matter will be set down for hearing to commence within 10 days after such receipt unless the franchisor, or franchise broker consents to a later date. If a hearing is not requested within 15 days from the date of the order and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after notice and hearing, may modify or vacate the order or extend it until its final determination. **[Note: also see Rule 404]**

705/24 CIVIL PENALTIES

§24. In lieu of any penalty provided pursuant to Section 25 of this Act, and in addition to an action pursuant to subsection (b) of Section 22 of this Act, the Administrator may bring an action in the name and on behalf of the people of the State against any person, trustee, manager or other officer or agent of a corporation, or against a corporation, domestic or foreign, to recover a penalty in a sum not to exceed \$50,000 per violation for the doing in this State of any act herein declared illegal. The action must be brought within 3 years after the commission of the act upon which it is based.

705/25 CRIMINAL PROSECUTION

§25. Any person who willfully sells a franchise in this State without complying with Sections 5, 6, 10, 11, 13 or 15 of this Act or who in a disclosure statement or an amendment thereto willfully makes any false or misleading statement of a material fact or willfully omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, commits a class 2 felony and upon conviction shall be subject to such punishment as provided by law. The Administrator, with such assistance as he may from time to time request of the State's Attorneys in the several counties, shall investigate suspected criminal violations of this Act and shall commence and try all prosecutions under this Act. Prosecutions under this Act may be commenced by information or indictment. With respect to the commencement and trial of such prosecutions instituted by the Administrator, the Administrator shall have all of the powers and duties vested by law in the state's attorneys with respect to criminal prosecutions generally. A prosecution for any offense under this Act must be commenced within 3 years after the commission thereof. Nothing in this Act limits the power of the State to punish any person for any conduct which constitutes a crime under any other statute.

705/26 PRIVATE CIVIL ACTIONS

§26. Any person who offers, sells, terminates, or fails to renew a franchise in violation of this Act shall be liable to the franchisee who may sue for damages caused thereby. This amendatory Act of 1992 is intended to clarify the existence of a private right of action under existing law with respect to the termination or nonrenewal of a franchise in violation of this Act. In the case of a violation of Section 5, 6, 10, 11, or 15 of the Act, the franchisee may also sue for rescission.

No franchisee may sue for rescission under this Section 26 who shall fail, within 30 days from the date of receipt thereof, to accept an offer to return the consideration paid or to repurchase the franchise purchased by such person. Every offer provided for in this Section shall be in writing, shall be delivered to the franchisee or sent by certified mail addressed to the franchisee at such person's last known address, shall offer to return any consideration paid or to repurchase the franchise for a price equal to the full amount paid less any net income received by the franchisee, plus the legal rate of interest thereon, and may require the franchisee to return to the person making such offer all unsold goods, equipment, fixtures, leases and similar items received from such person. Such offer shall continue in force for 30 days from the date on which it was received by the franchisee and shall advise the franchisee of such rights and the period of time limited for acceptance thereof. Any agreement not to accept or refusing or waiving any such offer made during or prior to the expiration of said 30 days shall be void.

The term "franchisee" as used in this Section shall include the personal representative or representatives of the franchisee.

Every person who directly or indirectly controls a person liable under this Section 26, every partner in a firm so liable, every principal executive officer or director of a corporation so liable, every person occupying a similar status or performing similar functions, and every employee of a person so liable, who materially aids in the act or transaction constituting the violation, is also liable jointly and severally with and to the same extent as such person, unless said person who otherwise is liable had no knowledge or reasonable basis to have knowledge of the facts, acts or transactions constituting the alleged violation.

Every franchisee in whose favor judgment is entered in an action brought under this Section shall be entitled to the costs of the action including, without limitation, reasonable attorney's fees.

705/27 PERIODS OF LIMITATION

§27. No action shall be maintained under Section 26 of this Act to enforce any liability created by this Act unless brought before the expiration of 3 years after the act or transaction constituting the violation upon which it is based, the expiration of one year after the franchisee becomes aware of facts or circumstances reasonably indicating that he may have a claim for relief in respect to conduct governed by this Act, or 90 days after delivery to the franchisee of a written notice disclosing the violation, whichever shall first expire. No cause of action barred under existing law on the effective date of this Act shall be revived by this Act. Every cause of action

under this Act survives the death of any person who might have been a plaintiff or defendant.
[Note: also see Index, “Limitations”]

705/28 NO OTHER CIVIL LIABILITY

§28. Except as explicitly provided in this Act, no civil liability in favor of any person shall arise against any person by implication from or as a result of the violation of any provision of this Act. Nothing in this Act shall limit any liability which may exist by virtue of any other statute or under common law if this Act were not in effect. Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before the effective date of this Act.

705/29 CERTIFICATE OF REGISTRATION OR FILING OF ANNUAL REPORT; ADMISSIBILITY IN EVIDENCE

§29. In any civil or criminal action brought under this Act, a Certificate under the seal of this State, signed by the Administrator, stating whether or not a franchise is registered, or whether or not an annual report of a franchisor has been filed under Section 10 of this Act, or whether or not a person has registered as a franchise broker under Section 13 of this Act, shall constitute prima facie evidence of such matter, and shall be admissible into evidence at trial without proof of foundation or additional authenticity.

§30. (blank)

705/31 POWERS OF THE ADMINISTRATOR

§31. (a) **Investigations.** The Administrator may in his discretion:

- (1) make such public or private investigations inside or outside this State as he deems necessary (i) to determine whether any person has violated, is violating, or is about to violate any provision of this Act or any rule or order prescribed or issued under this Act or (ii) to aid in the enforcement of this Act or in the prescribing of rules under this Act; and
- (2) publish information concerning the violation of this Act or any rule or order prescribed or issued under this Act. No actions taken or orders issued by the Administrator shall be binding on, nor in any way preclude the Administrator from conducting any investigation or commencing any action authorized under this Act. The Administrator or any of his assistants may participate in any hearings conducted by the Administrator under this Act and the Administrator may provide such assistance as the Administrator believes necessary to effectively fulfill the purposes of this Act.

(b) **Subpoenas.** For the purpose of any investigation or proceeding under this Act and

prior to the commencement of any civil or criminal action as provided for in this Act, the Administrator has the authority to subpoena witnesses, compel their attendance, examine them under oath, or require the production of any books, documents, records or tangible things, hereafter referred to as “documentary material”, which the Administrator deems relevant or material to his investigation, for inspection, reproducing or copying under such terms and conditions as are hereafter set forth. Any subpoena issued by the Administrator shall contain the following information:

- (1) the statute and section thereof, the alleged violation of which is under investigation;
 - (2) the date, place and time at which the person is required to appear or produce documentary material in his possession, custody or control at a designated office of the Administrator, which date shall not be less than 10 days from date of service of the subpoena; and
 - (3) where documentary material is required to be produced, the same shall be prescribed by class so as to clearly indicate the material demanded.
- (c) **Production of documentary material.** The Administrator is hereby authorized, and may so elect to require the production, pursuant to this Section of documentary material prior to the taking of any testimony of the person subpoenaed, in which event such documentary material shall be made available for inspection and copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be agreed upon by the person served and the Administrator. When documentary material is demanded by subpoena, said subpoena shall not (1) contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of this State; or (2) require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this State.
- (d) **Service of subpoenas.** Service of a subpoena of the Administrator as provided herein may be made by (1) delivery of a duly executed copy thereof to the person served or if a person is not a natural person, to the principal place of business of the person to be served, or (2) mailing by certified mail, return receipt requested, a duly executed copy thereof addressed to the person to be served at his principal place of business in this State, or, if said person has no place of business in this State, to his principal office.
- (e) **Examination of witnesses.** The examination of all witnesses under this Section shall be conducted by the Administrator, or by his deputy designated by him, before an officer authorized to administer oaths in this State. The testimony shall be taken stenographically or by a sound recording device and shall be transcribed.

- (f) **Fees.** All persons served with a subpoena by the Administrator under this Act shall be paid the same fees and mileage as are paid to witnesses in the courts of this State.
- (g) **Judicial enforcement of subpoenas.** In the event a witness served with a subpoena by the Administrator under this Act fails or refuses to obey same or to produce documentary material as provided herein or to give testimony relevant or material to the investigation being conducted, the Administrator may petition any circuit court for an order requiring said witness to attend and testify or produce the documentary material demanded. Thereafter, any failure or refusal on the part of the witness to obey such order of court may be punishable by the court as a contempt thereof.
- (h) **Immunity from prosecution.** No person is excused from attending and testifying or from producing any document or records before the Administrator in obedience to the subpoena of the Administrator, in any proceeding instituted by the Administrator and authorized by this Act, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture. No individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after validly claiming his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.
- (i) **Administrator entitled to recover costs.** In any action brought under the provisions of this Act, the Administrator is entitled to recover costs for the use of this State.

705/32 RULES AND INTERPRETIVE OPINIONS

§32. The Administrator may make and enforce such reasonable rules as are necessary to administer and enforce this Act. Such rules and regulations shall conform to and comply with “The Illinois Administrative Procedure Act”, approved September 22, 1975, as amended [5 ILCS 100/1-1 et seq.]. The Administrator may in his discretion honor requests for interpretive opinions. The Administrator shall maintain a complete collection of his interpretive opinions which is properly indexed, a copy of which shall be made available to any person upon request and payment of a reasonable fee to be determined by the Administrator. [**Note: also see Rule 200**]

705/33 HEARINGS

§33. (a) **Notice required.** If a hearing is requested or ordered under any provision of this Act, the Administrator shall set the matter for hearing and notice of the time and place for the hearing shall be sent to the franchisor at least 7 days prior to the hearing.

- (b) **Manner of giving notice.** Notice required by this Section is sufficient if sent by registered or certified mail and addressed to the franchisor at the address designated in the disclosure statement.
- (c) **Opportunity to be present and heard.** The parties to any hearing shall be accorded ample opportunity to present, in person or by counsel, such statements, testimony, evidence and argument as may be pertinent.
- (d) **Record.** All testimony taken at any hearing before the Administrator shall be reported stenographically or by a sound recording device and a full and complete record shall be kept of all proceedings.
- (e) **Written decisions required.** After a hearing, the Administrator shall issue a written decision modifying, vacating or extending the order and shall state the reasons for his decision.

[Note: also see Rules 400 through 411]

705/34 JUDICIAL REVIEW

§34. All final administrative decisions of the Administrator hereunder shall be subject to judicial review pursuant to the Administrative Review Law, as amended [735 ILCS 5/3-101 et seq.], and any rules adopted pursuant thereto. The term “administrative decision” is defined as in Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

705/35 SERVICE OF PROCESS

§35. Sufficient service of any process in any action brought under this Act may be made by serving a copy thereof with the agency designated to receive process in the disclosure statement filed with the Administrator or in the absence of such agent at the principal business address set forth in the disclosure statement. Where no disclosure statement has been filed and personal jurisdiction cannot otherwise be obtained in this State over a person who engaged in conduct prohibited or made actionable by this Act or any rule or order hereunder, that conduct shall be considered equivalent to the appointment of the Administrator to be such person’s attorney to receive service of any lawful process in any noncriminal suit, action or proceeding against him or his successor, executor, or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (a) the plaintiff forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice and (b) the plaintiff’s affidavit of compliance with this Section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

705/36 BOOKS AND RECORDS

§36. Every franchisor selling franchises in this State shall at all times keep and maintain a complete set of books, records and accounts of such sales.

705/37 PUBLIC INSPECTION

- §37. (a) Generally. All disclosure statements and other papers and documents received by the Administrator under this Act shall be open to public inspection, except that the Administrator may, in his discretion, withhold from public inspection any information the disclosure of which is, in the judgment of the Administrator, not necessary in the public interest or for the protection of franchisees. The Administrator may publish any information filed with him or obtained by him, if in the judgment of the Administrator, such action is in the public interest. No provision of this Act authorizes the Administrator or any of his assistants, clerks or deputies to disclose any information withheld from public inspection except among themselves or when necessary or appropriate in a proceeding or investigation under this Act or to other federal or State regulatory agencies. No provision of this Act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Administrator or any of his assistants, clerks or deputies.
- (b) Restrictions on use. The Administrator and his employees may not use for personal benefit any information which is obtained by them under this Act and which is not then generally available to the public.

705/38 COPIES TO BE FURNISHED

§38. On request and at such reasonable charges as he prescribes by rule, the Administrator shall furnish to any person photostatic or other copies, certified under his seal of office if requested, of any document which is retained as a matter of public record. He shall not charge or collect any fee for copies of any document furnished to public officers for use in their official capacity. In any judicial proceeding or prosecution, any copy so certified is prima facie evidence of the contents of the document certified.

705/39 DESTRUCTION OF RECORDS

- §39. (a) **Period of retention.** The Administrator may destroy any disclosure statements or orders, together with the files and folders, as useless or obsolete, 4 years after the date of receipt or issuance. A permanent record shall be maintained of any civil or criminal enforcement of this Act by the Administrator.
- (b) **Microfilm.** Copies on microfilm or in other form which may be retained by the Administrator in his discretion of any records destroyed under authority of this Section shall be accepted for all purposes as equivalent to the original when certified by the Administrator.

705/40 FEES

- §40.** (a) The Administrator shall charge and collect the fees fixed by this Section. All fees and charges collected under this Section shall be transmitted to the State Treasurer at least weekly, accompanied by a detailed statement thereof. Such fees and charges shall be refundable at the discretion of the Administrator.
- (b) The fee for the **initial registration** of a franchise shall be \$500.
- (c) The fee for filing an **amended disclosure statement** shall be \$100 if the amendment pertains to a material change, otherwise \$25.
- (d) The fee for an **interpretive opinion** shall be \$50.
- (e) The fee for registration of a **franchise broker** shall be \$100 with a renewal fee of \$100.
- (f) The fee for filing an **annual report** shall be \$100. [Note: also see Rule 607]

705/41 WAIVERS VOID

§41. Any condition, stipulation, or provision purporting to bind any person acquiring any franchise to waive compliance with any provision of this Act or any other law of this State is void. This Section shall not prevent any person from entering into a settlement agreement or executing a general release regarding a potential or actual lawsuit filed under any of the provisions of this Act, nor shall it prevent the arbitration of any claim pursuant to the provisions of Title 9 of the United States Code. [Note: also see Rule 609]

705/42 BURDEN OF PROOF

§42. In any proceeding under this Act, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

705/43 CONSTRUCTION

§43. This Act shall be liberally construed to effect the purposes thereof.

705/44 APPLICABILITY

§44. This Act shall not be construed to repeal any right, claim, penalty, offense or punishment existing under The Franchise Disclosure Act et seq. prior to the date this Act takes effect. This Act shall apply only to actions undertaken on and subsequent to the date this Act takes effect as well as to all resulting rights, claims, penalties, offenses and punishment.

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4 Ill Admin Code Sec.200
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Note: the following sections have been repealed:

200.101	200.602	200.1001
200.111	200.700	200.Appendix A
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14 Ill. Admin Code §200

SUBPART A: DEFINITIONS

§200.100 Act

The “Act” means the Franchise Disclosure Act of 1987 [815 ILCS 705], hereinafter cited as Section 1 through Section 44 of the Act.

§200.102 Marketing Plan or System

- a) **Marketing Plan or System** within the meaning of Section 3(1)(a) of the Act means advice given to the purchaser on how to sell the franchisor's product or service.
- b) Whether such a plan or system is *prescribed or suggested in substantial part* by the franchisor within the meaning of Section 3(1)(a) of the Act depends on the extent to which the following assistance is provided by the franchisor: site selection, the grant of an exclusive territory, assistance on constructing or remodeling or decorating business premises, advice on fixtures or equipment or signs, advice on dress, training programs, advice on business hours, limitations on products or services to be sold, advertising assistance, suggested prices or credit practices, customer relations advice, and warranty advice.
- c) A marketing plan or system may be prescribed or suggested in substantial part regardless of whether the franchisee is an independent contractor and not the agent of the franchisor and notwithstanding provisions of a franchise or other agreement purporting to grant the franchisee complete freedom in operating its business.

§200.103 Substantially Associated

A franchisee’s business is *substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising or other commercial symbol designating the franchisor or its affiliate* within the meaning of Section 3(1)(b) of the Act, if the franchise or other agreement, the nature of the franchise business or other circumstances **permit** or require the franchisee to identify its business to its customers primarily under such trademark, service mark, trade name, logotype, advertising or other commercial symbol (hereinafter referred to collectively as “franchisor’s mark”) or to otherwise use the franchisor’s mark in a manner likely to convey to the public that it is an outlet of the franchisor. Mere absence in the franchise agreement of permission to use the franchisor’s name or mark will not alone negate “substantial association”. A contractual prohibition on use of the franchisor’s name or mark must be policed and enforced to insure that the name or mark is not being substantially used without the franchisor’s knowledge.

§200.104 Franchise Fee

A “*franchise fee*” within the meaning of Section 3(14) of the Act may be present regardless of the

designation given to or the form of the fee, whether payable in lump sum or installments, definite or indefinite in amount, or partly or wholly contingent on future sales, profits, or purchases for the franchise business, or the sale or transfer of the franchisee's business. A transfer fee will not be considered a franchise fee if it represents reasonable expenses incurred in connection with the transfer.

§200.105 Absence of Fee Exclusion

- a) Any payment(s) in excess of \$500 that is required to be paid by a franchisee to the franchisor or an affiliate of the franchisor constitutes a franchise fee unless specifically excluded by Section 3(14) of the Act.
- b) However, rental payments which reflect payments for the economic value of property, as opposed to payments wholly or partly for the right to enter into a business or to sell, resell or distribute goods, services or franchises, shall not be considered indirect franchise fees.
- c) A payment made to a franchisor or affiliate for equipment, materials, real estate services, or other items shall not constitute a franchise fee if the purchase of the items is not required by the franchisor or franchisee is **permitted** to purchase the items from sources other than the franchisor or its affiliates and the item is available from such other sources.

§200.106 Bona Fide Wholesale and Retail Price

- a) The ***Bona Fide Wholesale and Retail Price*** exceptions to the ***franchise fee*** described in Section 3(14)(c) and (f) of the Act apply if the price charged constitutes a fair payment for goods purchased at a comparable level of distribution. No part of the price may be for the right to enter into the franchise business.
- b) Only goods sold to the franchisee for resale qualify for the bona fide wholesale price exception. The price charged for a trademarked product does not exceed its bona fide wholesale price merely because that price exceeds the wholesale price of non-trademarked products of comparable quality and specifications. If the trademarked product commands a premium price by virtue of the trademark it carries, such premium does not constitute the payment of a franchise fee.
- c) The bona fide wholesale and retail price exceptions apply only to purchases of goods. Services, rental payments, and leases of real or personal property are not within the category of "goods" regardless of whether the payment for such items constitutes a fair payment. Payments for services are presumed to be in part for the right granted to the franchisee to engage in the franchise business. Training programs are services and not goods regardless of whether offered, distributed or communicated by word of mouth, through instructions or lectures, in writing or printed form or by record or tape recording. If services are provided, an indirect franchise fee will be presumed regardless of whether the agreement sets forth an itemized fee for such services.

§200.107 Established Market

Whether a product has an *established market* within the meaning of Section 3(14) of the Act is determined by the following factors in Illinois or in another area with market characteristics similar to Illinois:

- a) The number of wholesale and retail outlets of the seller or of competitors in a similar line of business;
- b) The quantity and price of like or similar products presently sold;
- c) The ability of the purchaser to resell at the suggested retail price of the manufacturer and/or wholesaler or at a reasonable markup over purchaser's cost;
- d) The number of years this and similar products have been sold.

§200.108 Indirect Franchise Fee

An *indirect franchise fee* within the meaning of Section 3(14) of the Act is present despite the bona fide wholesale or retail price exceptions if the buyer is required to purchase a quantity of goods so unreasonably large that such goods may not be resold within a reasonable time. What constitutes a reasonable time is determined by the price, markup, consumer demand, location of product suppliers and seasonal demand variations.

§200.109 Consideration

Consideration within the meaning of Section 5(2) of the Act includes, without limitation, fully refundable deposits and post-dated checks.

§200.110 Material Change

A statement or omission of fact is "**material**" within the meaning of the Act if there is a substantial likelihood that a reasonable prospective franchisee would consider it significant in making a decision to purchase or not purchase the franchise.[also see UFOC Item 3 Instructions].

§200.112 Administrator

"**Administrator**" as used in this Part means the Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706, (217)782-4465. Conferences may be arranged by appointment. Persons with questions concerning the Act are encouraged to telephone the Franchise Bureau.

§200.113 Correspondent

The term "**Correspondent**" means the person authorized in the application for registration to receive notices and communications.

§200.114 Negotiated Change

As stated in Section 11 of the Act, an amendment is not required when changes in the franchise agreement are made pursuant to negotiations between the franchisor and franchisee. However, if the same change is consistently made in additional consecutive franchise sales and it is a material change, it is considered to be a permanent change in the franchise agreement and an Amendment reflecting the change must be filed within the applicable time period.

§200.115 Tradeshows

A franchisor shall not attempt to solicit franchise sales at a trade show held in Illinois, from Illinois residents or persons desiring an Illinois franchise site, unless the franchisor is registered with the Administrator or is otherwise exempt from registration. Accepting the name, address and phone number of prospective franchisees for contact after registration does not constitute an offer or offer to sell.

§200. 116 Franchise Broker

A person shall be deemed to be a franchise broker engaged in the business of representing a franchisor in offering for sale or selling a franchise within the meaning of Section 3 (21) of the Act, unless otherwise exempt, if such person provides a prospective franchisee with information about specific franchises other than the franchisor's name, address and phone number. The expectation or acceptance of a fee contingent upon a franchise sale shall be considered as evidence of franchise broker status unless such fee results from an isolated transaction as defined in Section 200. 202.

§200. 117 Cooperative

“**Cooperative**” means a for-profit organization owned and operated, or a nonprofit organization operated, by the wholesale or retail members it serves. A cooperative that operates as, or subsequently purchases, a franchise system must register that system under the Franchise Disclosure Act if the system franchisees are not members of the cooperative with control relatively equal to the other cooperative members.

§200.118 UFOC Disclosure Requirements

References in this Part to a Uniform Franchise Offering Circular (UFOC), disclosure statement, offering circular, or prospectus means a document prepared in compliance with the UFOC Guidelines as adopted by the North American Securities Administrators Association (NASAA) and set forth in Section 200. Appendix A, Illustration L.

§200. 119 Notification

Notification in Section 10 of the Act means the listed documents required to be filed by the franchisor under Section 200.600 and UFOC General Instruction 110.

§200.120 Time Periods Ending on Saturday, Sunday or Holiday

Whenever the Act establishes a filing deadline, whether based upon calendar “days” or “business days” and the date due falls upon a Saturday, Sunday or Holiday when the Office of the Administrator is closed to the public, the party affected is excused from compliance until the next business day when the office is open to the public.

SUBPART B: OPINIONS, EXEMPTIONS

§200.200 Interpretive Opinions and No Action Letters

- a) Except as provided in subsections (b) and (c) below, the Attorney General will issue an interpretive opinion upon submission of the following:
 - 1) An explanatory cover letter;
 - 2) A \$50.00 fee as required by Section 40(d) of the Act;
 - 3) A copy of the agreement;
 - 4) Promotional materials where relevant;
 - 5) Photographs of locations, where relevant;
 - 6) A list of states where the applicant is registered;
 - 7) A list of the names and addresses of all company operated and licensed outlets;
 - 8) Copies of all interpretive opinions from other administrative franchise agencies relating to the same issue;
 - 9) A certification of all facts.
- b) The Administrator will decline to issue an interpretive opinion if litigation is ongoing or reasonably anticipated.
- c) No action letters will be issued where, despite the absence or pendency of litigation, a close issue is involved which in the Administrator’s opinion is best left to judicial resolution. The Administrator will consider whether the interest of the franchisee is protected, whether the issue has been previously undecided and whether the franchisor has requested a no action letter. A no action letter does not reach the merits of the issue but merely contains a statement that the Attorney General will not prosecute.
- d) All interpretive opinions and no action letters are open to public inspection at the Administrator’s office. Copies of specific opinions and no action letters may be ordered at a cost of \$1.00 each.

§200.201 Order of Exemption

- a) Pursuant to Section 9 of the Act, the Administrator may by Order grant exemptions from the registration and disclosure requirements of the Act. The Administrator will consider whether to issue such an Order upon submission of the following:
 - 1) A cover letter describing the basis for the exemption by reference to this

Section and to Section 9 of the Act, a list of administrative agencies (other franchise regulatory states and the Federal Trade Commission) that have issued or denied exemptions or opinions with copies of the exemptions or opinions, and a statement of the number of franchises the franchisor intends to sell in Illinois in the ensuing twelve months;

- 2) A list showing all Illinois franchise sales since the most recent UFOC submitted with the exemption application;
 - 3) UFOC (Appendix A, Illustration L); and
 - 4) A certification page (Appendix A, Illustration G).
- b) Exemption requests will be granted only when in the public interest. An exemption is considered in the public interest:
- 1) If the franchisor intends to sell only one or two franchises in Illinois in the ensuing twelve months; and
 - 2) If the litigation and bankruptcy disclosure is not materially adverse to the interests of prospective franchisees; and
 - 3) If the franchisor agrees to timely provide the franchisee with a UFOC disclosure statement; and
 - 4) If the franchisor obtains a letter from the prospective franchisee's attorney, after issuance of the exemption but within the time period described in Section 5 (2) of the Act, stating that he has explained the Act to his client, and the client does not object to issuance of the exemption, and forwards the letter to the Administrator. Prior to procurement of this letter, but after issuance of the order of exemption, the franchisor may solicit franchisees but may not have a contract signed or require a prospective franchisee or subfranchisor to pay consideration.
- c) Application for exemption from Sections 5 and 10 of the Act may be made with regard to the offer and sale of a single unit franchise in which the actual minimum initial investment is in excess of \$1,000,000. The Administrator will consider whether to issue such an Order upon submission of the following:
- 1) The information required by subsection 201 (a) of this Section;
 - 2) A list showing all Illinois franchise sales since the most recent UFOC submitted with the exemption application; and
 - 3) Application documents required by Section 200.600 (a) (1) through (7).
- d) Every registered franchise and any franchisor exempt under this Section must provide the prospective franchisee with a UFOC disclosure document unless specifically

excused from this requirement by the Administrator.

§200.202 Exemptions by Rule

- a) The offer and sale of a franchise to a bank, savings institution, trust company, interstate carrier or insurance company is exempt from Sections 5 and 10 of the Act.
- b) **Isolated Transaction**
 - 1) If a referral source provides the name of a prospective franchisee to a franchisor and receives a referral or broker fee, but the person making the referral has no involvement in presenting the advantages of that particular franchise system, handles no franchisee payments owed to the franchisor, and has made no referral to that franchisor during the preceding 12 months, then such an isolated transaction does not require registration as a franchise broker and does not require the franchisor to provide disclosures concerning the person making the referral in the franchisor's UFOC.
 - 2) If a franchisor obtains a prospective franchisee from an unregistered broker, the franchisor must verify the representations made to the prospect by the broker and that all required disclosure has been provided. No referral fee or commission shall be paid to the broker until such broker is properly registered with the Administrator or is found to be exempt from registration.
- c) An **officer, director or employee of an affiliate or related company of the franchisor** is exempt from the Broker Application and Registration requirements of Section 13 of the Act, provided that the franchisor files a Sales Agent Disclosure Form with the Administrator for any such person. See Appendix A, Illustration C.
- d) **Franchise Trade Show Promoters** and persons who organize or manage events, shows or facilities in which franchises are advertised, offered or otherwise promoted are hereby exempt from the requirements of Section 13 of the Act if:
 - 1) the person does not receive a fee or other consideration from the exhibitors participating in such event or show other than exhibitor fees; and
 - 2) any rent, exhibitor fees or other consideration paid for use of the exhibit space is not contingent or based upon the sale of franchises by the exhibitors or show promoters; and
 - 3) the person is in compliance with 16 C.F.R. 436, as amended through May 1, 1999, or is in compliance with an exemption issued by the Federal Trade Commission (contact FTC Consumer Response Center, 600 Pennsylvania Ave. N.W., Washington D.C. 20580).
- e) **Large Franchisor Exemption**

The offer and sale of a franchise meeting the following requirements is exempt from Sections 5 (1) and 10 of the Act:

 - 1) **Net Worth.** The franchisor and, when applicable, a parent corporation or other business entity owning at least 80 percent of the franchisor must meet one of the following net worth requirements according to the financial statements

for the most recent fiscal year just ended:

- A) The franchisor has a net worth on a consolidated basis of not less than \$5,000,000, according to its audited financial statement; or
 - B) The franchisor has a net worth of not less than \$1,000,000, and its parent has a net worth of not less than \$5,000,000, according to the audited financial statements of the franchisor and its parent, respectively; or
 - C) The franchisor has a net worth of not less than \$1,000,000, according to its unaudited financial statement, and the parent has a net worth on a consolidated basis of not less than \$5,000,000, according to its audited financial statement, and the parent absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement should the franchisor become unable to perform its duties and obligations.
- 2) **Experience.** The franchisor or its parent corporation or other business entity owning at least 80 percent of the franchisor or the franchisor's predecessor (as defined by UFOC Guidelines), or any combination thereof, has, throughout the five year period immediately preceding the offer and sale of the franchise, at least 25 franchisees conducting business in its franchise system. Up to three years of the required experience can be fulfilled by demonstrating that the franchisor has conducted business that is substantially the same as the subject of the franchise.
- 3) **Disclosure.** The franchisor agrees to timely provide a Federal Trade Commission prospectus or UFOC offering circular to each prospective franchisee.
- 4) **Loss of Exemption.** This exemption shall immediately terminate if:
- A) Franchisor's net worth requirement is no longer met; or
 - B) Franchisor has fewer than 25 active franchisees; or
 - C) The franchisor was dependent upon another corporation or business entity to qualify for this exemption and such qualifying support has been withdrawn or is otherwise no longer available.
- 5) **Required Documentation.** The franchisor must submit the following documents to the Administrator to secure this exemption:
- A) A cover letter stating: how the net worth requirement has been met; specific information demonstrating that the experience requirement has been met; that the franchisor agrees to timely provide a UFOC or FTC disclosure document to each prospective franchisee; that the Illinois Franchise Disclosure Act applies to all Illinois franchise transactions; and that this exemption will immediately terminate for the reasons stated above;
 - B) Franchisor's current UFOC or FTC disclosure document;
 - C) A Uniform Consent to Service of Process and the appropriate acknowledgment (Section 200. Appendix A, Illustrations D and E or F);
 - D) A Certification Page (Appendix A, Illustration G) verifying that the documents submitted are true and correct.
- 6) **The franchisor must renew its exemption annually.**

SUBPART C: ADVERTISING

§200.300 Deceptive Practices

Use of advertising not in compliance with this Subpart is deemed a false, fraudulent, misleading or deceptive practice.

§200.301 Statements of Profitability

No advertising in connection with the offer or sale of franchises shall contain the statement that the purchase of a franchise is a safe investment, is free from risk of loss or failure, or assures earnings or profit. The text of the advertisement may employ words such as “success”, “profits”, or “profit potential” so long as such terms are reasonably qualified.

§200.302 Opinions of Counsel

No advertising shall contain or refer to any opinion of counsel unless the franchisor has obtained the prior written consent to such use of counsel’s name and opinion and unless the name and address of such counsel is included in the advertising.

§200.303 Inconsistencies with Disclosure Statement

It is a fraudulent practice for a franchisor to make any oral or written representation which is materially inconsistent with the information contained in the registered disclosure statement.

§200.304 Dollar Statements on Sales or Income

Any advertisement which suggests a range or specific level of sales, income, gross or net profits, or other types of earnings claims must be consistent with the guidelines contained in Item 19 of the UFOC. (See Section 200.Appendix A, Illustration L).

§200.306 Internet Franchise Offers

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 Illinois Franchise Disclosure Act if the franchisor limits contact with prospective Illinois franchisees to keeping a prospect list and notifying such prospects that, until the franchisor registers the franchise in Illinois, no further discussion about the franchise opportunity can take place.

SUBPART D: HEARINGS

§200.400 Preamble

The regulations contained in this Subpart shall govern administrative hearings under the Act. The purpose of this Subpart is to provide for the orderly determination of rights, duties and privileges of parties under procedures assuring such parties due process of law.

§200.401 Party

“**Party**” means the Administrator and all persons whose rights are to be determined at the hearing. Several persons may be joined as parties when they are alleged to have engaged in the same transaction constituting a violation.

§200.402 Hearing Officer

“**Hearing Officer**” means an independent person designated by the Administrator to preside at the hearing. Such person must meet the following standards and qualifications:

- a) be of high integrity and good personal repute;
- b) be unbiased, impartial and without any material conflict of interest;
- c) be a member in good standing of the Bar of Illinois;
- d) be familiar with the rules of evidence applied in civil cases in the circuit courts of Illinois and with the Act and the Rules promulgated thereunder; and
- e) not be a regular employee of the Illinois Attorney General.

§200.403 Office

“**Office**”, unless otherwise indicated, refers to the Office of the Attorney General, 500 South Second Street, Springfield, Illinois 62706.

§200.404 Hearing Requests

- c) A party may request a hearing within 15 days of the date of an order issued under Section 23 of the Act.
- b) If such a request is received by the Administrator, the matter will be set down for hearing within 10 days after such receipt, unless the requesting party consents to a later date.
- c) Unless a hearing is so requested, the order will remain in effect until it is modified or vacated by the Administrator.

§200.405 Notice of Hearing

- a) A notice of hearing shall be delivered to all parties to the proceeding by certified or registered U.S. Mail with return receipt requested, not less than 5 days prior to the initial date of such hearing, or any proper extension thereof.
- b) The notice shall include:

- 1) the names and last known addresses of all parties;
- 2) the time, date and place of hearing;
- 3) the name of the Hearing Officer;
- 4) a short and concise statement of facts (as distinguished from conclusions of law or a mere recitation of the words of the Act) alleging the act or acts done by each respondent; the date and place each such act was done; the Sections of the Act or of this Part alleged to have been violated or otherwise involved in the proceeding; and the decision or action requested by the Administrator;
- 5) a concise statement to each party that:
 - A) the party may be represented by legal counsel; may present evidence; may cross-examine witnesses and otherwise participate;
 - B) failure to so appear shall constitute default unless any party has upon due notice moved for and obtained a continuance.

§200.406 Requirements Relating to Continuances

Certain costs are incurred by the Administrator when a scheduled hearing is continued to another time. Therefore, the requirements for a continuance are as follows:

- a) All requests for a continuance shall be in writing and must be received by the Administrator at least three days prior to the assigned hearing date;
- b) A party requesting a continuance shall serve a copy of the request on all parties;
- c) Continuances will be granted by the Administrator upon a showing of:
 - 1) Illness of the parties or attorneys,
 - 2) Death in the immediate family of the parties or attorneys,
 - 3) Unalterable court appearances by the attorneys, or
 - 4) Undue hardship or inconvenience to either the parties or the hearing officer.

§200.407 Rules of Evidence in Hearings

- a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon

by reasonably prudent persons in the conduct of their affairs. Objection to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

- b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examinations required for a full and fair disclosure of the facts.
- c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed.

§200.408 Record of Proceedings

- a) At each hearing, a licensed court reporter may be called by the Administrator, or a sound recording may be made, to create a permanent and complete record of the proceedings.
- b) Upon request, and at the party's own expense, any party may have a copy of the record.

§200.409 Record of Hearing

The record of hearing shall include:

- a) Offers of proof, objections, and rulings thereon;
- b) All pleadings (including all pre-hearing and post-hearing notices and responses thereto, admissions, stipulations of facts, motions and rulings thereon);
- c) A statement of matters officially noted;
- d) Evidence received including testimony;
- e) All memoranda or data submitted to the Hearing Officer;
- f) Any opinion, report, or recommendation of the Hearing Officer to the Administrator or the Administrator's representative;
- g) The findings of fact and law and final order entered by the Administrator.

§200.410 Duties of Hearing Officer

- a) The Hearing Officer shall have the authority to conduct the hearing, to entertain and rule upon motions, to administer oaths, to examine witnesses, and to rule upon the admissibility of evidence.

- b) The Hearing Officer shall rule on procedure, make findings of fact and law, and issue a recommendation to the Administrator within one (1) month of the close of the hearing.

§200.411 Final Administrative Decision

- a) A final administrative decision shall be issued by the Administrator in writing within one month of receipt of the Hearing Officer's recommendation. The Hearing Officer's recommendation, rulings and findings of fact and law are to be taken into account but are not binding on the Administrator. However the final administrative decision must be based exclusively on evidence in the record. The Administrator may refuse to accept the factual recommendations of the Hearing Officer only when all the evidence, viewed most favorably to the party for whom the Hearing Officer held, so overwhelmingly favors the other party, that no contrary holding based on that evidence could withstand Administrative Review under the Administrative Review Act because the findings of fact of the Hearing Officer are against the manifest weight of the evidence. A copy of the final administrative decision shall be sent by certified or registered mail to each party or each party's representatives.
- b) The final administrative decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- c) The final order of the Administrator shall constitute a final administrative decision within the provisions of the Administrative Review Act [735 ILCS 5/Art. III].

SUBPART E: DENIAL BASED ON FINANCIAL STATEMENTS, ESCROW, GUARANTY, SURETY BOND

§200.500 Assurance of Financial Ability to Fulfill Obligations

- a) If, after examination of the financial statements of the franchisor and the duties and obligations of the franchisor contained in the franchise or other agreement to furnish goods and/or services to assist its franchisees in establishing and opening their business, the Administrator determines that adequate financial resources are not available to the franchisor for the performance of said obligations or that the franchisor will depend primarily on the initial franchise fees paid by franchisees as such financial resources (the franchisor has no other apparent source of income or assets), the Administrator will require the franchisor, at the franchisor's option to assure financial capability by one of the following means: an escrow of funds, guaranty of performance, the posting of a surety bond, the issuance of a Certificate of Deposit, or the deferral of the initial franchise fees until the franchisor has met its obligations to the franchisee and the franchisee has commenced doing business.
- b) When determining whether adequate financial resources are available, the Administrator shall give consideration to the applicant's recent financial statements.

The following criteria shall be considered in making the determination: the auditor's opinion letter or review report, notes to the financial statements, the current ratio, the quick ratio, the amount of working capital, the proportion of tangible and intangible assets, the amount and maturities of debts, the debt/equity ratio, the amount of equity, the earnings history, the proportion of receivables compared to other assets, and the quality of receivables (e.g., financial statements reflect receivables that will not be collected, including bad debts, a debt discharged in bankruptcy, or the failure to allow for aged receivables).

- c) Registration under the provisions of this Section shall be limited to the sale of the number of franchises authorized by the Administrator. The Administrator will make that decision based upon the franchisor's demonstrated willingness to fulfill its obligations to a specific number of franchises.

§200.502 Escrow of Funds

When a franchisor chooses the escrow of franchise fees to comply with financial assurance requirements, the escrow account shall comply with the following requirements:

- a) Checks shall be made payable to the escrowee by the franchisee;
- b) The account shall be established in a federally insured bank, and the funds shall be kept and maintained in an account separate and apart from the franchisor's business and personal accounts;
- c) The escrowed funds shall not be subject to any liens or charges by the escrowee or judgments, garnishments, or creditor's claims against the franchisor as hereinafter provided. This escrow is for the benefit of each franchisee in the amount paid by each franchisee;
- d) At the request of the Administrator, statements indicating the status of the escrow shall be furnished by the bank or trust company to the Administrator;
- e) An escrow agreement in the form set forth in Appendix C, Illustration A hereto, shall be entered into between the bank and the franchisor, which shall state that its purpose is to protect the franchisee and shall authorize the Administrator to inspect the records of the bank as escrowee relating thereto, and shall state that, upon order of the Administrator or a court of competent jurisdiction, the escrowee shall release and pay over the funds, or a portion thereof, to the franchisor or franchisee; and
- f) The escrow shall remain in effect as to the respective franchisee/franchisor relationships until the initial obligations of the franchisor to assist the franchisee to establish and open the franchisee's business are fulfilled.

§200.503 Release of Escrowed Funds

- a) A franchisor shall petition for release of escrowed funds by use of the form attached as Appendix C, Illustration B. Upon receipt of such petition, the Administrator will send notice of it to the franchisee advising the franchisee that any objection that the franchisee may have to the petition must be filed in writing and received by the Administrator within 30 days after the date the notice is sent. The Administrator shall issue a “no exception notice” authorizing the escrowee to release to the franchisor the escrowed funds applicable to a specified franchisee upon a showing that the franchisor has fulfilled its initial obligations under the franchise or other agreements to establish such franchise and that the franchisee has commenced doing business pursuant to the franchise agreement. The “no exception notice” shall state that the Administrator has no objection to the release of the funds to the franchisor.
- b) A franchisee shall petition for release by use of the form attached as Appendix C, Illustration C. Upon receipt of such petition, the Administrator will send notice of it to the franchisor advising it that any objection it may have to the petition must be filed in writing and received by the Administrator within 30 days after the date the notice is sent. The Administrator shall issue a “no exception notice” authorizing the escrowee to release to the franchisee the escrowed funds applicable to each franchisee upon a showing that the franchisor has failed to fulfill its initial obligations under the franchise or other agreement to the franchise and that the franchisee has not commenced doing business. The “no exception notice” shall state that the Administrator has no objection to the release of funds to the franchisee.
- c) An order of the Administrator releasing funds held in escrow to the franchisor or franchisee shall not be considered a finding of any fact and shall not constitute evidence of any such finding of fact in any judicial or arbitration proceeding.
- d) If the Administrator receives a timely objection to the release of the escrowed funds, the Administrator shall not order the funds released from escrow until such time as the objection is resolved by either settlement, court order, or decision of arbitrator.

§200.504 Guarantee of Performance

- a) If the franchisor can make arrangements with any other individual, partnership or corporation whose financial statements demonstrate an ability to perform the franchisor’s obligations as contained in the franchise or other agreement, the Administrator will accept a guaranty of performance in the form set forth in Appendix D, Illustration A from such other individual, partnership or corporation;
- b) The guarantor shall submit, in addition to the guaranty of performance, the resolution of its governing body authorizing the guaranty, the certificate of its Secretary as to such resolution, and a consent to service of process and acknowledgment for the guarantor in the form set forth in Appendix D, Illustrations B and C and Appendix A, Illustrations D, E and F hereto. The franchisor’s disclosure statement shall include

those financial statements of the guarantor which, absent a guaranty, the UFOC or FTC prospectus requires of the franchisor.

§200.505 Performance or Surety Bond

A franchisor who posts a surety bond shall do so in the form of Appendix E hereto in an amount equal to the product of the initial franchisee fee and the number of franchises the franchisor is authorized to sell in Illinois in the ensuing registration year. The bond is to be issued by a corporate surety authorized to transact business in Illinois. The bond shall be conditioned upon the performance by the franchisor of its obligations under the franchise and other agreements to furnish goods and/or services necessary to establish and open the business of its franchisees and upon the franchisor's compliance with the Act and this Part.

§200.506 Certificate of Deposit

- a) A franchisor who posts a Certificate of Deposit must post one Certificate of Deposit for each franchise that is authorized for sale by the Administrator. Each Certificate of Deposit shall be in an amount equal to the initial franchise fee.
- b) Each Certificate of Deposit is to be deposited with a federally insured savings institution and issued in the name of the Administrator for the benefit of the franchisee. The Certificate and accrued interest thereon shall be renewed for such periods necessary to maintain it until such time that the Administrator determines that it may be released either to the franchisor or to franchisees upon notice to both parties.

§200.507 Release of Certificate of Deposit

- a) A franchisor shall petition for release of the Certificate of Deposit by use of the form attached as Appendix F, Illustration A. Upon receipt of such petition, the Administrator will send notice of it to the franchisee advising the franchisee that any objection that the franchisee may have to the petition must be filed in writing and received by the Administrator within 30 days after the date the notice is sent. The Administrator shall issue a "no exception notice" authorizing the bank to release to the franchisor the Certificate of Deposit applicable to a specified franchisee upon a showing that the franchisor has fulfilled its initial obligations under the franchise or other agreements to establish such franchise and that the franchisee has commenced doing business pursuant to the franchise agreement. The "no exception notice" shall state that the Administrator has no objection to the release of the Certificate of Deposit to the franchisor.
- b) A franchisee shall petition for release of the Certificate of Deposit by use of the form attached as Appendix F, Illustration B. Upon receipt of such petition, the Administrator will send notice of it to the franchisor advising it that any objection it may have to the petition must be filed in writing and received by the Administrator within 30 days after the date the notice is sent. The Administrator shall issue a "no exception notice" authorizing the bank to release to a franchisee the Certificate of

Deposit applicable to the franchise agreement upon a showing that the franchisor has failed to fulfill its initial obligations under the franchise or other agreements to the franchisee and the franchisee has not commenced doing business. The “no exception notice” shall state that the Administrator has no objection to the release of the Certificate of Deposit to the franchisee.

- c) An order of the Administrator releasing the Certificate of Deposit to the franchisor or franchisee shall not be considered a finding of fact and shall not constitute evidence of any such finding of any judicial or arbitration proceeding.
- d) If the Administrator receives a timely objection to the release of the Certificate of Deposit, the Administrator shall not order the Certificate of Deposit released until such time as the objection is resolved by either settlement, court order, or decision of arbitrator.

§200.508 Deferral of Franchise Fee

A franchisor who defers the payment of initial franchise fees pursuant to Section 200.500 of this part shall defer the payment of all initial franchise fees owed to the franchisor, or its affiliate, by the franchisee until such time as all initial obligations owed to the franchisee under the franchise agreement or other agreements have been fulfilled by the franchisor and the franchisee has commenced doing business pursuant to the franchise agreement.

SUBPART F: REGISTRATION REQUIREMENTS

§200.600 Original Registration

- a) Documents to File. The following materials must be submitted to the Administrator to obtain registration:
 - 1) Uniform Franchise Registration Application Page, Appendix A, Illustration A;
 - 2) Supplemental Information Page, Appendix A, Illustration B;
 - 3) Sales Agent Disclosure Form for each sales agent employed by or affiliated with the applicant, Appendix A, Illustration C;
 - 4) Uniform Consent to Service of Process naming the Illinois Attorney General as agent to receive service, with corporate, individual or partnership acknowledgment, Appendix A, Illustration D, E, F, G and H;
 - 5) Certification Page, Appendix A, Illustration G;
 - 6) Auditor’s consent letter granting consent to use each audited report in the registration, Appendix A, Illustration H;

- 7) Uniform Franchise Offering Circular in duplicate current within 120 days and in compliance with UFOC Guidelines. Updated information pertaining to Items 20 or 21 may be submitted as an exhibit without changing the information already in these items; and
 - 8) A \$500 nonrefundable fee payable to the State of Illinois.
- b) **Signing of Notification:** The Notification shall be signed by an authorized officer of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of the power of attorney or a copy of the corporate resolution authorizing the attorney to act.
 - c) **Phase In Of Audit Requirement:** Franchisors who have never had audited financial statements and are filing their first application with the Administrator may request a phase in of the audit requirement. All unaudited statements must be prepared by an independent CPA in accordance with GAAP. Initial registration will be granted using the unaudited statements which cover the time periods set forth in UFOC Item 21. The franchisor must notify its CPA to count the opening inventory at the beginning of the franchisor's fiscal year which commences after the registration has been filed. At the end of that fiscal year, the balance sheet must be audited. The remainder of the financial statements for that fiscal year may be unaudited but must independently be prepared in accordance with GAAP. Financial statements for the following fiscal year must be fully audited.
 - d) The franchisor submitting original registration documents shall be provided either a courtesy notice that registration has been completed or an order of denial indicating the deficiencies that must be cured.

§200.603 Annual Report

- a) To maintain the effectiveness of registration, a franchisor must file the Annual Report required by Section 10 of the Act no later than one business day prior to the anniversary date of the registration. The filing of the Annual Report shall include:
 - 1) A non-refundable filing fee of \$100;
 - 2) Two complete unbound copies of the franchisor's Uniform Franchise Offering Circular updated as of 120 days after the franchisor's anniversary date. The phase in of the Audit Requirement continues. If the required audited financial documents are not current within 120 days after the anniversary date, interim financials in a format consistent with GAAP, including a balance sheet and corresponding income statement for the period between the close of the franchisor's most recent fiscal year and the date of the balance sheet must be submitted. All material changes in the disclosure statement must be clearly

marked on one copy of the UFOC . The updated UFOC shall replace the UFOC previously submitted to the Administrator;

- 3) Sales Agent Disclosure Form for each salesperson employed by the applicant, Appendix A, Illustration C;
 - 4) Certification Page, Appendix A, Illustration G;
 - 5) Auditor's consent letter granting consent to use each audited report in the registration, Appendix A, Illustration H;
- b) If the franchise is registered pursuant to conditions required under Section 15 of the Act or Section 200.500 and the franchisor has sold that number of franchises previously authorized by the Administrator, additional sales must be authorized by the Administrator in accordance with the terms of Section 15 of the Act or Section 200.500;
 - c) The other documents listed in Section 200.600 need not be submitted with the Annual Report if the information contained in them is current. If the information contained in those documents is no longer current, updated documents must be filed with the Annual Report;
 - d) If the franchisor fails to timely submit an Annual Report, the Administrator shall enter an order pursuant to Section 22 of the Act declaring that the franchisor's registration is terminated effective as of the anniversary date of its registration date. Annual Reports received after the Annual Report filing date are invalid. A franchisor whose registration is terminated due to its failure to file an Annual Report must file as an original registrant and comply with Section 200.603(a) (3) if it desires to offer or sell franchises in this State;
 - e) The Administrator may consider a franchisor's incomplete filing of its Annual Report as partial compliance with Section 200.603 a) and provide the franchisor up to 14 additional days to complete its Annual Report if:
 - 1) The franchisor has filed the required fee and an Annual Report that is in substantial compliance with Section 200.603 no later than one business day prior to the anniversary date of its registration;
 - 2) A letter of explanation is provided as to why material portions of the Annual Report have not been provided and verifying that the missing information will be provided within a maximum period of 14 days after the Annual Report due date; and
 - 3) The franchisor agrees not to make offers or conclude the sale of franchises during the period when the Annual Report is incomplete; and
 - f) The franchisor shall be provided a courtesy notice that its Annual Report has been received.

§200.604 Amendment Application

- a) Within 90 days after the occurrence of any material change to the UFOC the following materials must be submitted to the Administrator to amend the disclosure statement:
 - 1) Two complete copies of the UFOC pages containing the changes. One copy of the changed pages must have all changes clearly marked;
 - 2) An Application page, Appendix A, Illustration A;
 - 3) A Certification page, Appendix A, Illustration G;
 - 4) A nonrefundable filing fee [**note that multiple changes, timely filed, are considered a single amendment when calculating filing fees**]:
 - A) \$25.00 for an immaterial amendment;
 - B) \$100.00 for a material amendment.
- b) A UFOC may be amended by addendum.
- c) The franchisor shall be provided a courtesy notice that its amendment(s) has been received.

§200.605 Final Circular Submission

A registrant may be required to submit one extra, complete unbound copy of the Disclosure Statement, including all revisions and exhibits.

§200.606 Multiple Filings

The Administrator will register multiple franchises in one filing provided:

- a) The franchises will be offered concurrently; and
- b) The franchises are of a similar type; and
- c) The contractual obligations are similar; and
- d) The information can be presented in a nonconfusing manner.

§200.607 Public Examination and Photocopying of Disclosure Statements

Any disclosure document registered under the Act may be examined at the office of the Administrator or ordered by mail for \$50.00 payable to the State of Illinois from the Illinois Attorney General, Franchise Bureau, 500 South Second Street, Springfield, Illinois 62706.

§200.608 Jurisdiction and Venue

As described in Section 4 of the Act, a franchise agreement shall not require a franchisee to litigate any cause of action, with the exception of arbitration proceedings, arising under the franchise agreement or the Act outside of this State, nor shall a franchise agreement provide for a choice of law provision for any state other than Illinois.

§200.609 Waiver

No franchisor shall attempt to circumvent compliance with the Act by requiring a franchisee to execute any document evidencing waiver of any right granted by the Act as described in Section 41 of the Act. This prohibition against waiver includes, but is not limited to, statements involving unregistered earnings claims, timely disclosure, warranty, material misrepresentations or limitation of liability.

§200.610 Denial of Initial Registration

- a) A franchisor, whose initial registration has been denied without a full review of the UFOC by the Administrator because incomplete financial statements not in compliance with UFOC Guidelines were submitted, shall have 90 days to correct such deficiencies. The Administrator shall have 21 days to review the corrected financial data submitted and the previously submitted circular.
- b) If the Administrator finds material deficiencies upon a complete review of the initial registration materials, or a review subsequent to the franchisor's submission of the required financial data, pursuant to subsection (a), the franchisor shall be notified that the franchisor has 90 days within which to correct such deficiencies. The Administrator shall have 21 days to review the curative information.
- c) If the franchisor cures the deficiencies noticed by the Administrator within the times specified in this Part, the Administrator shall rescind the order of denial and register the franchise. A franchisor that fails to comply with statutory requirements and UFOC Guidelines during the above described 90 day periods must reapply by submitting a new registration fee and documents pursuant to the Act and Section 200.600.

SUBPART G: AREA FRANCHISE AND SUBFRANCHISE REGISTRATION REQUIREMENTS - RESPONSIBILITIES FOR FILING

§200.701 Number of Applications

An application to register the offer of a franchise between a subfranchisor and a subfranchisee shall be made by a separate application. If there is more than one subfranchisor (e.g., two subfranchisors offering the franchise in the same state) the franchise to be offered by or through each subfranchisor shall be filed for registration by a separate application.

§200.702 Responsibility for Filing the Application

- a) When both the franchisor and the subfranchisor have performance obligations to the subfranchise, whether such obligations are set forth in the franchise agreement or other written document or arise as a matter of practice, it is the responsibility of both the franchisor and the subfranchisor to register the offer of the subfranchise. The application for registration regarding the subfranchise shall contain a signature page from both the franchisor and the subfranchisor, each certifying as to the accuracy of the information he supplied, as well as a properly executed consent to service of process from each. Both the franchisor's and subfranchisor's financial statements are to be included in the disclosure statement.
- b) If the franchise agreement is solely between a subfranchisor and a subfranchisee and the franchisor has no material performance obligations under the franchise or any other agreement, then the responsibility for registering the offer of the subfranchise is that of the subfranchisor. The franchisor need only verify the information in the application that is relevant to the franchisor.
- c) If the franchise agreement is solely between the franchisor and the subfranchisee, the subfranchisor is not a signatory to any such agreement, the franchisor has the primary performance obligations to the subfranchisee, then the responsibility for registering the offer of the subfranchise is that of the franchisor. The subfranchisor need only verify the information in the application relevant to the subfranchisor. This subsection will not apply if the area franchise agreement requires the subfranchisor to service subfranchisees, despite the lack of direct privity between the subfranchisor and the subfranchisee.

SUBPART I: REGISTRATION OF FRANCHISE BROKERS

§200.900 Documents to File

Each franchise broker shall file with the Administrator the documents listed below in duplicate and pay an annual \$100 registration fee.

- a) Franchise Broker application page, Appendix B, Illustration A;
- b) Certification page, Appendix A, Illustration G;
- c) Salesperson Disclosure Form for each person who will be offering or selling franchises, Appendix A, Illustration C;
- d) Corporate, Partnership or Individual Acknowledgment, Appendix A, Illustrations E and F;
- e) Uniform Consent to Service of Process naming the Illinois Attorney General as agent to receive service, Appendix A, Illustration D;

- f) Broker Authorization Form, Appendix B, Illustration B. This form must be filed with the Administrator for each franchisor the broker purports to represent, before making such representations to any prospective franchisee. The franchisor must amend its UFOC to disclose each broker relationship before the respective broker (s) represents the Franchisor, except under the “isolated transaction” exemption [Section 200.202 b];
- g) A broker who is authorized to accept cash, checks or other payments from prospective franchisees on behalf of a franchisor shall comply with the provisions of this subsection g) requiring an unaudited balance sheet and income statement externally prepared by an independent CPA in accordance with GAAP current within 120 days certifying the net worth of the franchise broker to be not less than \$50,000.
- 1) In lieu of an unaudited balance sheet and income statement, the broker may post a surety bond in the amount of \$50,000, (Appendix B, Illustration C); or
 - 2) In lieu of the franchise broker’s unaudited balance sheet the franchise broker may submit an audited balance sheet and income statement of a person, corporation or partnership having a net worth of \$50,000, a Guaranty of Performance from such other entity (Appendix B, Illustration D), a Corporate Resolution (Appendix D, Illustration B), a Secretary’s Certificate (Appendix D, Illustration C), a Consent to Service of Process from the guarantor (Appendix A, Illustration D), and an acknowledgment from the guarantor (Appendix A, Illustration E or F); and
- h) \$100 registration fee.

Note the following sections have been repealed:

200.101	200.601	200.800	200. Appendix A. Illustration I
200.111	200.602	200.1000	200. Appendix A. Illustration J
200.305	200.700	200.1001	200. Appendix A. Illustration K
200.501	200.703		

§200.APPENDIX A Franchise Registration Forms

**UNIFORM FRANCHISE REGISTRATION NOTIFICATION PAGE
Appendix A – Illustration A**

File No. _____
(Insert prior number, if any)

FEE: _____
(Enclosed at time of initial filing)

Date of Filing: _____

Notification of Filing for (Check only one category):

Registration of an offer or sale of franchises

Annual Report

Amendment

1. Name of Franchisor

Name under which the Franchisor is doing or intends to do business.

2. Franchisor's principal business address.

Name and address of Franchisor's agent in the State of Illinois authorized to receive process.

Illinois Attorney General,
500 South Second Street,
Springfield, Illinois 62706

3. Name, address and telephone number of subfranchisors, if any, for this State.
4. Name, address and telephone number of person to whom communications regarding this application should be directed.

SUPPLEMENTAL INFORMATION
Appendix A - Illustration B

1. List the following:
 - A. The states in which this proposed registration is effective.
 - B. The states in which this proposed registration is or will be shortly on file.
 - C. The states, if any, which have refused, by order or otherwise, to register this franchise.
 - D. The states, if any, which have revoked or suspended the right to offer this franchise.
 - E. The states, if any, in which the proposed registration of this franchise has been withdrawn.
2. With respect to all franchises sought to be registered set forth, in budget form, the total projected financing required by the franchisor to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training and all other items included in the offering. Show separately the sources of all of the required funds including any proposed loans or contributions to capital.

SALES AGENT DISCLOSURE FORM
Appendix A – Illustration C

1. List the persons who will offer or sell franchises in this State.
For each person state:
 - A. Name;
 - B. Business address and telephone number;
 - C. Home address and telephone number;
 - D. Present employer;
 - E. Present title;
 - F. Social security number;
 - G. Birth date; and
 - H. Employment during the past 5 years. For each such employment state the name of the employer, position held and beginning and ending dates.
2. State whether any person identified in 1. above:
 - A. Has any administrative, civil or criminal action pending alleging a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or any comparable allegations?

YES _____ NO _____

B. Has during the 10 year period immediately before the Offering Circular date:

- (1) been convicted of a felony or pleaded nolo contendere to a felony charge or been held liable in a civil action by final judgment if the felony or civil action involved a violation of franchise or securities law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable violation of law?

YES _____ NO _____

- (2) entered into or been named in any consent judgment, decree, order or assurance under federal or state franchise, securities antitrust, monopoly, trade practice, or trade regulation law?

YES _____ NO _____

- (3) been subject to any order of any national securities association or national securities exchange (as defined in the Securities and Exchange Act of 1934, 15 U.S.C. 78a) suspending or expelling the person from membership in the association or exchange.

YES _____ NO _____

C. With respect to each question above answered "YES" state:

- (1) the name of each person or entity involved;
(2) the court, agency, association or exchange involved;
(3) a summary of the allegations;
(4) if applicable, the date of the conviction, judgment, decree, order or assurance;
and
(5) the penalty imposed, damages assessed and nature thereof, terms and conditions of the judgment, decree, order or assurance.

UNIFORM CONSENT TO SERVICE OF PROCESS

Appendix A – Illustration D

_____ (a corporation organized under the laws of the State of _____) (a partnership) (an individual) irrevocably appoints the (regulatory authority) _____ and the successors in office, its attorney in the State of _____ for service of notice, process or pleading in any action or proceeding against it arising out of or in connection with the sale of franchises, or a violation of the franchise laws of ___(state)___; and consents that an action or proceeding against it may be commenced in a court of competent jurisdiction and proper venue within ___(state)___ by service of process upon this officer with the same effect as if the undersigned was organized or created under the laws of ___(state)___ and had lawfully been served with process in ___(state)___ . A copy of any notice, process or pleading served pursuant to this consent shall be mailed to:

INDIVIDUAL OR PARTNERSHIP ACKNOWLEDGMENT
Appendix A -- Illustration F

STATE OF _____)
 _____)
 COUNTY OF _____)

On this _____ day of _____, _____, before me _____ the undersigned officer, personally appeared _____ to me personally known and known to be the same person(s) whose name(s) is (are) signed to the foregoing instrument, and acknowledged the execution thereof for the uses and purposes therein set forth.

IN WITNESS WHEREOF I have hereunto set my hand and official seal.

(Notarial Seal)

 Notary Public
 My commission expires: _____

CERTIFICATION PAGE
Appendix A -- Illustration G

I certify under penalty of law that I have read this application notification and the exhibits attached hereto and incorporated herein by reference, and know the contents thereof and that the statements therein are true and correct.

Executed at _____, _____, _____.

(SEAL)

 (Signature(s) of Franchisor,
 Subfranchisor or Broker)
 By: _____
 Title: _____

STATE OF _____)
 _____)
 COUNTY OF _____)

Personally appeared before me this _____ day of _____, the above-named _____ (and) _____ to me known to be the person(s) who executed the foregoing notification (as

_____ and _____ respectively, of the above-named applicant) and (each) being first duly sworn, stated upon oath that said notification, and all exhibits submitted herewith, are true and correct.

(Notarial Seal)

Notary Public

My Commission expires _____

**CONSENT OF ACCOUNTANT
Appendix A -- Illustration H**

A “Manually Signed Consent of Accountant” should contain the following language:

John Doe and Company, Inc. hereby consents to the use in the Franchise Disclosure Document filed by John Smith, Inc. of our report dated April 4, 1978, relating to the financial statements of John Smith, Inc. for the period ending December 31, 1977.

NOTE: This letter must be manually signed by the accountant.

**REQUIREMENTS FOR PREPARATION OF A UNIFORM
FRANCHISE OFFERING CIRCULAR
Appendix A -- Illustration L**

**THE UNIFORM FRANCHISE OFFERING CIRCULAR GUIDELINES
GENERAL INSTRUCTIONS**

90. Introduction: The Uniform Franchise Offering Circular (UFOC) Guidelines consist of the Requirements, Instructions and Sample Answers (this Appendix A, Illustration L). The UFOC Guidelines were prepared and adopted by the North American Securities Administrators Association (“NASAA”) and its predecessor, the Midwest Securities Commission Association June 10, 1993. The members of NASAA cannot create statutes since that is the constitutional province of state legislatures, but NASAA intends for the UFOC Guidelines to facilitate compliance with disclosure requirements under state franchise investment laws. Where possible, NASAA has developed uniform disclosure requirements, but differences in state laws bearing on the franchise relationship may necessitate changes. In addition, state administrators will continue to review the application for deficient disclosure and additional disclosure necessitated by special problems or risks in the proposed offering.

100. Follow these General Instructions and the Requirement and Instruction for each Item in franchise registration applications and disclosure in the Uniform Franchise Offering Circular.

110. Original Registration Application-Documents to File:

- (a) Uniform Franchise Registration Application Page (also known as “Facing Page”) (this Appendix A, Illustration A);
- (b) Supplemental Information Pages(s) (this Appendix A, Illustration B);
- (c) Certification Page (this Appendix A, Illustration G);
- (d) Uniform Consent to Service of Process (this Appendix A, Illustration D);

- (e) Sales Agent Disclosure Form (this Appendix A, Illustration C);
- (f) If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner (this Appendix A, Illustrations E,F,M and N);
- (g) Uniform Franchise Offering Circular (this Appendix A, Illustration L);
- (h) Application Fee (see Section 40 of Act);
- (i) Auditors's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the offering circular (this Appendix A, Illustration H) .

120. Renewal application: When state law requires renewal, mark "renewal" on the Application page. Submit all documents required for an initial application with additions to the previously filed documents underlined. Changes must be clearly marked so that the change is noticed easily. File a renewal application before the prior registration has expired (see Section 10 of Act). If the prior registration has expired, mark "Registration of an Offer or Sale of Franchises" on the facing page and pay the fee charged for initial registrations. Redlining and bracketing changes from the last filing will speed a re-registration. Do not mark the amendment boxes on the application page on the first renewal filing even if documents are revised. In Illinois you can make as many changes in a renewal filing as are necessary without paying an amendment fee.

150. "Disclose" means to state all material facts in an accurate and unambiguous manner. Disclose clearly, concisely and in a narrative form that is understandable by a person unfamiliar with the franchise business. For clear and concise disclosure avoid legal antiques ¹ and repetitive phrases. ² When possible, use active, not passive voice. ³ Limit the length and complexity of disclosure through careful organization of information in the disclosure. Avoid technical language and unnecessary detail. Make the format and chronological order consistent within each Item.

NOTES:

- ¹ Avoid these legal antiques. Preferred substitutes are in parentheses: aforesaid; arising from (from); as between; as an inducement for; as part of the consideration; as set forth in (in); as the case may be, at a later point in time; binding upon and inure; commence (begin); condition precedent (before); condition subsequent (after); consist of (are); engaged in business of offering (offers); for and in consideration of the grant of the franchise; for a period of (for); foregoing; forthwith; from time to time; hereby; herein; hereinafter; hereto; heretofore; if necessary; in the event (if); including but not limited to (including); in any manner whatsoever; including without limitation (including); in conjunction with; in connection with; in no event of (if); in whole or in part; it will be specifically understood that; manner in which; not later than (within, by); not less than (at least); notwithstanding; offers to an individual, corporation or partnership (offer); on behalf of (for); precedent (before); prescribed (required); prior to (before); provided however (but, unless); provided that (if, unless); purporting to; relating to (under); subsequent (after); such (this); so as to (to); so long as (while); thereafter, therefrom; thereof; thereunder; without limiting the foregoing whatsoever; with respect to.

2. Avoid repetitive phrases. Preferred substitutes are in parentheses: agrees, acknowledges and recognizes; any and all; are and remain; based upon, related to, or growing out of (because); certified as true and correct (certified); consultation, assistance and guidance (guidance); each and every; equipment, furniture, supplies and inventory set forth on the equipment list attached as Exhibit___ (items on Exhibit ___); necessary and appropriate; sample, test and review (test); twenty three (23) (write as 23).
3. The preferred phrase is in parentheses: As the franchisor prescribes (you must); being offered (offers); consist of (is); engaged in the business of offering (offer); giving rise to; if it becomes necessary for (if); inure to the benefit of (benefits); if granted the right to (can); is given an opportunity to (can); is required to (must); shall be no less than (a minimum of); shall continue in effect (continues); with the exception of (except).

160. Since prospective franchisees must have sufficient disclosure to understand economic commitments and to develop a business plan, Items 5, 6, 7 and 8 must disclose the minimum and maximum franchisee cost. The franchisor should provide reasonably available information to allow franchisees to forecast future charges listed in these Items and to be paid to persons who are independent of the franchisor. Future payments to the franchisor should be specific as is required by individual Items.

170. The disclosure for each UFOC Item should be separately titled and in the required order. Do not repeat the UFOC question in the offering circular. Respond to each question fully. If the disclosure is not applicable, respond in the negative but if an answer is required “if applicable,” respond only if the requested information applies. Do not qualify a response with a reference to another document unless permitted by the instructions to that Item.

180. For each Item in the UFOC, type the Requirement’s Item title and number. Sub-items may be designated by descriptive headings, but do not use sub-item letters and numbers.

190. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the offering circular.

200. Use 8-1/2 by 11 inch paper for the entire application.

210. When the applicant is a master franchisor seeking to sell subfranchises, references in these requirements and instructions to “franchisee” include the subfranchisor unless the language context requires a different meaning.

220. The offer of subfranchises is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application may register the sale of single unit and multi-unit franchises if the offering circular is not confusing.

230. When the applicant is a subfranchisor, disclose the same information concerning the subfranchisor that is required about the franchisor, to the extent applicable.
240. In offerings by a subfranchisor, “franchisor” means both the franchisor and subfranchisor.
250. When state requirements conflict with these Guidelines, the state requirements control. The State Administrator may modify or waive these Guidelines or may require additional documentation or information.
260. Grossly deficient applications may be rejected summarily by the Administrator as incomplete for filing. It is not the function of an Administrator to prepare, in effect, an applicant’s application. The additional examiner time reviewing the grossly deficient product delays the processing of diligently prepared and pursued applications.
270. The Guidelines that continue after these Instructions use the following format:
- (a) The title of the Item follows the Item number. It is capitalized and centered on the page.
 - (b) The “Item” is a restatement of the Uniform Franchise Offering Circular (UFOC) Item Requirement. It is capitalized and follows the title of the Item.
 - (c) The “Instruction” appears beneath the Item. It explains portions of the Item requirements.
 - (d) The “Sample Answer” at the end of each Item provides sample disclosures. Double horizontal lines divide the Sample Answer from the Instructions.

COVER PAGE: The State cover page of the offering circular must state:

1. The title in boldface type: **FRANCHISE OFFERING CIRCULAR**
2. The franchisor’s name, type of business organization, principal business address and telephone number.
3. A sample of the primary business trademark, logotype, trade name, or commercial label or symbol under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)
4. A brief description of the franchised business.
5. The total amounts in Items 5 and 7 of the offering circular: Franchisee’s Initial Franchise Fee or Other Payment and Franchisee’s Initial Investment.
6. The following statements:
Information comparing franchisors is available. Call the State administrators listed in Exhibit ____ or your public library for sources of information.

Registration of this franchise by a state does not mean that the state recommends

it or has verified the information in this offering circular. If you learn that anything in the offering is untrue, contact the Federal Trade Commission and Illinois Attorney General.

7. Effective Date: (Leave blank until notified of effectiveness by State regulatory authority.)

Cover Page Instructions:

- i. Present information in the required order. Except for risk factors or when instructed by the examiner, do not capitalize or underline.
- ii. The estimated cash investment should agree with the Item 7 total. This total should represent the franchisee's entire initial investment minus only exclusions allowed by Item 7. Do not state what the total includes.
- iii. Limit the cover page disclosure to one page unless risk factors require additional space. Disclosure on the cover page should be brief. Limit the description of the business to the product or service offered by the franchisor. Unless required by a State regulator, do not disclose financing arrangements or the franchisee's right to use the trademark. Exclude non-required information unless necessary as a risk factor or required by a State regulator.
- iv. If applicable, disclose the following risk factors using the following language on the cover:
 - a. THE FRANCHISE AGREEMENT PERMITS THE FRANCHISEE (TO SUE) (TO ARBITRATE WITH) _____ (franchisor) ONLY IN _____ (state). OUT OF STATE (ARBITRATION) (LITIGATION) MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST MORE (TO SUE) (TO ARBITRATE WITH) _____ (franchisor) IN _____ (state) THAN IN YOUR HOME STATE.
 - b. THE FRANCHISE AGREEMENT STATES THAT _____ (state) LAW GOVERNS THE AGREEMENT, AND THIS LAW MAY NOT PROVIDE THE SAME PROTECTIONS AND BENEFITS AS LOCAL LAW. YOU MAY WANT TO COMPARE THESE LAWS.
 - c. THERE MAY BE OTHER RISKS CONCERNING THIS FRANCHISE.
- v. In addition to the above language, disclose other risk factors required by a State regulator.
- vi. Use capital letters for risk factor disclosure.

- vii. In multistate offerings in which the franchisor uses a single offering circular, refer to an exhibit to the offering circular for a list of State or Provincial authority.

Sample Cover Page

(Logo) Franchise Offering Circular

Belmont Mufflers, Inc.
A Minnesota Corporation
First Street
Jackson, Minnesota 55000
(612) 266-3430

The franchisee will repair and install motor vehicle exhaust systems.

The initial franchise fee is \$10,000. The estimated initial investment required ranges from \$132,700 to \$160,200. This sum does not include rent for the business location.

Risk Factors:

THE FRANCHISE AGREEMENT REQUIRES THAT ALL DISAGREEMENTS BE SETTLED BY ARBITRATION IN MINNESOTA. OUT OF STATE ARBITRATION MAY FORCE YOU TO ACCEPT A LESS FAVORABLE SETTLEMENT FOR DISPUTES. IT MAY ALSO COST YOU MORE TO ARBITRATE WITH US IN MINNESOTA THAN IN YOUR HOME STATE.

Information about comparisons of franchisors is available. Call the state administrators listed in Exhibit _____ or your public library for sources of information.

Registration of this franchise with the state does not mean that the state recommends it or has verified the information in this offering circular. If you learn that anything in this offering circular is untrue, contact the Federal Trade Commission and (State or Provincial authority).

Effective Date: _____

TABLE OF CONTENTS: INCLUDE A TABLE OF CONTENTS BASED ON THE REQUIREMENTS OF THIS OFFERING CIRCULAR.

Table of Contents Instructions:

Refer to UFOC Items and state the page where each UFOC Item disclosure begins. List exhibits by letter. Use the following format:

SAMPLE TABLE OF CONTENTS:

TABLE OF CONTENTS

ITEM	PAGE
1. The Franchisor, its Predecessors and Affiliates	
2. Business Experience	
3. Litigation	
4. Bankruptcy	
5. Initial Franchise Fee	
6. Other Fees	
7. Initial Investment	
8. Restrictions on Sources of Products and Services	
9. Franchisee’s Obligations	
10. Financing	
11. Franchisor’s Obligations	
12. Territory	
13. Trademarks	
14. Patents, Copyrights and Proprietary Information	
15. Obligation to Participate in the Actual Operation of the Franchise Business	
16. Restrictions on What the Franchise May Sell	
17. Renewal, Termination, Transfer and Dispute Resolution	
18. Public Figures	
19. Earnings Claims	
20. List of Outlets	
21. Financial Statements	
22. Contracts	
23. Receipt	
 Exhibits	
A. Franchise Agreement	
B. Equipment Lease	
C. Lease for Premises	
D. Loan Agreement	

ITEM 1

THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES

Item 1 Instructions:

- i. Use the word “we,” initials or one or two words to refer to the franchisor. Use different initials or a different one or two words to refer to other persons contracting with the franchisee under the franchise agreement. Except in the 23 Item titles, use these initials or the word(s) to describe these persons or entities throughout the offering circular.

- ii. Define the franchisee as “you” and use this description throughout the offering circular. If the franchisee could be a corporation, partnership or other entity, disclose whether “you” includes the franchisee’s owners.
- iii. “Predecessor” in Item 1 means a person from whom the franchisor acquired directly or indirectly the major portion of the franchisor’s assets.
- iv. The disclosure regarding predecessors need only cover the 10 year period immediately before the close of the franchisor’s most recent fiscal year.
- v. Affiliate in Item 1 means a person (other than a natural person) controlled by, controlling or under common control with the franchisor, which is offering franchises in any line of business or is providing products or services to the franchisees of the franchisor.

DISCLOSE IN SUMMARY FORM:

A. THE NAME OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES.

B. THE NAME UNDER WHICH THE FRANCHISOR DOES OR INTENDS TO DO BUSINESS.

Item 1B Instruction:

If the franchisor does business under a name different from the name disclosed in Item 1A, state that other name. If not, state that the franchisor does not do business under another name.

C. THE PRINCIPAL BUSINESS ADDRESS OF THE FRANCHISOR, ITS PREDECESSORS AND AFFILIATES, AND THE FRANCHISOR'S AGENT FOR SERVICE OF PROCESS.

Item 1C Instructions:

- i. Principal business address means “home office” in the United States, not in the state for which the offering circular was prepared. If appropriate, also disclose the location of an international “home office.” The business address cannot be a post office box.
- ii. In a multi-state offering in which the agent for service of process is required, the franchisor may use an exhibit or the acknowledgement of receipt to disclose this agent.

D. THE BUSINESS FORM OF THE FRANCHISOR

Item 1D Instruction:

Disclose the state of incorporation or business organization and the type of business organization.

E. THE FRANCHISOR'S BUSINESS AND THE FRANCHISES TO BE OFFERED IN THIS STATE.

Item 1E Instructions:

Disclose the following:

- i. That the franchisor sells or grants franchises;
- ii. Whether the franchisor operates businesses of the type being franchised;
- iii. The franchisor's other business activities;
- iv. The business to be conducted by the franchisees;
- v. The general market for the product or service to be offered by the franchisee. (For example, is the market developed or developing? Will the goods be sold primarily to a certain group? Are sales seasonal?);
- vi. In general terms any regulations specific to the industry in which the franchise business operates. It is not necessary to include laws or regulations that apply to businesses generally;
- vii. A general description of the competition.

F. THE PRIOR BUSINESS EXPERIENCE OF THE FRANCHISOR. ITS PREDECESSORS AND AFFILIATES INCLUDE:

- (1) THE LENGTH OF TIME THE FRANCHISOR HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.
- (2) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE HAS CONDUCTED A BUSINESS OF THE TYPE TO BE OPERATED BY THE FRANCHISEE.
- (3) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.
- (4) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES FOR THE SAME TYPE OF BUSINESS AS THAT TO BE OPERATED BY THE FRANCHISEE.
- (5) WHETHER THE FRANCHISOR HAS OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:
 - (A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;
 - (B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF

BUSINESS; AND

- (C) THE LENGTH OF TIME THE FRANCHISOR HAS OFFERED EACH OTHER FRANCHISE.

- (6) WHETHER EACH PREDECESSOR AND AFFILIATE OFFERED FRANCHISES IN OTHER LINES OF BUSINESS, INCLUDING:
 - (A) A DESCRIPTION OF EACH OTHER LINE OF BUSINESS;

 - (B) THE NUMBER OF FRANCHISES SOLD IN EACH OTHER LINE OF BUSINESS; AND

 - (C) THE LENGTH OF TIME EACH PREDECESSOR AND AFFILIATE OFFERED EACH OTHER FRANCHISE.

Item 1F Instruction:

Limit disclosure about predecessors to the time before the franchisor acquired the predecessor's assets. Thus, under the 10 year limitation, if a franchisor acquired the assets of a predecessor 8 years ago, the disclosure about the predecessor should cover only the 2 year period before the acquisition.

Sample Answer 1

To simplify the language in this offering circular "Belmont" means Belmont Mufflers Inc., the franchisor. "You" means the person who buys the franchise. Belmont is a Minnesota corporation that was incorporated on September 3, 1963. Belmont does business as Belmont Muffler Shops. Our principal business address is 111 First Street, Jackson, Minnesota 55555.

Belmont's agent for service of process is disclosed in Exhibit _____.

Belmont currently operates 12 Belmont Muffler Shops and sells pipe bending machines and mufflers to various muffler shops.

Belmont franchises the right to sell and install mufflers for the public. You must honor our guarantee to replace mufflers or exhaust pipes that wear out if the vehicle ownership has not changed. Belmont's franchisees often operate their muffler shop franchise with their service stations or tire center. Your competitors include department store service departments, service stations and other national chains of muffler shops. Exhibit _____ is attached to this offering circular and contains a summary of the special regulations for muffler installation in your state.

During the past 5 years Belmont has operated 7 muffler shops that are similar to the franchised

shops being offered. All these shops are located in urban areas, have approximately xxxxx square feet of floor space and are located on busy streets. An additional 3 muffler shops were opened in 1990. From 1968 to 1973, Belmont offered franchises for "Repair-All Transmission Shops." "Repair-All" franchises repaired and replaced motor vehicle transmissions under a marketing plan similar to the franchise in this offering circular. Belmont sold 40 of these franchises primarily in the states of Minnesota, Michigan, Wisconsin and Illinois. In 1973, Belmont sold this transmission repair company to CTF Inc.

Item 2

BUSINESS EXPERIENCE

LIST BY NAME AND POSITION THE DIRECTORS, TRUSTEES AND/OR GENERAL PARTNERS, THE PRINCIPAL OFFICERS AND OTHER EXECUTIVES OR SUBFRANCHISORS WHO WILL HAVE MANAGEMENT RESPONSIBILITY RELATING TO THE FRANCHISES OFFERED BY THIS OFFERING CIRCULAR. LIST ALL FRANCHISE BROKERS. STATE EACH PERSON'S PRINCIPAL OCCUPATIONS AND EMPLOYERS DURING THE PAST FIVE YEARS.

Item 2 Instructions:

- i. Principal officers include the chief executive and chief operating officer, the president, financial, franchise marketing, training and franchise operations officers.
- ii. First disclose the position and the name of the person holding it. Underline this information; then skip one line.
- iii. Disclose the beginning date and departure date for each job held in the five year period whether or not this date is within the past five years. Disclose the location of the job.
- iv. Do not disclose home addresses, home telephones, social security numbers or birth dates in this Item.
- v. Disclose the required information concerning the franchise broker's directors, principal officers and executives with management responsibility to market or service the franchises.
- vi. In a multi-state offering in which the franchisor uses a single offering circular and franchise brokers and executives with direct management responsibility to the franchisees differs from state to state, use an exhibit to refer to these personnel.

Sample Answer 2

President: Jane J. Doe :

From June 1978, until April, 1986, Ms. Doe was Vice President of Atlas Inc., a Houston, Texas

based manufacturer of automobile wheels. In April 1986, she joined Belmont as a Director and Vice President. She was promoted to President in June 1987.

ITEM 3

LITIGATION

DISCLOSE WHETHER THE FRANCHISOR, ITS PREDECESSOR, A PERSON IDENTIFIED IN ITEM 2 OR AN AFFILIATE OFFERING FRANCHISES UNDER THE FRANCHISOR'S PRINCIPAL TRADEMARK:

- A. HAS AN ADMINISTRATIVE, CRIMINAL OR MATERIAL CIVIL ACTION PENDING AGAINST THAT PERSON ALLEGING A VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IN ADDITION, INCLUDE ACTIONS OTHER THAN ORDINARY ROUTINE LITIGATION INCIDENTAL TO THE BUSINESS WHICH ARE SIGNIFICANT IN THE CONTEXT OF THE NUMBER OF FRANCHISEES AND THE SIZE, NATURE OR FINANCIAL CONDITION OF THE FRANCHISE SYSTEM OR ITS BUSINESS OPERATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM, NATURE, AND CURRENT STATUS OF THE PENDING ACTION. FRANCHISOR MAY INCLUDE A SUMMARY OPINION OF COUNSEL CONCERNING THE ACTION IF A CONSENT TO USE OF THE SUMMARY OPINION IS INCLUDED AS PART OF THIS OFFERING CIRCULAR.

- B. HAS DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR BEEN CONVICTED OF A FELONY OR PLEADED NOLO CONTENDERE TO A FELONY CHARGE; OR BEEN HELD LIABLE IN A CIVIL ACTION BY FINAL JUDGMENT OR BEEN THE SUBJECT OF A MATERIAL ACTION INVOLVING VIOLATION OF A FRANCHISE, ANTITRUST OR SECURITIES LAW, FRAUD, UNFAIR OR DECEPTIVE PRACTICES, OR COMPARABLE ALLEGATIONS. IF SO, DISCLOSE THE NAMES OF THE PARTIES, THE FORUM AND DATE OF CONVICTION OR DATE JUDGMENT WAS ENTERED, PENALTY OR DAMAGES ASSESSED AND/OR TERMS OF SETTLEMENTS.

- C. IS SUBJECT TO A CURRENTLY EFFECTIVE INJUNCTIVE OR RESTRICTIVE ORDER OR DECREE RELATING TO THE FRANCHISE OR UNDER A FEDERAL, STATE OR CANADIAN FRANCHISE, SECURITIES, ANTITRUST, TRADE REGULATION OR TRADE PRACTICE LAW RESULTING FROM A CONCLUDED OR PENDING ACTION OR PROCEEDING BROUGHT BY A PUBLIC AGENCY. IF SO, DISCLOSE THE NAME OF THE PERSON, THE PUBLIC AGENCY AND COURT, A SUMMARY OF THE ALLEGATIONS OR FACTS FOUND BY THE AGENCY OR COURT AND THE DATE, NATURE, TERMS AND CONDITIONS OF THE ORDER OR DECREE.

Item 3 Instructions:

- i. Definitions:

- a. For purposes of these instructions to Item 3, “franchisor” includes the franchisor, its predecessors, persons identified in Item 2 and affiliates offering franchises under the franchisor’s principal trademarks.
- b. Action: Action includes complaints, cross claims, counterclaims, and third party complaints in a judicial proceeding, and their equivalents in an administrative action or arbitration proceeding. The franchisor may disclose its counterclaims. Omit actions that were dismissed by final judgment without liability of or entry of an adverse order against the franchisor.
- c. Included in the definition of material is an action or an aggregate of actions if a reasonable prospective franchisee would consider it important in making a decision about the franchised business.
- d. In this Item, settlement of an action does not diminish its materiality if the franchisor agrees to pay material consideration or agrees to be bound by obligations which are materially adverse to its interests.
- e. “Ordinary routine litigation” means actions which ordinarily result from the business and which do not depart from the normal kinds of actions in the business.
- f. “Held liable” includes a finding by final judgment in a judicial, binding arbitration or administrative proceeding that the franchisor, as a result of claims or counterclaims, must pay money or other consideration, must reduce an indebtedness by the amount of an award, cannot enforce its rights, or must take action adverse to its interests.
- g. “Currently Effective”: An injunctive or restrictive order or decree is “currently effective” unless it has been vacated or rescinded by a court or by the issuing public agency. An order that has expired by its own terms is not “currently effective.” If the named partys have fully complied with an order (for example, through registration of its franchise offer), the order is not “currently effective.” A party has not fully complied with an order to act or to refrain from an act (for example, to comply with the franchise law or to refrain from violating the franchise law) until the order expires by its own terms.

ii. Civil Litigation or Injunctive or Restrictive Order:

- a. Use Sample Answer 3-1 for a negative response to Item 3 if the franchisor has never been named in litigation or if the only litigation naming the franchisor is outside the scope of Item 3.
- b. Disclose in the same order as the instructions below appear.
- c. Title each action and state its case number or citation in parentheses. Underline the title of the action.
- d. For each action, state the action’s initial filing date and the opposing party’s name and relationship with the franchisor. Relationships include competitor, supplier, lessor,

franchisee, former franchisee, or class of franchisees.

- e. Summarize the legal and factual nature of each claim in the action.
- f. Summarize the relief sought or obtained. Summarize conclusions of law or fact.
- g. State that other than these (list number of actions) no litigation is required to be disclosed in this offering circular.

iii. Criminal Convictions or Pleas:

- a. Disclose in the same order as the following instructions appear.
- b. Title each action and state its citation in parentheses. Underline the title of the action.
- c. Name the person convicted or who pleaded.
- d. State the crime or violation and the date of conviction.
- e. Disclose the sentence or penalty imposed.
- f. State that other than these (list the number of actions) actions, no litigation is required to be disclosed in this offering circular.

Sample Answer 3-1

No litigation is required to be disclosed in this offering circular.

Sample Answer 3-2

Doe v. Belmont Muffler Service, Inc. (cite) On March 1, 1985, our Franchisee, Donald Doe, sought to enjoin us from terminating him for nonpayment of royalty fees. Doe alleged_____. On April 3, 1986, Doe withdrew the case when we repurchased his franchise for \$90,000 and agreed not to enforce non-compete clauses against him.

Indiana v. Belmont Muffler Service, Inc. (cite) On April 1, 1985, the Attorney General of Indiana sought to enjoin us from offering unregistered franchises and from using false income representations. The Attorney General alleged that the earnings claims were false because.... The court found that we had offered franchises, that the offers were not registered and that we had made the alleged false representations in our earnings claims. The court enjoined us from repeating those acts.

Other than these 2 actions, no litigation is required to be disclosed in this offering circular.

ITEM 4

BANKRUPTCY

STATE WHETHER THE FRANCHISOR, ITS AFFILIATE, ITS PREDECESSOR, OFFICERS OR GENERAL PARTNER DURING THE 10 YEAR PERIOD IMMEDIATELY BEFORE THE DATE OF THE OFFERING CIRCULAR (A) FILED AS DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE; (B) OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE; OR (C) WAS A PRINCIPAL OFFICER OF A COMPANY OR A GENERAL PARTNER IN A PARTNERSHIP THAT EITHER FILED AS A DEBTOR (OR HAD FILED AGAINST IT) A PETITION TO START AN ACTION UNDER THE U.S. BANKRUPTCY CODE OR THAT OBTAINED A DISCHARGE OF ITS DEBTS UNDER THE BANKRUPTCY CODE DURING OR WITHIN 1 YEAR AFTER THE OFFICER OR GENERAL PARTNER OF THE FRANCHISOR HELD THIS POSITION IN THE COMPANY OR PARTNERSHIP. IF SO, DISCLOSE THE NAME OF THE PERSON OR COMPANY THAT WAS THE DEBTOR UNDER THE BANKRUPTCY CODE, THE DATE OF THE ACTION AND THE MATERIAL FACTS.

Item 4 Instructions:

- i. First, name the party that filed (or had filed against it) the petition in bankruptcy and the party's relationship to the franchisor. If the debtor in a bankruptcy proceeding was or is affiliated with the franchisor, state the relationship. If the debtor in a bankruptcy proceeding is unaffiliated with the franchisor, state the name, address and principal business of the bankrupt company.
- ii. Disclose that the entity filed bankruptcy or reorganization under the bankruptcy law and the date of the original filing.
- iii. Identify the bankruptcy court, and the case name and number. Put this information in parentheses.
- iv. State the date on which the debtor obtained a discharge in bankruptcy (including discharges under Chapter 7 and confirmation of any plans of reorganization under Chapters 11 and 13 of the U.S. Bankruptcy Code).
- v. Disclose other material facts.
- vi. Cases, actions and other proceedings under the laws of foreign nations relating to bankruptcy proceedings should be included in answers, where responses are required, as if those cases, actions and proceedings took place under the U.S. Bankruptcy Code.
- vii. If information is disclosed in this Item, at the end of the disclosure add Sample Answer 4-1 with the qualification "other than these actions."
- viii. Use Sample Answer 4-1 if no person listed in Items 1 or 2 has been involved as a debtor in bankruptcy proceedings or any person listed in Items 1 or 2 has been involved as a

debtor in bankruptcy proceedings but the bankruptcy proceedings (under the U.S. Bankruptcy Code or its predecessor, the National Bankruptcy Act of 1898) were discharged more than 10 years ago. "Person" includes natural persons and legal entities listed in Items 1 and 2. Person does not include anyone acting solely as the franchisor's agent for service of process.

Sample Answer 4-1

No person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

Sample Answer 4-2

On March 2, 1984, Belmont filed a petition to reorganize under Chapter 11 of the U.S. Bankruptcy Code. We were allowed to continue to operate under bankruptcy court supervision. On October 2, 1985, the bankruptcy court approved our plan of reorganization and discharged the proceedings. (US Bankruptcy Court for the District of _____ Case B 84-301.)

Belmont's present president, Roger Rowe, was president of Acme Muffler Service, Inc., a Houston, Texas based manufacturer of exhaust systems, from July 1, 1978, through June 14, 1983. On June 6, 1983, an involuntary petition under the U.S. Bankruptcy Code was filed against Acme by its creditors. On July 14, 1983, the court entered an order of relief. Acme sold its assets and was dissolved.

Other than these 2 actions, no person previously identified in Items 1 or 2 of this offering circular has been involved as a debtor in proceedings under the U.S. Bankruptcy Code required to be disclosed in this Item.

ITEM 5

INITIAL FRANCHISE FEE

DISCLOSE THE INITIAL FRANCHISE FEE AND STATE THE CONDITIONS WHEN THIS FEE IS REFUNDABLE.

Item 5 Instructions:

- i. "Initial fee" includes all fees and payments for services or goods received from the franchisor before the franchisee's business opens. "Initial fee" includes all fees and payments whether payable in lump sum or installments.
- ii. If the initial fee is not uniform, disclose the formula or the range of initial fees paid in the fiscal year before the application date and the factors that determined the amount.
- iii. Disclose installment payment terms in this Item or in Item 10.

Sample Answer 5-1

All franchisees pay a \$10,000 lump sum franchise fee when they sign the franchise agreement. Belmont will refund the entire amount if we do not approve your application within 45 days. Belmont will refund \$9,000 of this fee if you do not satisfactorily complete your 2-week training. There are no refunds under other circumstances.

Sample Answer 5-2

You must pay a franchise license fee of \$ _____ per thousand licensed drivers who reside within your exclusive area when the franchise agreement is signed. The number of licensed drivers is determined by the latest abstract of the state agency which issues driver's licenses. The minimum fee is \$20,000. When you send your application, you must pay a non-refundable \$500 application fee. You must pay an additional \$10,000 when you receive your equipment. The balance of your fee is payable in 12 equal monthly installments of \$ _____. The first installment payment is due 1 year after your shop opens. Belmont charges 10% annual interest on the unpaid balance. Interest compounds daily and accrues from the date that you receive your equipment. All buyers pay this uniform fee and receive the same financing terms on the fee. If your application is not accepted, Belmont retains the \$500 for investigative costs, but you are not liable for the \$19,500 remainder. Belmont does not give refunds under other circumstances.

ITEM 6

OTHER FEES

DISCLOSE OTHER RECURRING OR ISOLATED FEES OR PAYMENTS THAT THE FRANCHISEE MUST PAY TO THE FRANCHISOR OR ITS AFFILIATES OR THAT THE FRANCHISOR OR ITS AFFILIATES IMPOSE OR COLLECT IN WHOLE OR IN PART ON BEHALF OF A THIRD PARTY. INCLUDE THE FORMULA USED TO COMPUTE THESE OTHER FEES AND PAYMENTS. IF ANY FEE IS REFUNDABLE, STATE THE CONDITIONS WHEN EACH FEE OR PAYMENT IS REFUNDABLE.

Item 6 Instructions:

- i. First disclose fees in tabular form. Use footnotes or a “remarks” column to elaborate on the information in the table or to disclose caveats. If elaborations are lengthy, use footnotes instead of a remarks column.
- ii. Disclose the amount of each fee. A dollar amount or a percentage of gross sales is acceptable if the term gross sales is defined. If dollar amounts may increase, disclose the formula which determines the increase or the maximum amount of the increase.
- iii. Disclose the due date for recurring payments.
- iv. If all fees are payable to only the franchisor, disclose this in a footnote.

- v. If all fees are imposed and collected by the franchisor, disclose this in a footnote.
- vi. If all fees are non-refundable, state this in a footnote.
- vii. Disclose the voting power of franchisor owned outlets on any fees imposed by cooperatives. If franchisor outlets have controlling voting power, disclose a range for the fee. Disclose this information in a footnote or a “remarks” column.
- viii. The franchisor need not repeat information contained in Items 8 & 9, but the table should direct the franchisees to those Items.
- ix. Examples of fees are royalty, lease negotiation, construction, remodeling, additional training, advertising, group advertising, additional assistance, audit, accounting/inventory, and transfer and renewal fee.

Sample Answer 6-1

Name of fee	Amount	Due Date	Remarks
Royalty(1)	4% of total gross sales	Payable monthly on the 10th day of the next month	Gross sales includes all revenue from the franchise location. Gross sales does not include sales tax or use tax.
Advertising(1)	2% of total gross sales	Same as Royalty fee	
Cooperative Advertising(1)	Maximum - 2% of total gross sales	Established by franchisees	Franchisees may form an advertising cooperative and establish local advertising fees. Company owned stores have no vote in these cooperatives.
Additional Training(1)	\$1,000 per person	2 weeks prior to beginning of training	Belmont trains 2 persons free - See Item 11
Additional Assistance(1)	\$500 per day	30 days after billing	Belmont provides opening assistance free - See Item 11
Transfer(1)	\$1,000	Prior to	Payable when you sell

		consummation of transfer	your franchise. No charge if franchise transferred to a corporation which you control
Audit(1)	Cost of audit plus 10% interest on underpayment(2)	30 days after billing	Payable only if audit shows an understatement of at least 2% of gross sales for any month
Renewal Fee(1)	\$1,000	30 days before renewal	

Notes:

- (1) All fees are imposed by and are payable to Belmont. All fees are non-refundable.
(2) Interest begins from the date of the underpayment.

ITEM 7

INITIAL INVESTMENT

DISCLOSE THE FOLLOWING EXPENDITURES STATING TO WHOM THE PAYMENTS ARE MADE, WHEN PAYMENTS ARE DUE, WHETHER EACH PAYMENT IS REFUNDABLE, THE CONDITIONS WHEN EACH PAYMENT IS REFUNDABLE, AND, IF PART OF THE FRANCHISEE'S INITIAL INVESTMENT IN THE FRANCHISE MAY BE FINANCED, AN ESTIMATE OF THE LOAN REPAYMENTS, INCLUDING INTEREST:

- A. REAL PROPERTY, WHETHER PURCHASED OR LEASED. IF NEITHER ESTIMABLE NOR DESCRIBABLE BY A LOW-HIGH RANGE, DESCRIBE REQUIREMENTS, SUCH AS PROPERTY TYPE, LOCATION AND BUILDING SIZE.
- B. EQUIPMENT, FIXTURES, OTHER FIXED ASSETS, CONSTRUCTION, REMODELING, LEASEHOLD IMPROVEMENTS AND DECORATING COSTS, WHETHER PURCHASED OR LEASED.
- C. INVENTORY REQUIRED TO BEGIN OPERATION.
- D. SECURITY DEPOSITS, UTILITY DEPOSITS, BUSINESS LICENSES, OTHER PREPAID EXPENSES.
- E. ADDITIONAL FUNDS REQUIRED BY THE FRANCHISEE BEFORE OPERATIONS BEGIN AND DURING THE INITIAL PHASE OF THE FRANCHISE.
- F. OTHER PAYMENTS THAT THE FRANCHISEE MUST MAKE TO BEGIN OPERATIONS.

Item 7 Instructions:

- i. Begin disclosure by listing expenditures in tabular form. List preopening expenses first. Use footnotes to comment on expected expenditures.
- ii. Disclose payments required by the franchise agreement and all costs necessary to begin operation of the franchise and operate the franchise during the initial phase of the business. A reasonable time for the initial phase of the business is at least 3 months or a reasonable period for the industry. Include an entry titled “additional funds” and disclose the length of the initial phase in the entry.
- iii. If a specific expenditure amount is not ascertainable, use a low-high range based on the franchisor’s current experience. If real property costs cannot be estimated in a low-high range, disclose the approximate size of the property and building involved. Describe the probable location of the building (for example, strip shopping center, mall, downtown, rural or highway).
- iv. The franchisor may include additional expenditure tables to show expenditure variations caused by differences in site location, premise size, etc. Describe in general terms the factors, basis and experience that the franchisor considered or relied upon in formulating the amount required for additional funds.
- v. If the franchisor or an affiliate finances part of the initial investment, state the expenditures that it will finance. State the required down payment, annual percentage rate of interest, rate factors, and the estimated loan repayments. Make the discussion brief, and refer to Item 10.
- vi. Total the initial investment. This total should be the same as the total investment on the offering circular cover.

Sample Answer 7

YOUR ESTIMATED INITIAL INVESTMENT

	AMOUNT	METHOD OF PAYMENT	WHEN DUE	TO WHOM PAYMENT IS TO BE MADE
INITIAL FRANCHISE FEE	\$20,000 (Note 1)	Lump Sum	At Signing of Franchise Agreement	Belmont, Inc.
TRAVEL AND LIVING EXPENSES WHILE TRAINING	\$2,500 to \$5,000	As Incurred	During Training	Airlines, Hotels & Restaurants

REAL ESTATE AND IMPROVEMENTS	(Note 2)	(Note 2)	(Note 2)	(Note 2)
EQUIPMENT	\$40,000 (Note 3)	Lump Sum	Prior to Opening	Belmont or vendors
SIGNS	\$2,200	Lump Sum	Prior to Opening	Abbey Sign Company
MISCELLANEOUS OPENING COSTS	\$8,000 (Note 4)	As Incurred	As Incurred	Suppliers, Utilities, etc.
OPENING INVENTORY	\$8,000 (Note 5)	Lump Sum	Prior to Opening	Belmont or vendors
ADVERTISING FEE-3 MONTHS	\$ 500		Monthly	Belmont
ADDITIONAL FUNDS- 3 MONTHS	\$50,000 to \$75,000 (Note 6)	As Incurred	As Incurred	Employees, Suppliers Utilities
TOTAL	\$132,700 to \$160,200 (Note 7)	(Does not include real estate costs)		

Notes:

- (1) See Item 5 for the conditions when this fee is partly refundable. Belmont does not finance any fee.
- (2) If you do not own adequate shop space, you must lease the land and building for the Belmont Muffler Shop. Typical locations are light industrial and commercial areas. The typical Belmont Muffler Shop has 5,000 - 8,000 square feet. Former three or four bay gasoline service stations have been converted with relative ease into Belmont Muffler Shops. Rent is estimated to be between \$12,000 - \$20,000 per year depending on factors such as size, condition and location of the leased premises.
- (3) This payment is fully refundable before equipment installation. After installation, Belmont deducts \$3,000 installation costs from your refund.
- (4) Includes security deposits, utility costs, incorporation fee.
- (5) This payment is fully refundable before Belmont delivers your inventory. After delivery Belmont deducts a 10% restocking fee from your refund.

- (6) This estimates your start up expenses. These expenses include payroll costs. These figures are estimates and Belmont cannot guarantee that you will not have additional expenses starting the business. Your costs will depend on factors such as: how much you follow Belmont's methods and procedures; your management skill, experience and business acumen; local economic conditions; the local market for our product; the prevailing wage rate; competition; and the sales level reached during the initial period.
- (7) Belmont relied on its 30 years of experience in the muffler business to compile these estimates. You should review these figures carefully with a business advisor before making any decision to purchase the franchise.
- (8) Belmont does not offer direct or indirect financing to franchisees for any items.

Item 8

RESTRICTIONS ON SOURCES OF PRODUCTS AND SERVICES

DISCLOSE FRANCHISEE OBLIGATIONS TO PURCHASE OR LEASE FROM THE FRANCHISOR, ITS DESIGNEE OR FROM SUPPLIERS APPROVED BY THE FRANCHISOR OR UNDER THE FRANCHISOR'S SPECIFICATIONS. FOR EACH OBLIGATION DISCLOSE:

- A. THE GOODS, SERVICES, SUPPLIES, FIXTURES, EQUIPMENT, INVENTORY, COMPUTER HARDWARE AND SOFTWARE OR REAL ESTATE RELATING TO ESTABLISHING OR OPERATING THE FRANCHISED BUSINESS.
- B. THE MANNER IN WHICH THE FRANCHISOR ISSUES AND MODIFIES SPECIFICATIONS OR GRANTS AND REVOKES APPROVAL TO SUPPLIERS.
- C. WHETHER, AND FOR WHAT CATEGORIES OF GOODS AND SERVICES, THE FRANCHISOR OR ITS AFFILIATES ARE APPROVED SUPPLIERS OR THE ONLY APPROVED SUPPLIERS.
- D. WHETHER, AND, IF SO, THE PRECISE BASIS BY WHICH, THE FRANCHISOR OR ITS AFFILIATES WILL OR MAY DERIVE REVENUE OR OTHER MATERIAL CONSIDERATION AS A RESULT OF REQUIRED PURCHASES OR LEASES.
- E. THE ESTIMATED PROPORTION OF THESE REQUIRED PURCHASES AND LEASES TO ALL PURCHASES AND LEASES BY THE FRANCHISEE OF GOODS AND SERVICES IN ESTABLISHING AND OPERATING THE FRANCHISED BUSINESS.
- F. THE EXISTENCE OF PURCHASING OR DISTRIBUTION COOPERATIVES.

Item 8 Instructions:

- i. An obligation includes those imposed by written agreement or by the franchisor's practice. The franchisor may include the reason for the requirement.
- ii. Do not include goods or services provided as part of the franchise and without a separate charge (for example, a fee for initial training when the cost is included in the franchise fee). These fees should be described in Item 5. Do not include fees disclosed in response to Item 6.
- iii. For "precise basis," disclose the franchisor's total revenues and the franchisor's revenues from all required purchases and leases of products and services. Also, disclose the percentage of the franchisor's total revenues represented by the franchisor's revenues from required purchases or leases. If the franchisor's affiliates also sell or lease products or services to franchisees, disclose affiliate revenues from those sales or leases. These amounts should be taken from the franchisor's statement of operations (or profit and loss statement) from the most recent annual audited financial statement attached to the offering circular. If the franchisor's annual audited financial statement is not required to be attached to the offering circular or if the franchisor's affiliate sells or leases required products or services to franchisees, disclose the sources of information used in computing revenues.
- iv. State how the franchisor formulates and modifies specifications and standards imposed on franchisees.
- v. Disclose whether specifications and standards are issued to franchisees, subfranchisors, or approved suppliers.
- vi. Describe how suppliers are evaluated, approved or disapproved. Disclose whether the franchisor's criteria for supplier approval are available to franchisees. State the fees and procedure to secure approval and how approvals are revoked. State the time period when the franchisee will receive notification of approval or disapproval.
- vii. If the designated supplier will make payments to the franchisor because of transactions with franchisees, disclose the basis for the payment. Specify a percentage or a flat amount. Purchases of similar goods or services by the franchisor at a lower price than that available to franchisees is a payment.
- viii. Disclose whether the franchisor negotiates purchase arrangements with suppliers (including price terms) for the benefit of franchisees.
- ix. Disclose whether the franchisor provides material benefits (for example, renewal or granting additional franchises) to a franchisee based on a franchisee's use of designated or approved sources.
- x. Use Sample Answer 8-1 if the response to Item 8 is negative.

Sample Answer 8-1

Belmont has no required specifications, designated suppliers, or approved suppliers for goods, services or real estate relating to your franchise business. Belmont will not derive revenue from your purchases or leases.

Sample Answer 8-2

You must purchase your pipe bending machine, hoist, cutting torch and supplies under specifications in the operations manual. These specifications include standards for delivery, performance, design and appearance. You may purchase this equipment from Belmont. In the year ending December 31, 1992, Belmont's revenues from the sale of this equipment to franchisees was \$500,000, or 5% of Belmont's total revenues of \$10,000,000. The cost of equipment purchased in accordance with specifications represents 10% of your total purchases in connection with establishment of your store.

Belmont's affiliate, Muffler Supply Co., is an approved supplier of mufflers to franchisees. In the year ending December 31, 1992, the affiliate's revenues from the sale of mufflers to franchisees was \$2,000,000. The purchase of mufflers from approved sources will represent 15 to 20% of your overall purchases in operating the store. Belmont has approved other suppliers of mufflers and exhaust pipe. If you would like to purchase these items from another supplier, you may request our "Supplier Approval Criteria and Request Form." Based on the information and samples you supply to us and your payment of a \$500 fee, we will test the items supplied and review the proposed supplier's financial records, business reputation, delivery performance, credit rating and other information. Our review typically is completed in 30 days.

One of the approved suppliers of mufflers and exhaust pipes, Scottie's Pipes, Inc., pays Belmont a rebate of 1% of all franchisee purchases, which is deposited in the Belmont Advertising Fund. Another approved supplier, Michael's Clean-Air, Inc., pays Belmont 2% of all franchisee purchases of catalytic converters. This amount is used in Belmont's training center for classes in catalytic converter repair and replacement.

Item 9

FRANCHISEE'S OBLIGATIONS

DISCLOSE THE PRINCIPAL OBLIGATIONS OF THE FRANCHISEE UNDER THE FRANCHISE AND OTHER AGREEMENTS AFTER THE SIGNING OF THESE AGREEMENTS.

Item 9 Instructions:

- i. Disclose obligations in tabular form. Refer to the section of the agreement that contains the obligation and any Item of the offering circular that further describes the obligation.
- ii. The table should contain a response to each category listed below. If the response to any category is that no obligation is imposed, the table should state that. Do not change the names of the categories. Fit all obligations within the listed categories. If other material obligations fall outside the scope of all of the prescribed categories, add additional categories as needed. The categories of franchisee obligations are:
 - a. Site selection and acquisition/lease
 - b. Pre-opening purchases/leases
 - c. Site development and other pre-opening requirements
 - d. Initial and ongoing training
 - e. Opening
 - f. Fees
 - g. Compliance with standards and policies/Operating Manual
 - h. Trademarks and proprietary information
 - i. Restrictions on products/services offered
 - j. Warranty and customer service requirements
 - k. Territorial development and sales quotas
 - l. Ongoing product/service purchases
 - m. Maintenance, appearance and remodeling requirements
 - n. Insurance
 - o. Advertising
 - p. Indemnification
 - q. Owner's participation/management/staffing
 - r. Records and reports
 - s. Inspections and audits
 - t. Transfer
 - u. Renewal
 - v. Post-termination obligations
 - w. Non-competition covenants
 - x. Dispute resolution
 - y. Other (describe)
- iii. Before the table, state the following:

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE

AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

Sample Answer 9

THIS TABLE LISTS YOUR PRINCIPAL OBLIGATIONS UNDER THE FRANCHISE AND OTHER AGREEMENTS. IT WILL HELP YOU FIND MORE DETAILED INFORMATION ABOUT YOUR OBLIGATIONS IN THESE AGREEMENTS AND IN OTHER ITEMS OF THIS OFFERING CIRCULAR.

Obligation	Section In Agreement	Item in Offering Circular
a. Site Selection and acquisition/ lease	Section 2A of Franchise Agreement	Items 6 and 11
b. Pre-opening purchases/ leases	Section 3D of Franchise Agreement	Item 8
c. Site development and other pre-opening requirements	Sections 3A and 3B of Franchise Agreement	Items 6, 7, and 11
d. Initial and ongoing training	Section 5 of Franchise Agreement	Item 11
e. Opening	Section 4 of Franchise Agreement	Item 11
f. Fees	Section 6 of Franchise Agreement	Items 5 and 6
g. Compliance with standards and policies/ Operating Manual	Section 8A of Franchise Agreement	Item 11
h. Trademarks and proprietary information	Sections 7 and 11 of Franchise Agreement	Items 13 and 14

Obligation	Section In Agreement	Item in Offering Circular
i. Restrictions on products/ services offered	Section 12 of Franchise Agreement	Item 16
j. Warranty and customer service requirements	Section 8B of Franchise Agreement	Item 11
k. Territorial development and sales quotas	None	
l. Ongoing product/ service purchases	Section 9 of Franchise Agreement	Item 8
m. Maintenance, appearance and remodeling requirements	Sections 8C and 10 of Franchise Agreement	Item 11
n. Insurance	Section 13A of Franchise Agreement	Items 6 and 8
o. Advertising	Section 15 of Franchise Agreement	Items 6 and 11
p. Indemnification	Section 13B of Franchise Agreement	Item 6
q. Owner's participation/ management/ staffing	Sections 4, 5 and 14 of Franchise Agreement	Items 11 and 15
r. Records/ reports	Section 17A of Franchise Agreement	Item 6
s. Inspections/ audits	Section 17B of Franchise Agreement	Items 6 and 11
t. Transfer	Section 18 of Franchise Agreement	Item 17

Obligation	Section In Agreement	Item in Offering Circular
u. Renewal	Section 20 of Franchise Agreement	Item 17
v. Post- termination obligations	Section 22 of Franchise Agreement	Item 17
w. Non-competition covenants	Sections 11, 18 and 22C of Franchise Agreement	Item 17
x. Dispute resolution	Section 24 of Franchise Agreement	Item 17

Item 10

FINANCING

DISCLOSE THE TERMS AND CONDITIONS OF EACH FINANCING ARRANGEMENT THAT THE FRANCHISOR, ITS AGENT OR AFFILIATE OFFERS DIRECTLY OR INDIRECTLY TO THE FRANCHISEE.

Item 10 Instructions:

- i. “Financing” includes leases and installment contracts.
- ii. Payments due within 90 days on open account financing need not be disclosed under this Item.
- iii. A written arrangement between a franchisor or its affiliate and a lender for the lender to offer financing to the franchisee or an arrangement in which a franchisor or its affiliate receives a benefit from a lender for franchisee financing is an “indirect offer of financing” and must be disclosed under this Item. The franchisor’s guarantee of a note, lease or obligation of the franchisee is an “indirect offer of financing” and must be disclosed under this Item.
- iv. If financing of the initial fee is disclosed in the Item 7 disclosure, a cross reference to Item 7 is sufficient if all the disclosure which Item 10 requires is provided in Item 7.
- v. If an affiliate offers financing, identify the affiliate and its relationship to the franchisor.
- vi. The franchisor may summarize the terms of each financing arrangement in tabular form, using footnotes to entries in the chart to provide additional information required by these instructions that does not fit in the chart.
- vii. If a financing arrangement is for the establishment of the franchised business, disclose what the financing covers, including:

- a. Initial franchise fee;
 - b. Site acquisition;
 - c. Construction or remodeling;
 - d. Equipment or fixtures; and
 - e. Opening inventory or supplies.
- viii. If the franchisor generally offers financing for the operation of the franchised business, disclose what the financing arrangement covers, including:
- a. Inventory or supplies;
 - b. Replacement equipment or fixtures; and
 - c. Other continuing expenses.
- ix. Disclose the terms of each financing arrangement, including:
- a. The identity of the lender(s) providing the financing and its relationship to the franchisor (for example, affiliate);
 - b. The amount of financing offered or, if the amount depends on an actual cost that may vary, the percentage of the cost that will be financed;
 - c. The annual percentage rate of interest (“APR”) charged, computed as provided by Sections 106-107 of the Consumer Protection Credit Act, 15 U.S.C. Secs. 106-107. If the APR may differ depending on when the financing is issued, disclose the APR on a specified recent date;
 - d. The number of payments or the period of repayment;
 - e. Nature of security interest required by the lender;
 - f. Whether a person other than the franchisee (for example spouse, shareholder of the franchisee) must personally guarantee the debt;
 - g. Whether the debt can be prepaid and the nature of any prepayment penalty;
 - h. The franchisee’s potential liabilities upon default, including any accelerated obligation to pay the entire amount due, court costs and attorney’s fees for collection, and termination of the franchise, or other cross default clauses whether directly, as a result of non-payment, or indirectly, as a result of loss of necessary facilities; and
 - i. Other material financing terms.
- x. Include specimen copies of the financing documents as an exhibit to Item 22. Cite the section and name of the document containing the financing terms. Put this information in parentheses at the end of the description of the term.
- xi. Use Sample Answer 10-1 if the franchisor does not offer financing.

A. A WAIVER OF DEFENSES OR SIMILAR PROVISIONS IN A DOCUMENT.

Item 10A Instructions:

- i. Disclose the terms of waivers of legal rights by the franchise under the terms of the financing arrangement (for example confession of judgment).
- ii. Describe provisions of the loan agreement that bar the franchisee from asserting a defense against the lender, the lender’s assignee or the franchisor.

- iii. If the loan agreement does not contain the provisions in i. or ii., disclose that fact.
- iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.

B. THE FRANCHISOR’S PRACTICE OR ITS INTENT TO SELL, ASSIGN, OR DISCOUNT TO A THIRD PARTY ALL OR PART OF THE FINANCING ARRANGEMENT.

Item 10B Instructions:

- i. Practice includes past or present practice and future intent to sell or assign franchisee financing arrangements.
- ii. Disclose the assignment terms including whether the franchisor will remain primarily obligated to provide the financed goods or services.
- iii. If the franchisor may sell or assign its rights under the financing agreement, disclose that the franchise may lose all its defenses against the lender as a result of the sale or assignment.
- iv. Cite the section and name of the document containing these terms. Put this information in parentheses at the end of the description of the term.
- v. If no disclosure is required by Instruction 10B, disclose that fact.

C. PAYMENTS TO THE FRANCHISOR OR AN AFFILIATE(S) FOR THE PLACEMENT OF FINANCING WITH THE LENDER.

Item 10C Instructions:

- i. Describe the payments.
- ii. If no disclosure is required by Instruction 10C i. for a financing arrangement, disclose that fact.
- iii. Identify the source of the payment and the relationship of the source to the franchisor or its affiliates.
- iv. Disclose the amount or the method of determining the payment.
- v. Cite the section and name of the document containing these arrangements. Put this information in parentheses at the end of the description of the term.

Sample Answer 10-1

Belmont does not offer direct or indirect financing. Belmont does not guarantee your note, lease or obligation.

Sample Answer 10-2

SUMMARY OF FINANCING OFFERED									
ITEM FINANCED (Source)	AMOUNT FINANCED	DOWN PAYMENT	TERM (YRS)	APR %	MONTHLY PAYMENT	PREPAY PENALTY	SECURITY REQUIRED	LIABILITY UPON DEFAULT	LOSS OF LEGAL RIGHT ON DEFAULT
INITIAL FEE (NOTE 1) (BELMONT)	\$10,000		10	18	\$	NONE	PERSONAL GUARANTEE	LOSS OF FRANCHIS E-UNPAID LOAN	WAIVE NOTICE CONFESS JUDGMENT
LAND/ CONSTRUCT	NONE								
LEASED SPACE (NOTE 2) (BELMONT)		\$2,000 (secur. dep.)	7-10	N/A	\$	NONE	PERSONAL GUARANTEE	LOSS OF FRANCHIS E- BACK RENT + 2 MOS. FRANCHISE RIGHTS- ATTY'S FEES	NONE
EQUIPMENT LEASE (NOTE 3) (USA CREDIT CORP.)	\$5,000	NONE	5	15	\$	NONE	EQUIPMENT- PERSONAL GUARANTEE	COST OF REMOVAL	LOSE ALL DEFENSES
EQUIPMENT PURCHASE (NOTE 4) (BELMONT)	\$3,750	\$1,250 (25%)	2-7	15	\$	\$500	EQUIPMENT- PERSONAL GUARANTEE	LOSS OF FRANCHIS E-ATTY'S FEES	NONE
OPENING INVENT.	NONE								
OTHER FINANCING	NONE								

Notes:

(1) If you meet Belmont's credit standards, Belmont will finance the \$10,000 initial franchisee fee over a 10-year period at an APR of 18%, using the standard form note in Exhibit A. The only security Belmont requires is a personal guarantee of the note by you and your spouse or by all the shareholders of your corporation. (Loan Agreement Section ____) The note can be prepaid without penalty at any time during its 10-year term. (Loan Agreement Section ____) If you do not pay on time, Belmont can call the loan and demand immediate payment of the full outstanding balance and obtain court costs and attorney's fees if a collection action is necessary. (Loan Agreement Section____) Belmont also has the right to terminate your franchise if you do not make your payments on time more than three times during the note term. (Loan Agreement Section____) You waive your rights to notice of a collection action and to assert any defenses to collection against Belmont. (Loan Agreement Section____) Belmont discounts these notes to a third party who may be immune under the law to any defenses to payment you may have against Belmont. (Loan Agreement Section____)

(2) In most cases Belmont will sublease the franchised premises to you but will guarantee your lease with a third party if you have acceptable credit and that is the only way to obtain an exceptional location. (Lease Section____) The precise terms of Belmont's standard lease in Exhibit B will vary depending on the size and location of the premises, but the chart reflects a typical range of payments for Belmont's standard 6-day franchise outlet, including payment of one month's rent as a security deposit. (Lease Section____) The only other security Belmont requires is a personal guarantee of the lease by you and your spouse or by all the shareholders of your corporation. (Lease Section____) The lease can be prepaid without penalty at any time during its term. (Lease Section____) If you do not make a rent payment on time, Belmont has the right to collect the unpaid rent plus an additional two months rent, as liquidated damages. (Lease Section____) Belmont can also obtain court costs and attorney's fees if a collection action is necessary. (Lease Section____) If you are late with your rent more than three times during the lease term, Belmont has the right to terminate the lease, take over the premises, and terminate your franchise. If Belmont guarantees your lease, Belmont will require you to sign the guarantee agreement in Exhibit F. (Lease Section____) This gives Belmont the same legal rights as the sublease but requires you to give Belmont the right to approve your lease and pay the rent for you if you fail to pay on time. (Lease Section____)

(3) If you want to lease the pipe bending machine and other equipment you need, Belmont has arranged an equipment lease (see Exhibit C) from USA Credit Corporation of Las Vegas, Nevada. If you choose this option, you will pay \$100 a month for 60 months (5 years) at an APR of 15% based on a cash price of \$5,000, with no money down. (Equipment Lease Section____) At the end of the lease term, you may purchase the equipment with a one-time payment of \$2,500. (Equipment Lease Section____) USA Credit requires a personal guarantee from you and your spouse or from all the shareholders of your corporation and retains a security interest in the equipment. (Equipment Lease Section____) The equipment lease can be prepaid at any time, but the interest you might otherwise save will be reduced by application of the Rule of 78's for computing finance charges. (Equipment Lease Section____) If you do not make a payment on time, USA Credit can demand payment of all past due payments, remove the equipment, and charge you \$1,000 as liquidated damages. (Equipment Lease Section____) USA Credit can also recover its costs of collection, including court costs and attorney's fees. (Equipment Lease Section____) While Belmont does not know USA Credit's policies, USA Credit may discount the lease to a third party who may be immune under the law to claims or defenses you may have against USA Credit, the equipment manufacturer or Belmont. Belmont receives a referral fee of \$500 from USA Credit for every franchisee who leases equipment from it.

(4) If you prefer, Belmont will sell you the pipe bending machine and other necessary equipment on time. (Equipment Purchase Agreement Section____) Belmont requires a 25% down payment of \$1,250. (Equipment Purchase Agreement Section____) Belmont will finance the remainder over a 2-7 year period at your option at an APR of 15%. (Equipment Purchase Agreement Section____) Payments range from \$228.11 a month over 7 years to \$821.58 a month over 2 years. (Equipment Purchase Agreement Section____) Belmont's standard equipment financing note in Exhibit D must be personally guaranteed by you and your spouse or by all the shareholders of your corporation, and Belmont will retain a security interest in the equipment. (Equipment Purchase Agreement Section____) You may purchase the equipment at any time during the lease period by paying the remainder of the principal plus a \$500 prepayment penalty. (Equipment Purchase Agreement Section____) If you do not make a payment on time, Belmont can demand all overdue payments, repossess the equipment, and terminate your franchise. Belmont can also recover its costs of collection, including court costs and attorney's fees. (Equipment Purchase Agreement Section_____).

Except as disclosed in Note 1, Belmont does not offer financing that requires you to waive notice, confess judgment or waive a defense against Belmont or the vendor, although you may lose your defenses against Belmont and others in a collection action on a note that is sold or discounted, as disclosed in Notes 2 and 3.

Except as disclosed in Note 3, Belmont does not arrange financing from other sources.

Except as disclosed in Notes 1 and 3, commercial paper from franchisees has not been and is not sold or assigned to anyone, and Belmont has no plans to do so.

Except as disclosed in Note 3, Belmont does not receive direct or indirect payments for placing financing.

Except as disclosed in Note 2, Belmont does not guarantee your obligations to third parties.

Item 11

FRANCHISOR'S OBLIGATIONS

DISCLOSE THE FOLLOWING:

A. THE OBLIGATIONS THAT THE FRANCHISOR WILL PERFORM BEFORE THE FRANCHISE BUSINESS OPENS. CITE BY SECTION THE PROVISIONS OF THE AGREEMENT REQUIRING PERFORMANCE.

Item 11A Instructions:

- i. Begin the disclosure by stating: “Except as listed below, (the franchisor) _____ need not provide any assistance to you.”
- ii. Pre-opening obligations include assistance to:
 - a. Locate a site for the franchised business and negotiate the purchase or lease of this site. State whether the franchisor generally owns the premises and leases it to the franchisee;
 - b. Conform the premises to local ordinances and building codes and obtain the required permits (i.e., health, sanitation, building, driveway, utility and sign permits);
 - c. Construct, remodel or decorate the premises for the franchised business;
 - d. Purchase or lease equipment, signs, fixtures, opening inventory and supplies. Disclose whether the franchisor provides these items directly or merely the names of approved suppliers. Disclose whether the franchisor provides written specifications for these items. Disclose whether the franchisor delivers or installs these items. (The franchisor may cross-reference Item 8 for details); and
 - e. Hire and train employees.
- iii. After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses. Use this format throughout this Item.

B. THE OBLIGATIONS TO BE MET BY THE FRANCHISOR DURING THE OPERATION OF THE FRANCHISE BUSINESS.

Item 11B Instructions:

- i. Include assistance in:
 - a. Products or services to be offered by the franchisee to its customers;
 - b. Hiring and training of employees;
 - c. Improvements and developments in the franchised business;
 - d. Pricing;
 - e. Administrative, bookkeeping, accounting and inventory control procedures; and
 - f. Operating problems encountered by the franchisee.
- ii. For the franchisor’s advertising program for the product or service offered by the franchisee:
 - a. Disclose the media in which the advertising may be disseminated (for example, print,

- radio, or television).
- b. Disclose whether the coverage of the media is local, regional, or national in scope.
 - c. Disclose the source of the advertising (for example, in-house advertising department, a national or regional advertising agency).
 - d. Disclose the conditions when the franchisor permits franchisees to use their own advertising material.
 - e. If there is an advertising council composed of franchisees that advises the franchisor on advertising policies, disclose:
 - (1) How members of the council are selected.
 - (2) Whether the council serves in an advisory capacity only or has operational or decision-making power.
 - (3) Whether the franchisor has the power to form, change, or dissolve the advertising council.
 - f. If the franchisee must participate in a local or regional advertising cooperative, disclose:
 - (1) How the area or membership of the cooperative is defined.
 - (2) How the franchisee's contribution to the cooperative is calculated (may reference Item 6).
 - (3) Who is responsible for administration of the cooperative (for example, franchisor, franchisees, advertising agency).
 - (4) Whether cooperatives must operate from written governing documents and whether the documents are available for review by the franchisee.
 - (5) Whether cooperatives must prepare annual or periodic financial statements and whether the statements are available for review by the franchisee.
 - (6) Whether the franchisor has the power to require cooperatives to be formed, changed, dissolved or merged.
 - g. If applicable, for each advertising fund not described in above subsection (f), disclose:
 - (1) Who contributes to each fund (for example, franchisees, franchisor, franchisor-owned units, outside vendors or suppliers).
 - (2) Whether the franchisor-owned units must contribute to the fund and, if so, whether it is on the same basis as franchisees.
 - (3) How much the franchisee must contribute to the advertising fund(s) (may reference Item 6) and whether other franchisees are required to contribute at a different rate (it is not necessary to disclose the specific rates).
 - (4) Who administers the fund(s). Whether the fund is audited and when, and whether financial statements of the fund are available for review by the franchisee.
 - (5) Use of the fund(s) in the most recently concluded fiscal year, the percentages spent on production, media placement, administrative expenses, and other (with a description of what constitutes "other"). Totals should equal 100%.
 - (6) Whether the franchisor or an affiliate receives payment for providing goods or services to an advertising fund.
 - h. State whether the franchisor must spend any amount on advertising in the area or territory where the franchisee is located.
 - i. If all advertising fees are not spent in the fiscal year in which they accrue, explain how the franchisor uses the remaining amounts. Indicate whether franchisees will receive a periodic accounting of how advertising fees are spent.
 - j. Disclose the percentage of advertising funds, if any, used for advertising that is

- principally a solicitation for the sale of franchises.
- k. Cross reference Items 6, 8 and 9.
- iii. If the franchisor requires that franchisees buy or use electronic cash register or computer systems, provide a general description of the systems in non-technical language:
- a. Identify each hardware component and software program by brand, type and principal functions.
 - (1) If the hardware component or software program is the proprietary property of the franchisor, an affiliate or a third party, state whether the franchisor, an affiliate or a third party has the contractual right or obligation to provide ongoing maintenance, repairs, upgrades or updates. Disclose the current annual cost of any optional or required maintenance and support contracts, upgrades and updates.
 - (2) If the hardware component or software program is the proprietary property of a third party, and no compatible equivalent component or program has been approved by the franchisor for use with the system to perform the same functions, identify the third party by name, business address and telephone number, and state the length of time the component or program has been in continuous use by the franchisor and its franchisees.
 - (3) If the hardware component or software program is not proprietary, identify compatible equivalent components or programs that perform the same functions and indicate whether they have been approved by the franchisor.
 - b. State whether the franchisee has any contractual obligation to upgrade or update any hardware component or software program during the term of the franchise, and if so, whether there are any contractual limitations on the frequency and cost of the obligation.
 - c. For each electronic cash register system or software program, describe how it will be used in the franchisee's business, and the type of business information or data that will be collected and generated. State whether the franchisor will have independent access to the information and data, and if so, whether there are any contractual limitations on the franchisor's right to access the information and data.
- iv. After describing the obligation, cite the section number of the agreement imposing the obligation. Put the citation in parentheses.
- v. Disclose if the franchisor is not obligated to provide or to assist the franchisee to obtain the above items or services.
- vi. Do not repeat, but do cross reference disclosure made in Item 6.
- vii. Disclose the table of contents of the operating manual(s) provided to the franchisee as of the franchisor's last fiscal year end or a more recent date. State the number of pages devoted to each subject and the total number of pages in the manual as of this date. Alternatively, this disclosure may be omitted if the prospective franchisee views the manual before purchase of the franchise.

C. THE METHODS USED BY THE FRANCHISOR TO SELECT THE LOCATION OF THE FRANCHISEE'S BUSINESS.

Item 11C Instructions:

- i. Disclose whether the franchisor selects the site or approves an area within which the franchisee selects a site. Disclose how and whether the franchisor must approve a franchisee selected site.
- ii. Disclose the factors which the franchisor considers in selecting or approving sites (for example, general location and neighborhood, traffic patterns, parking, size, physical characteristics of existing buildings and lease terms).
- iii. Disclose the time limit for the franchisor to locate or to approve or disapprove the site. Disclose the consequences if the franchisor and franchisee cannot agree on a site.
- iv. Disclosure made in response to Item 11A need not be repeated or cross-referenced in the response to Item 11C.

D. THE TYPICAL LENGTH OF TIME BETWEEN THE SIGNING OF THE FRANCHISE AGREEMENT OR THE FIRST PAYMENT OF CONSIDERATION FOR THE FRANCHISE AND THE OPENING OF THE FRANCHISEE'S BUSINESS.

Item 11D Instructions:

- i. Disclosure may be a range of times if the range is specific.
- ii. Describe the factors which may affect the time period such as ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, or delayed installation of equipment, fixtures and signs.

E. THE TRAINING PROGRAM OF THE FRANCHISOR AS OF THE FRANCHISOR'S LAST FISCAL YEAR END OR A MORE RECENT DATE INCLUDING:

- (1) The location, duration and general outline of the training program;
- (2) How often the training program will be conducted;
- (3) The experience that the instructors have with the franchisor;
- (4) Charges to be made to the franchisee and who must pay travel and living expenses of the enrollees in the training program;
- (5) If the training program is not mandatory, the percentage of new franchisees that enrolled in the training program during the preceding 12 months; and
- (6) Whether any additional training programs and/or refresher courses are required.

F. DESCRIBE THE NATURE AND EXTENT OF TRAINING UNDER THE FRANCHISOR'S TRAINING PROGRAM.

Item 11F Instructions:

- i. Use a table to state the subjects taught and the number of hours of classroom and "on the job training" devoted to each subject in the franchisor's training program. Use footnotes to explain.

- ii. For each subject disclose the training location and how often training classes are held.
 - iii. Describe the location or facility where the training is held (for example, company, home, office, company owned store).
 - iv. State how long after the signing of the agreement or before the opening date of the business the franchisee must complete the required training.
 - v. Describe the nature of instructional material. Disclose the minimum experience of the instructors. Disclose only experience that is relevant to the subject taught and the franchisor's operations.
 - vi. State who may and who is required to attend the training. State whether the franchisee or other persons must complete the program to the franchisor's satisfaction.
 - vii. Charges for training or training materials should be disclosed in Item 5 if the obligation to pay arises before the franchise location opens.
 - viii. Disclose who pays the travel and living expenses of the persons receiving the training.
-
-

Sample Answer 11

Except as disclosed below, Belmont need not provide any assistance to you.

Before you open your business, Belmont will:

- (1) Designate your exclusive territory (Franchise Agreement - paragraph 2).
- (2) Assist you in selecting a business site. Your site must be at least _____ square feet in area, have parking spaces, and an average of _____ cars per hour driving by. We must approve or disapprove your site within 20 days after we receive notice of the location.
- (3) Within 30 days of your signing the Franchise Agreement, assist you to find and negotiate the lease or purchase of a location for your muffler shop (Franchise Agreement - paragraph____). Your store location will be purchased or leased by you from independent third parties.
- (4) Within 60 days of your signing the Franchise Agreement, provide written specifications for store construction or remodeling and for all required and replacement equipment, inventory and supplies (Franchise Agreement - paragraph____). See Item 8 of this offering circular.
- (5) Within 60 days of your signing the Franchise Agreement, provide blueprints for your store construction or remodeling and obtain health, sanitation, building, utility and sign permits for your premises. You pay for the construction or remodeling (Franchise Agreement - paragraph____).

- (6) Within 60 days of your signing the Franchise Agreement, train you and one other person as follows:

Subject	Time Begun	Instructional Material	Hours of Class Room Training	Hours of on the Job Training	Instructor

Belmont does not charge for this training or service, but you must pay the travel and living expenses for you and your employees. All training occurs at Belmont's Jackson, Minnesota headquarters.

During the operation of the franchised business, Belmont will:

- (1) Develop new products and methods and provide you with information about developments (Franchise Agreement - paragraph____).
- (2) Loan you a copy of our operations manual which contains mandatory and suggested specifications, standards and procedures. This manual is confidential and remains our property. Belmont will modify this manual, but the modification will not alter your status and rights under the Franchise Agreement (Franchise Agreement - paragraph____). The table of contents is as follows:

Each week for the first 90 days after you open your shop, Belmont will telephone to discuss your operational problems.

Belmont will hold annual conferences to discuss sales techniques, personnel training, bookkeeping, accounting, inventory control, performance standards, advertising program and merchandising procedures. There is no conference fee, but you must pay all your travel and living expenses. These elective conferences are held at our Jackson, Minnesota headquarters or at a location chosen by a majority vote of all franchisees.

Belmont provides advertising materials and services to you through a national advertising fund (the "National Fund"). Materials provided by the National Fund to all franchisees include video and audio tapes, mats, posters, banners and miscellaneous point-of-sale items. You will receive one sample of each at no charge. If you want additional copies you must pay duplication costs.

You may develop advertising materials for your own use, at your own cost. Belmont must approve the advertising materials in advance and in writing.

Belmont occasionally provides for placement of advertising on behalf of the entire Belmont system, including franchisees. However, most placement is done on a local basis, typically by local advertising agencies hired by individual franchisees or advertising cooperatives. Belmont reserves the right to use advertising fees from the Belmont system to place advertising in national media (including broadcast, print or other media) in the future. In the past Belmont has used an outside advertising agency to create and place advertising. Neither Belmont nor its affiliate receives payment from the National Fund. Advertising funds are used to promote the products sold by the franchisee and are not used to sell additional franchises.

The National Fund is a nonprofit corporation which collects advertising fees from all franchisees. Each franchisor owned store of Belmont contributes to the National Fund on the same basis as franchisees. All payments to the National Fund must be spent on advertising, promotion and marketing of goods and services provided by Belmont Muffler Shops. You must contribute the amounts described in Item 6, under the heading “Advertising Fees and Expenses.”

The National Fund is administered by Belmont's accounting and marketing personnel under the direction of the Advertising Council. An annual audited financial statement of the National Fund is available to any franchisee upon request. During the last fiscal year of the National Fund (ending on December 31, 1990), the National Fund spent 39% of its income on the production of advertisements and other promotional materials, 36% for media placement, 18% for general and administrative expenses, and 7% for other expenses (the purchase of glassware given to customers of Belmont shops as part of a promotional campaign).

The Advertising Council acts as the board of directors of the National Fund. The Advertising Council has 8 members: the President, Treasurer, Vice President-Marketing, and Vice President-Operations of Belmont; and 4 franchisee representatives who are elected by the governing board of the Belmont Franchisee Association.

Once your shop opens, you must participate in the local advertising cooperative established in the Area of Dominant Influence (ADI) where your store is located. The amount of your contribution to the local advertising cooperative is described in Item 6 under the heading “Advertising Fees and Expenses.”

Each local advertising cooperative must adopt written governing documents. A copy of the governing documents of the cooperative (if one has been established) for your ADI is available upon request. Each cooperative may determine its own voting procedures; however, each company-owned Belmont Shop will be entitled to one vote in any local advertising cooperative. The members and their elected officers are responsible for administration of the cooperative. Advertising cooperatives must prepare quarterly and annual financial statements. The annual financial statement must be prepared by an independent CPA and be made available to all franchisees in that advertising cooperative.

You select your business site within your exclusive area subject to our approval. Belmont assists in site selection by telling you the number of new car registrations, population density, traffic patterns and proximity of the proposed site to other Belmont Muffler Shops.

Franchisees typically open their shops 4 to 7 months after they sign a franchise agreement. The factors that affect this time are the ability to obtain a lease, financing or building permits, zoning and local ordinances, weather conditions, shortages, and delayed installation of equipment fixtures and signs.

Item 12

TERRITORY

DESCRIBE ANY EXCLUSIVE TERRITORY GRANTED THE FRANCHISEE. CONCERNING THE FRANCHISEE'S LOCATION (WITH OR WITHOUT EXCLUSIVE TERRITORY), DISCLOSE WHETHER:

A. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH ANOTHER FRANCHISEE WHO MAY ALSO USE THE FRANCHISOR'S TRADEMARK.

B. THE FRANCHISOR HAS ESTABLISHED OR MAY ESTABLISH A COMPANY-OWNED OUTLET OR OTHER CHANNELS OF DISTRIBUTION USING THE FRANCHISOR'S TRADEMARK.

Item 12 Instructions:

- i. As used in Item 12, trademark includes name, trademarks, logos and other commercial symbols.
- ii. If appropriate, describe the minimum area granted to the franchisee. The franchisor may use an area encompassed within a specific radius, a distance sufficient to encompass a specified population or another specific designation.
- iii. State whether the franchise is granted for a specific location or a location to be approved by the franchisor.
- iv. If appropriate, state the conditions under which the franchisor will approve the relocation of the franchised business or the establishment of additional franchised outlets.
- v. Describe restrictions on the franchisor regarding operating company-owned stores or on granting franchised outlets for a similar or competitive business within the defined area.
- vi. Describe restrictions on franchisees from soliciting or accepting orders outside of their defined territories.
- vii. Describe restrictions on the franchisor from soliciting or accepting orders inside the franchisee's defined territory. State compensation that the franchisor must pay for soliciting or accepting orders inside the franchisee's defined territories.
- viii. Describe franchisees options, rights of first refusal or similar rights to acquire additional franchises within the territory or contiguous territories.
- ix. If the franchisor does not grant territorial rights, use Sample Answer 12-1.

C. THE FRANCHISOR OR ITS AFFILIATE HAS ESTABLISHED OR MAY ESTABLISH OTHER FRANCHISES OR COMPANY-OWNED OUTLETS OR ANOTHER CHANNEL OF DISTRIBUTION SELLING OR LEASING SIMILAR PRODUCTS OR SERVICES UNDER A DIFFERENT TRADEMARK.

Item 12C Instructions:

- i. “Similar products and services” includes competing, interchangeable or substitute products but not products or services which are not part of the same product or service market.
- ii. If the franchisor or an affiliate operates, franchises or has present plans to operate or franchise a business under a different trademark and that business sells goods or services similar to those to be offered by the franchisee, describe:
 - a. The similar goods and services;
 - b. The trade names and trademarks;
 - c. Whether outlets will be franchisor owned or operated;
 - d. Whether the franchisor or its franchisees who use the different trademark will solicit or accept orders within the franchisee’s territory;
 - e. A timetable for the plan;
 - f. How the franchisor will resolve conflicts between the franchisor and the franchisees and between the franchisees of each system regarding territory, customers or franchisor support; and
 - g. If appropriate, disclose the principal business address of the franchisor’s similar operating business. If it is the same as the franchisor’s principal business address disclosed in Item 1, disclose whether the franchisor maintains (or plans to maintain) physically separate offices and training facilities for the similar competing business.

D. CONTINUATION OF THE FRANCHISEE’S TERRITORIAL EXCLUSIVITY DEPENDS ON ACHIEVEMENT OF A CERTAIN SALES VOLUME, MARKET PENETRATION OR OTHER CONTINGENCY AND UNDER WHAT CIRCUMSTANCES THE FRANCHISEE’S TERRITORY MAY BE ALTERED.

Item 12D Instructions:

- i. Disclose conditions for the franchisee’s keeping its territorial rights (for example, sales quotas or the opening of additional business outlets). Specify the quotas or conditions and the franchisor’s rights if the franchisee fails to meet the requirements.
- ii. Disclose other circumstances that permit the franchisor to modify the franchisee’s territorial rights (for example, a population increase in the territory giving the franchisor the right to grant an additional franchise within the area). Disclose the effect on the franchisee’s rights.

Sample Answer 12-1

You will not receive an exclusive territory. Belmont may establish other franchised or company owned outlets that may compete with your location.

Sample Answer 12-2

You will receive an exclusive territory with a minimum population of 50,000 people. You will operate from one location and must receive Belmont's permission before relocating. Belmont will not operate stores or grant franchises for a similar or competitive business within your area. Except when advertising cooperatively with appropriate franchisees, neither Belmont nor you can advertise or solicit orders within another franchisee's territory. You and Belmont can accept orders from outside your territory without special payment.

You do not receive the right to acquire additional franchises within your area.

There is no minimum sales quota. You maintain rights to your area even though the population increases.

Item 13

TRADEMARKS

DISCLOSE THE PRINCIPAL TRADEMARKS TO BE LICENSED TO THE FRANCHISEE INCLUDING:

Item 13 Instructions:

- i. As used in Item 13, "principal trademarks" means the primary trademarks, service marks, names, logos and symbols to be used by the franchisee to identify the franchised business. It does not include every trademark owned by a franchisor.
- ii. The franchisor may limit Item 13 disclosure to information that is relevant to the state where the franchised business will be located. The franchisor may include all states to eliminate the need for multiple disclosure in Item 13 but must amend its offering circular to reflect any material change in the list.

A. WHETHER THE PRINCIPAL TRADEMARKS ARE REGISTERED WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE. FOR EACH REGISTRATION STATE THE REGISTRATION DATE AND NUMBER AND WHETHER THE REGISTRATION IS ON THE PRINCIPAL OR SUPPLEMENTAL REGISTER.

Item 13A Instructions:

- i. Identify each principal trademark which the franchisee may use. The franchisor may reproduce these trademarks in this Item.
- ii. State the date and identification number of each trademark registration or registration application listed. State whether the franchisor has filed all required affidavits. State whether any registration has been renewed.
- iii. State whether the principal trademarks are registered on the principal or supplemental register of the U.S. Patent and Trademark Office, and if not, whether an "intent to use" application or an application based on actual use has been filed with the U.S. Patent and Trademark Office. If the principal trademark to be used by the franchisee is not

registered on the Principal Register of the U.S. Patent and Trademark Office, state:

By not having a principal federal registration for (name or description of symbol), (name of franchisor) does not have certain presumptive legal rights granted by a registration.

B. DISCLOSE CURRENTLY EFFECTIVE MATERIAL DETERMINATIONS OF THE PATENT AND TRADEMARK OFFICE, TRADEMARK TRIAL AND APPEAL BOARD, THE TRADEMARK ADMINISTRATOR OF THIS STATE OR ANY COURT; PENDING INFRINGEMENT, OPPOSITION OR CANCELLATION; AND PENDING MATERIAL LITIGATION INVOLVING THE PRINCIPAL TRADEMARKS.

Item 13B Instructions:

- i. Litigation or an action is material if it could significantly affect the ownership or use of a trademark listed under Item 13. Describe how the determination affects the ownership, use or licensing. Describe any decided infringement, cancellation or opposition proceedings. Include infringement, opposition or cancellation proceedings in which the franchisor unsuccessfully sought to prevent registration of a trademark in order to protect a trademark licensed by the franchisor.
- ii. For pending material federal or state litigation regarding the franchisor's use or ownership rights in a trademark disclose:
 - a. The forum and case number;
 - b. The nature of claims made opposing the franchisor's use or by the franchisor opposing another person's use; and
 - c. Any effective court or administrative agency ruling concerning the matter.
- iii. Do not repeat disclosure made in response to Item 13A.
- iv. The franchisor need not disclose historical challenges to registrations of trademarks listed in Item 13 that were resolved in the franchisor's favor.
- v. The franchisor may include an attorney's opinion relative to the merits of litigation or of an action if the attorney issuing the opinion consents to its use. The text of the disclosure may include a summary of the opinion if the full opinion is attached and the attorney issuing the opinion consents to the use of the summary.

C. DISCLOSE AGREEMENTS CURRENTLY IN EFFECT WHICH SIGNIFICANTLY LIMIT THE RIGHTS OF THE FRANCHISOR TO USE OR LICENSE THE USE OF TRADEMARKS LISTED IN ITEM 13 IN A MANNER MATERIAL TO THE FRANCHISE.

Item 13C Instructions:

For each agreement disclose:

- i. The manner and extent of the limitation or grant;

- ii. The agreement's duration;
- iii. The parties to the agreement;
- iv. The circumstances under which the agreement may be cancelled or modified; and
- v. All other material terms.

D. WHETHER THE FRANCHISOR MUST PROTECT THE FRANCHISEE'S RIGHT TO USE THE PRINCIPAL TRADEMARKS LISTED IN ITEM 13, AND MUST PROTECT THE FRANCHISEE AGAINST CLAIMS OF INFRINGEMENT OR UNFAIR COMPETITION ARISING OUT OF THE FRANCHISEE'S USE OF THEM.

Item 13D Instructions:

- i. Disclose the franchisee's obligation to notify the franchisor of the use of, or claims of rights to, a trademark identical to, or confusingly similar to, a trademark licensed to the franchisee.
- ii. State whether the franchise agreement requires the franchisor to take affirmative action when notified of these uses or claims. Identify who has the right to control administrative proceedings or litigation.
- iii. State whether the franchise agreement requires the franchisor to participate in the franchisee's defense and/or indemnify the franchisee for expenses or damages if the franchisee is a party to an administrative or judicial proceeding involving a trademark licensed by the franchisor to the franchisee, or if the proceeding is resolved unfavorably to the franchisee.
- iv. Disclose the franchisee's rights under the franchise if the franchisor requires the franchisee to modify or discontinue the use of a trademark as a result of a proceeding or settlement.

E. WHETHER THE FRANCHISOR ACTUALLY KNOWS OF EITHER SUPERIOR PRIOR RIGHTS OR INFRINGING USES THAT COULD MATERIALLY AFFECT THE FRANCHISEE'S USE OF THE PRINCIPAL TRADEMARKS IN THIS STATE OR THE STATE IN WHICH THE FRANCHISED BUSINESS IS TO BE LOCATED.

Item 13E Instructions:

For each use of a principal trademark that the franchisor believes constitutes an infringement that could materially affect the franchisee's use of a trademark, state:

- i. The location(s) where the infringement is occurring;
- ii. To the extent known, the length of time of the infringement; and
- iii. Action taken by the franchisor.

If the franchisor knows of a use of a trademark by another in a geographic area relevant to the franchisee which is or is likely to be based on a claim of superior prior rights to the franchisor's, state the nature of the use by the other person and the place or area where it is occurring.

Sample Answer 13

Belmont grants you the right to operate a shop under the name Belmont Muffler Shop. You may also use our other current or future trademarks to operate your shop. By trademark Belmont means trade names, trademarks, service marks and logos used to identify your shop. Belmont registered the below trademark on the United State Patent and Trademark Office principal register:

You must follow our rules when you use these marks. You cannot use a name or mark as part of a corporate name or with modifying words, designs or symbols except for those which Belmont licenses to you. You may not use Belmont's registered name in connection with the sale of an unauthorized product or service or in a manner not authorized in writing by Belmont.

On June 4, 1973, the United States Patent and Trademark Office rejected Belmont's application to register the mark "Super Mufflers" because the mark was found to be confusingly similar to a registered mark. Belmont's inability to register this mark on a federal level permits others to establish rights to use the mark. This use will not be in areas where our franchisees are operating, or advertising under the mark, or in the natural zone of expansion for Belmont's shops. In addition, these users must act in good faith and without actual knowledge of Belmont's prior use of the mark. However, if others establish rights to use Belmont's mark, Belmont may not be able to expand into these areas using the mark.

No agreements limit Belmont's right to use or license the use of Belmont's trademarks.

You must notify Belmont immediately when you learn about an infringement of, or challenge to, your use of our trademark. Belmont will take the action we think appropriate. While Belmont is not required to defend you against a claim against your use of our trademark, Belmont will reimburse you for your liability and reasonable costs in connection with defending Belmont's trademark. To receive reimbursement you must have notified Belmont immediately when you learned about the infringement or challenge.

You must modify or discontinue the use of a trademark if Belmont modifies or discontinues it. If this happens, Belmont will reimburse you for your tangible costs of compliance (for example, changing signs). You must not directly or indirectly contest our right to our trademarks, trade secrets or business techniques that are part of our business.

Belmont does not know of any infringing uses that could materially affect your use of Belmont's trademark.

or

John E. Jones, 4231 Main Street, Reno, Nevada is currently doing business as Belmont Muffler Shoppe at 4231 Main Street, Reno, Nevada. We believe that this is an infringing use of our

federally registered trademark “Belmont Muffler Shop,” and we have filed an action to enjoin Mr. Jones and to recover damages. If the court holds that Mr. Jones’ use is not infringing, Belmont may not be able to use Belmont’s trademark in Mr. Jones’ immediate area. (Belmont Muffler Shop v. Belmont Muffler Shoppe-cite).

Item 14

PATENTS, COPYRIGHTS AND PROPRIETARY INFORMATION

IF THE FRANCHISOR OWNS RIGHTS IN PATENTS OR COPYRIGHTS THAT ARE MATERIAL TO THE FRANCHISE, DESCRIBE THESE PATENTS AND COPYRIGHTS AND THEIR RELATIONSHIP TO THE FRANCHISE. INCLUDE THEIR DURATION AND WHETHER THE FRANCHISOR CAN AND INTENDS TO RENEW THE COPYRIGHTS. TO THE EXTENT RELEVANT, DISCLOSE THE INFORMATION REQUIRED BY ITEM 13 CONCERNING THESE PATENTS AND COPYRIGHTS. IF THE FRANCHISOR CLAIMS PROPRIETARY RIGHTS IN CONFIDENTIAL INFORMATION OR TRADE SECRETS, DISCLOSE THEIR GENERAL SUBJECT MATTER AND THE TERMS AND CONDITIONS FOR USE BY THE FRANCHISEE.

Item 14 Instructions:

- i. State the patent number, issue date and title for each patent. State the serial number, filing date and title of each patent application. Describe the type of patent or patent application (for example mechanical, process, or design). State the registration number and date of each copyright.
- ii. Describe the relationship of the patent, patent application or copyright to the franchised business.
- iii. Describe any current determination of the Patent and Trademark Office, Copyright Office (Library of Congress) or court regarding the patent or copyright. Include the forum, case number and effect on the franchised business.
- iv. State the forum, case number, claims asserted, issues involved and effective determinations for any proceedings pending in the Patent and Trademark Office or the Court of Appeals for the Federal Circuit.
- v. If counsel consents, the franchisor may include a counsel’s opinion or a summary of the opinion about patent or copyright issues discussed in this Item.
- vi. If an agreement limits the use of the patent, patent application or copyright, state the parties to and duration of the agreement, the extent to which the franchisee may be affected by the agreement, and other material terms of the agreement.
- vii. Disclose the franchisor’s obligation to protect the patent, patent application or copyright. State:
 - a. Whether franchisee must notify the franchisor of claims or infringements or if the action is discretionary.

- b. Whether the franchisor must take affirmative action when notified of infringement or if the action is discretionary.
 - c. Who has the right to control litigation.
 - d. Whether the franchisor must participate in the defense of a franchisee or indemnify the franchisee for expenses or damages in a proceeding involving a patent, patent application or copyright licensed to the franchisee.
 - e. Requirements that the franchisee modify or discontinue use of the subject matter covered by the patent or copyright.
 - f. Franchisee's rights if the franchisor requires the franchisee to modify or discontinue the use of the subject matter covered by the patent or copyright.
- viii. If the franchisor actually knows of an infringement that could materially affect the franchisee, state:
- a. The nature of the infringement.
 - b. The location(s) where the infringement is occurring.
 - c. The length of time of the infringement.
 - d. Action taken or anticipated by the franchisor.
- ix. State whether the franchisor intends to renew the copyright when the registration expires.
- x. Discuss in general terms other proprietary information communicated to the franchisee (for example, whether there is a formula or recipe considered to be a trade secret).
- xi. Use Sample Answer 14-1 if no patents or copyrights are material to the franchise.

Sample Answer 14-1

No patents or copyrights are material to the franchise.

Sample Answer 14-2

You do not receive the right to use an item covered by a patent or copyright, but you can use the proprietary information in Belmont's Operations Manual. The Operations Manual is described in Item 11. Although Belmont has not filed an application for a copyright registration for the Operations Manual, it claims a copyright and the information is proprietary. Item 11 describes limitations on the use of this manual by you and your employees.

You must also promptly tell us when you learn about unauthorized use of this proprietary information. Belmont is not obligated to take any action but will respond to this information as we think appropriate. Belmont will indemnify you for losses brought by a third party concerning your use of this information.

Sample Answer 14-3

U.S. Patent 3999442 was issued on December 14, 1980. It describes a process for exhaust system installation. The process describes the steps in making a straight length of exhaust pipe,

bending this pipe, coating the inside and outside of this pipe with our Pipe Protector and installing the exhaust pipe on a motor vehicle. You will use equipment utilizing this process.

On December 15, 1970, Belmont obtained a copyright registration for its Operations Manual under Registration A41139. Amendments to the manual were registered on January 7, 1983 (Reg. A521,371) and June 6, 1974 (Reg. A 541,333). Belmont intends to renew these copyrights. Item 11 of this Offering Circular describes the Operations Manual and the manner in which you are permitted to use it.

Belmont's right to use or license these patents and copyrighted items is not materially limited by any agreement or known infringing use.

You must tell us immediately if you learn about an infringement or challenge to our use of these patents or copyrights. Belmont will take the action that Belmont thinks appropriate. You must also agree not to contest Belmont's interest in these or our other trade secrets.

If Belmont decides to add, modify or discontinue the use of an item or process covered by a patent or copyright, you must also do so. Belmont's sole obligation is to reimburse you for the tangible cost of complying with its obligation.

Although Belmont is not obligated to defend your use of these items or processes, Belmont will reimburse you for damages and reasonable costs incurred in litigation about them.

Item 15

OBLIGATION TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS

DISCLOSE THE FRANCHISEE'S OBLIGATION TO PARTICIPATE PERSONALLY IN THE DIRECT OPERATION OF THE FRANCHISE BUSINESS AND WHETHER THE FRANCHISOR RECOMMENDS PARTICIPATION.

Item 15 Instructions:

- i. Include obligations arising from written agreement (including personal guaranty, confidentiality agreement or noncompetition agreement) or from the franchisor's practice.
- ii. If personal "on premises" supervision is not required:
 - a. If the franchisee is an individual, state whether the franchisor recommends "on premises" supervision by the franchisee;
 - b. State limitations on whom the franchisee can hire as an on premises supervisor;
 - c. Whether this "on premises" supervisor must successfully complete the franchisor's training program; and
 - d. If the franchisee is a business entity, state the amount of equity interest that the "on premises" supervisor must have in the franchise.
- iii. Disclose the restrictions which the franchisee must place on its manager (for example, maintain trade secrets, non-competition).

- iv. The franchisor may reference Items 14 and 17 in its answer.
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Sample Answer 15-1

If you are an individual, you must directly supervise the franchised business on its premises. If you are a corporation, the direct, on-site supervision must be done by a person who owns at least 1/3 of the corporate equity.

Sample Answer 15-2

Belmont does not require that you personally supervise the franchised business. The business must be directly supervised “on premises” by a manager who has successfully completed Belmont’s training program. The on premises manager cannot have an interest or business relationship with any of Belmont’s business competitors. The manager need not have an ownership interest in a corporate or partnership franchisee. The manager must sign a written agreement to maintain confidentiality of the trade secrets described in Item 14 and to conform with the covenants not to compete described in Item 17.

Each individual who owns a 5% or greater interest in the franchisee entity must sign an agreement (Exhibit____) assuming and agreeing to discharge all obligations of the “franchisee” under the Franchise Agreement.

Item 16

RESTRICTIONS ON WHAT THE FRANCHISEE MAY SELL

DISCLOSE RESTRICTIONS OR CONDITIONS IMPOSED BY THE FRANCHISOR ON THE GOODS OR SERVICES THAT THE FRANCHISEE MAY SELL OR THAT LIMIT THE CUSTOMERS TO WHOM THE FRANCHISEE MAY SELL GOODS OR SERVICES.

Item 16 Instructions:

- i. Describe the franchisee’s obligation to sell only goods and services approved by the franchisor.
- ii. Disclose any franchisee obligation to sell all goods and services authorized by the franchisor. Disclose whether the franchisor has the right to change the types of authorized goods and services and whether there are limits on the franchisor’s right to make changes.
- iii. If the franchisee is restricted regarding customers, disclose the restrictions.
- iv. The applicant may cross reference disclosures made in Items 8, 9, and 12.
- v. Use Sample Answer 16-1 for a negative response.

Sample Answer 16-1

Belmont does not restrict the type of goods or services that you may offer.

Sample Answer 16-2

Belmont requires you to offer and sell only those goods and services that Belmont has approved (see Item 9).

You must offer all goods and services that Belmont designates as required for all franchisees. These required services are muffler inspection, repair and replacement. Parts, supplies, and equipment used in your Belmont Muffler business must be approved by Belmont (see Item 8).

Belmont has the right to add additional authorized services that the franchisee is required to offer. There are no limits on Belmont's right to do so except that the investment required of a franchisee (for equipment, supplies and initial inventory) will not exceed \$5,000 per year.

Belmont also designates some services as optional for qualified franchisees. Current optional services are brake inspection, repair and replacement, tire rotation, wheel balancing, and alignment and rustproofing. To offer optional goods or services, you must be in substantial compliance with all material obligations under your Franchise Agreement. In addition, Belmont may require you to comply with other requirements (such as training, marketing, insurance) before Belmont will allow you to offer certain optional services.

As long as you meet your annual agreed sales quotas (see Item 12), Belmont will not restrict you from soliciting any customers, no matter who they are or where they are located. If you do not meet your annual sales quota, Belmont may deny you the right to receive any further fleet business referrals from Belmont and may either keep the fleet business referrals for itself or give them to another franchisee. Failure to meet your annual sales quota is a default under your Franchise Agreement and grounds for termination of your franchise (see Item 17).

Item 17

RENEWAL, TERMINATION, TRANSFER AND DISPUTE RESOLUTION

SUMMARIZE THE PROVISIONS OF THE FRANCHISE AND OTHER AGREEMENTS DEALING WITH TERMINATION, RENEWAL, TRANSFER, DISPUTE RESOLUTION AND OTHER IMPORTANT ASPECTS OF THE FRANCHISE RELATIONSHIP.

Item 17 Instructions:

- i. Begin Item 17 disclosure with the following statement:

This table lists certain important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

- ii. Respond in tabular form. Refer to the section of the agreement which covers each subject.
 - iii. Use a separate table for any other significant franchise-related agreement. If a provision in any other agreement affects the provisions of the franchise or franchise-related agreements disclosed in this Item (for example, the term of the franchise will be equal to the term of the lease), disclose that provision in the applicable category in the table.
 - iv. The table should contain a “summary” column to summarize briefly the disclosed provision. The summary is intended to provide a concise overview of the provision in no more than a few words or a sentence. Do not specify in detail all matters covered by a provision.
 - v. The table should respond to each category listed below. Do not change the names of the categories. List all contractual provisions relevant to each category in the table. If the response to any category is that the agreement does not contain the relevant provision, the table should so state. If the agreement is silent concerning a category but the franchisor unilaterally offers to provide certain benefits or protections to franchisees as a matter of policy, a footnote should describe this policy and state whether the policy is subject to change. The categories are:
 - a. Length of the term of the franchise
 - b. Renewal or extension of the term
 - c. Requirements for franchisee to renew or extend
 - d. Termination by franchisee
 - e. Termination by franchisor without cause
 - f. Termination by franchisor with “cause”
 - g. “Cause” defined - curable defaults
 - h. “Cause” defined - defaults which cannot be cured
 - i. Franchisee’s obligations on termination/non-renewal
 - j. Assignment of contract by franchisor
 - k. “Transfer” by franchisee - denied
 - l. Franchisor approval of transfer by franchisee
 - m. Conditions for franchisor approval of transfer
 - n. Franchisor’s right of first refusal to acquire franchisee’s business
 - o. Franchisor’s option to purchase franchisee’s business
 - p. Death or disability of franchisee
 - q. Non-competition covenants during the term of the franchise
 - r. Non-competition covenants after the franchise is terminated or expires
 - s. Modification of the agreement
 - t. Integration/merger clause
 - u. Dispute resolution by arbitration or mediation
 - v. Choice of forum
 - w. Choice of law
-
-

Sample Answer 17

This table lists important provisions of the franchise and related agreements. You should read these provisions in the agreements attached to this offering circular.

Provision	Section in Franchise Agreement	Summary
a. Term of the franchise	Section 1 (also Section 1 of Lease, Exhibit F)	Term is equal to lease Term - 10 years
b. Renewal or extension	Section 20	If you are in good standing you can add additional term equal to renewal term of lease (10 years max.)
c. Requirements for you to renew or extend	Section 20	Sign new agreement, pay fee, remodel and sign release
d. Termination by you	None	
e. Termination by Belmont without cause	None	
f. Termination by Belmont with cause	Section 21	Belmont can terminate only if franchisee defaults
g. "Cause" defined - defaults which can be cured	Section 21B	You have 30 days to cure: non-payment of fees, sanitation problems, non-submission of reports and any other default not listed in Sec. 21A
h. "Cause" defined - defaults which cannot be cured	Section 22	Noncurable defaults: conviction of felony, repeated defaults even if cured, abandonment, trademark misuse and unapproved transfers

Provision	Section in Franchise Agreement	Summary
i. Your obligations on termination/nonrenewal	Section 22	Obligations include complete identification and payment of amounts due (also see r, below)
j. Assignment of contract by Belmont	Section 18	No restriction on Belmont's right to assign
k. "Transfer" by you - definition	Section 19A	Includes transfer of contract or assets or ownership change
l. Belmont's approval of transfer by franchisee	Section 19B	Belmont has the right to approve all transfers but will not unreasonably withhold approval
m. Conditions for Belmont approval of transfer	Section 19C	New franchisee qualifies, transfer fee is paid, purchase agreement approved, training arranged, release signed by you and current agreement signed by new franchisee (also see r, below)
n. Belmont's right of first refusal to acquire your business	Section 19F	Belmont can match any offer for the franchisee's business
o. Belmont's option to purchase your business	None, but see policy described in Note 1	
p. Your death or disability	Section 19D	Franchise must be assigned by estate to approved buyer in 6 months
q. Non-competition covenants during the term of the franchise	Section 11	No involvement in competing business anywhere in U.S.

Provision	Section in Franchise Agreement	Summary
r. Non-competition covenants after the franchise is terminated or expires	Section 19C and 22C	No competing business for 2 years within 20 miles of another Belmont franchise (including after assignment)
s. Modification of the agreement	Section 8A	No modifications generally but Operating Manual subject to change
t. Integration/merger clause	Section 29	Only the terms of the franchise agreement are binding (subject to state law). Any other promises may not be enforceable
u. Dispute resolution by arbitration or mediation	Section 24	Except for certain claims, all disputes must be arbitrated in (state)
v. Choice of forum	Section 27	Litigation must be in (state)
w. Choice of law	Section 28	(state) law applies

Note:

(1) Franchisor is not obligated by the Agreement to do so, but, if the franchise is terminated, franchisor's policy is to buy back inventory at fair market value. This policy is subject to change at any time.

These states have statutes which may supersede the franchise agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise: ARKANSAS (Stat. Section 70-807), CALIFORNIA (Bus. & Prof. Code Sections 20000-20043), CONNECTICUT (Gen. Stat. Section 42-133e et seq.), DELAWARE (Code, Tit.), HAWAII (Rev. Stat. Section 482E-1), ILLINOIS [815 Compiled Stat. 705/19 and 20], INDIANA (Stat. Section 23-2-2.7), IOWA (Code Sections 523H.1-523H.17), MICHIGAN (Stat. Section 19.854(27)), MINNESOTA (Stat. Section 80C.14), MISSISSIPPI (Code Section 75-24-51), MISSOURI (Stat. Section 407.400), NEBRASKA (Rev. Stat. Section 87-401), NEW JERSEY (Stat. Section 56:10-1), SOUTH DAKOTA (Codified Laws Section 37-5A-51), VIRGINIA (Code

13.1-557-574-13.1-564), WASHINGTON (Code Section 19.100.180), WISCONSIN (Stat. Section 135.03). These and other states may have court decisions which may supersede the Franchise Agreement in your relationship with the franchisor including the areas of termination and renewal of your franchise.

Item 18

PUBLIC FIGURES

DISCLOSE THE FOLLOWING:

A. COMPENSATION OR OTHER BENEFIT GIVEN OR PROMISED TO A PUBLIC FIGURE ARISING FROM:

- (1) THE USE OF THE PUBLIC FIGURE IN THE FRANCHISE NAME OR SYMBOL OR
- (2) THE ENDORSEMENT OR RECOMMENDATION OF THE FRANCHISE TO PROSPECTIVE FRANCHISEES.

B. THE EXTENT TO WHICH THE PUBLIC FIGURE IS INVOLVED IN THE ACTUAL MANAGEMENT OR CONTROL OF THE FRANCHISOR.

C. THE TOTAL INVESTMENT OF THE PUBLIC FIGURE IN THE FRANCHISOR.

Item 18 Instructions:

- i. A “public figure” is a person whose name or physical appearance is generally known to the public in the geographic area where the franchise will be located.
- ii. Disclose the compensation paid or promised for the endorsement or use of the name of the public figure.
- iii. Describe the public figure’s position and duties in the franchisor’s business structure.
- iv. State the amount of the public figure’s investment. Describe the extent of the amount contributed in services performed or to be performed. State the type of investment (for example, common stock, promissory note).
- v. Use Sample Answer 18-1 for a negative response.

Sample Answer 18-1

Belmont does not use any public figure to promote its franchise.

Sample Answer 18-2

Belmont has paid Ralph Doister \$50,000 for the use of his name in promoting the sale of our franchise. The right expires December 31, 1992. Belmont has produced newspaper ads, a brochure and a video which feature Mr. Doister. Mr. Doister does not manage or own an interest in Belmont.

Item 19

EARNINGS CLAIMS

A. AN EARNINGS CLAIM MADE IN CONNECTION WITH AN OFFER OF A FRANCHISE MUST BE INCLUDED IN FULL IN THE OFFERING CIRCULAR AND MUST HAVE A REASONABLE BASIS AT THE TIME IT IS MADE. IF NO EARNINGS CLAIM IS MADE, ITEM 19 OF THE OFFERING CIRCULAR MUST CONTAIN THE NEGATIVE DISCLOSURE PRESCRIBED IN THE INSTRUCTION.

Item 19A Instructions:

- i. Definition: "Earnings claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level or range of actual or potential sales, costs, income or profit from franchised or non-franchised units may be easily ascertained.

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) is an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

- ii. Supplemental earnings claim: If a franchisor has made an earnings claim in accordance with this Item 19, the franchisor may deliver to a prospective franchisee a supplemental earnings claim directed to a particular location or circumstance, apart from the offering circular. The supplemental earnings claim must be in writing, explain the departure from the earnings claim in the offering circular, be prepared in accordance with this Item 19, and be left with the prospective franchisee.
- iii. Scope of requirement: An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this Item 19. If an earnings claim is not made, then negative disclosure 19 (below) must be used.
- iv. Claims regarding future performance: A statement or prediction of future performance that is prepared as a forecast or projection in accordance with the statement on standards for accountants' services on prospective financial information (or its successor) issued by

the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.

- v. Burden of proof: The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.

(NEGATIVE DISCLOSURE 19)
REPRESENTATIONS REGARDING EARNINGS CAPABILITY

Belmont does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of (a Belmont muffler shop). Actual results vary from unit to unit and Belmont cannot estimate the results of any particular franchise.

B. AN EARNINGS CLAIM SHALL INCLUDE A DESCRIPTION OF ITS FACTUAL BASIS AND THE MATERIAL ASSUMPTIONS UNDERLYING ITS PREPARATION AND PRESENTATION.

Item 19B Instructions:

- i. Factual Basis: The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend. This includes, for example, economic or market conditions which are basic to a franchisee's operation and encompass matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor or franchisees of that person; provided that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

- ii. Basic Disclosures: The earnings claim must state:
 - a. Material assumptions, other than matters of common knowledge, underlying the claim (see Definition iii under Item 3 for the definition of "material");
 - b. A concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;
 - c. A conspicuous admonition that a new franchisee's individual financial results are likely to differ from the result stated in the earnings claim; and
 - d. A statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.

Item 20

LIST OF OUTLETS

A. THE NUMBER OF FRANCHISES OF A TYPE SUBSTANTIALLY SIMILAR TO THOSE OFFERED AND THE NUMBER OF FRANCHISOR OWNED OR OPERATED OUTLETS AS OF THE CLOSE OF EACH OF THE FRANCHISOR'S LAST 3 FISCAL YEARS. SEGREGATE FRANCHISES THAT ARE OPERATIONAL FROM FRANCHISES NOT YET OPERATIONAL. SEGREGATE DISCLOSURE BY STATE. TOTAL EACH CATEGORY.

B. THE NAMES OF ALL FRANCHISEES AND THE ADDRESSES AND TELEPHONE NUMBERS OF ALL OF THEIR OUTLETS. THE FRANCHISOR MAY LIMIT ITS DISCLOSURE TO ALL FRANCHISEE OUTLETS IN THE STATE, BUT IF THESE FRANCHISEE OUTLETS TOTAL FEWER THAN 100, DISCLOSE FRANCHISEE OUTLETS FROM ALL CONTIGUOUS STATES AND THEN THE NEXT CLOSEST STATE(S) UNTIL AT LEAST 100 FRANCHISEE OUTLETS ARE LISTED.

C. THE ESTIMATED NUMBER OF FRANCHISES TO BE SOLD DURING THE 1 YEAR PERIOD AFTER THE CLOSE OF THE FRANCHISOR'S MOST RECENT FISCAL YEAR.

D. THE NUMBER OF FRANCHISEE OUTLETS IN THE FOLLOWING CATEGORIES THAT, FOR THE 3-YEAR PERIOD IMMEDIATELY BEFORE THE CLOSE OF FRANCHISOR'S MOST RECENT FISCAL YEAR, HAVE:

- (1) Transferred controlling ownership;
- (2) Been canceled or terminated by the franchisor;
- (3) Not been renewed by the franchisor;
- (4) Been reacquired by the franchisor; or
- (5) Been reasonably known by the franchisor to have otherwise ceased to do business in the system.

E. THE NAME AND LAST KNOWN HOME ADDRESS AND TELEPHONE NUMBER OF EVERY FRANCHISEE WHO HAS HAD AN OUTLET TERMINATED, CANCELED, NOT RENEWED, OR OTHERWISE VOLUNTARILY OR INVOLUNTARILY CEASED TO DO BUSINESS UNDER THE FRANCHISE AGREEMENT DURING THE MOST RECENTLY COMPLETED FISCAL YEAR OR WHO HAS NOT COMMUNICATED WITH THE FRANCHISOR WITHIN 10 WEEKS OF THE APPLICATION DATE.

Item 20 Instructions:

- i. Do not include a transfer when beneficial ownership of the franchise does not change.
- ii. List an outlet that is reacquired by the franchisor in that column whether or not it also fits another category.
- iii. Other than the franchisee names, addresses, and telephone numbers, disclose Item 20

information in tabular form. Use footnotes or a “remarks” column to elaborate on information in the table or to disclose caveats. Disclose the number of franchised and franchisor owned outlets sold, opened and closed. Disclose the total number of franchised and franchisor owned outlets open at the end of each year. Disclose information for each of the last 3 fiscal years.

- iv. If an outlet has been operated by more than one franchisee, disclose each transfer in the transfer column.
- v. Disclose information about franchisor owned outlets that are substantially similar to the franchised outlets. In this Item “franchisor owned” outlets include outlets owned by the franchisor and by its affiliates. Use a separate table with a format similar to the format for franchised outlets. The same table may be used if the franchisor owned outlets are separated from franchised outlets.
- vi. For franchisees operating within the system disclose franchisee business addresses and telephone numbers. List outlets owned by the persons listed in Item 2 and their immediate families or by business entities owned by them as franchisor owned outlets. These outlets can be identified in the table by an asterisk.
- vii. Separate information by state. List all states for which franchisor has information responsive to this Item.
- viii. When the requirement states “most recent fiscal year,” the franchisor may use a more recent date if it discloses that date and uses that date for all disclosures in this Item.
- ix. When the requirement states “most recent fiscal year,” the state may require a more recent date.

Sample Answer 20

FRANCHISED STORE STATUS SUMMARY FOR YEARS 1992/1991/1990							
State	Transfers	Canceled or Terminated	Not Renewed	Reacquired by Franchisor	Left the System Other	Total from left columns (2)	Franchises operating at year end
Alaska							2/0/0
Arizona	2/1/0					2/1/0	8/6/2
Arkansas							6/4/2
California					1/1/0	1/1/0	4/0/0
Colorado							3/3/3
Connecticut							5/3/1
Delaware		1/0/0				1/0/0	6/4/0
Florida							2/0/0
Georgia							2/0/0

Idaho							2/0/0
Totals	2/1/0	1/0/0	0/0/0	0/0/0	1/1/0	4/2/0	40/20/8

Notes:

- (1) All numbers are as of December 31 for each year.
- (2) The numbers in the "Total" column may exceed the number of stores affected because several events may have affected the same store. For example, the same store may have had multiple owners.

STATUS OF COMPANY OWNED STORES
FOR YEARS 1992/1991/1990

<u>STATE</u>	<u>STORES CLOSED DURING YEAR</u>	<u>STORES OPENED DURING YEAR</u>	<u>TOTAL STORES OPERATING AT YEAR END</u>
Alaska			
Arizona			
Arkansas			
California			
Colorado			
Connecticut			
Delaware			
Florida			
Georgia			
Idaho			
Totals	0/0/0	0/0/0	0/0/0

Note: Belmont no longer operates company owned stores.

PROJECTED OPENINGS
AS OF DECEMBER 31, 1992

<u>STATE</u>	<u>FRANCHISE AGREEMENT SIGNED BUT STORE NOT OPEN (1)</u>	<u>PROJECTED FRANCHISED NEW STORES IN THE NEXT FISCAL YEAR</u>	<u>PROJECTED COMPANY OWNED OPENINGS IN NEXT FISCAL YEAR YEAR</u>
Alaska	1	1	
Arizona			

Arkansas				
California				
Colorado				
Connecticut		2		
Delaware				
Florida				
Georgia				
Idaho	1			
Totals	<hr/>	<hr/>	<hr/>	0

Note: (1) As of December 31, 1992

Item 21

FINANCIAL STATEMENTS

PREPARE FINANCIAL STATEMENTS IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES. THESE FINANCIAL STATEMENTS MUST BE AUDITED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UNAUDITED STATEMENTS MAY BE USED FOR INTERIM PERIODS. INCLUDE THE FOLLOWING FINANCIAL STATEMENTS:

A. THE FRANCHISOR’S BALANCE SHEETS FOR THE LAST TWO FISCAL YEAR ENDS BEFORE THE APPLICATION DATE. IN ADDITION, INCLUDE STATEMENTS OF OPERATIONS, OF STOCKHOLDERS EQUITY AND OF CASH FLOWS FOR EACH OF THE FRANCHISOR’S LAST THREE FISCAL YEARS. IF THE MOST RECENT BALANCE SHEET AND STATEMENT OF OPERATIONS ARE AS OF A DATE MORE THAN 90 DAYS BEFORE THE APPLICATION DATE, THEN ALSO SUBMIT AN UNAUDITED BALANCE SHEET AND STATEMENT OF OPERATIONS AS OF A DATE WITHIN 90 DAYS OF THE APPLICATION DATE.

B. AFFILIATED COMPANY STATEMENTS. INSTEAD OF THE DISCLOSURE REQUIRED BY ITEM 21A, THE FRANCHISOR MAY INCLUDE FINANCIAL STATEMENTS OF ITS AFFILIATED COMPANY IF THE AFFILIATED COMPANY’S FINANCIAL STATEMENTS SATISFY ITEM 21A AND THE AFFILIATED COMPANY ABSOLUTELY AND UNCONDITIONALLY GUARANTEES TO ASSUME THE DUTIES AND OBLIGATIONS OF THE FRANCHISOR UNDER THE FRANCHISE AGREEMENT.C. CONSOLIDATED AND SEPARATE STATEMENTS:

- (1) When a franchisor owns a direct or beneficial, controlling financial interest in another corporation, its financial statements should reflect the financial condition of the franchisor and its subsidiaries.
- (2) If the applicant is a subfranchisor include separate financial statements for the franchisor and subfranchisor related entity.
- (3) Prepare consolidated and separate financial statements in accordance with generally accepted accounting principles.

Item 21 Instructions:

- i. States may require financial statements additional to those listed in this Item.
- ii. A company controlling 80% or more of a franchisor may be required to include its financial statements.
- iii. Present required financials in a format of columns which compare at least 2 fiscal years.
- iv. In Item 21A, the required financial statements for a franchisor with a calendar fiscal year end and a July 15, 1989 application filing date are:
 - a. Unaudited balance sheet as of either April 30, May 31 or June 30, 1989 with an unaudited income statement for the period from January 1, 1989 to the date of the balance sheet;
 - b. Balance sheets, statements of operations, of stockholders equity and of cash flow. The balance sheets should be audited and as of December 31, 1987 and 1988. The remaining statements should be audited and should be for periods ending December 31, 1986, 1987 and 1988; and
 - c. If the franchisor has never had an audit, it need not supply the financial statement required by (b) if it supplies either an audit as of its last fiscal year end or the statements required by (a) in an audited form.
- v. In the Item 21B response, the affiliate's guarantee need cover only the franchisor's obligations to the franchisee. The guarantee need not extend to third parties. A sample guarantee is on page in Exhibit_____.
- vi. In the Item 21B response the filing state may permit a surety bond instead of the parent company's guarantee.
- vii. Disclose the existence of a guarantee.

Item 22

CONTRACTS

ATTACH A COPY OF ALL AGREEMENTS PROPOSED FOR USE OR IN USE IN THIS STATE REGARDING THE OFFERING OF A FRANCHISE, INCLUDING THE FRANCHISE AGREEMENT, LEASES, OPTIONS AND PURCHASE AGREEMENTS.

Item 22 Instructions:

- i. Copies of agreements attached to the offering circular under Item 22 are part of the offering circular. Each offering circular delivered to a prospective franchisee must include copies of all agreements to be offered.
- ii. The franchisor may cross reference Item 10 for financing agreements.

Item 23

RECEIPT

THE LAST PAGE OF THE OFFERING CIRCULAR IS A DETACHABLE DOCUMENT ACKNOWLEDGING RECEIPT OF THE OFFERING CIRCULAR BY THE PROSPECTIVE FRANCHISEE. IT MUST CONTAIN THE FOLLOWING STATEMENT IN BOLDFACE TYPE:

THIS OFFERING CIRCULAR SUMMARIZES CERTAIN PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF _____ OFFERS YOU A FRANCHISE, _____ MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR**
- (2) FOURTEEN DAYS BEFORE THE SIGNING OF A BINDING AGREEMENT; OR**
- (3) FOURTEEN DAYS BEFORE A PAYMENT TO _____ .**

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN A FRANCHISE AGREEMENT.

IF _____ DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND THE ILLINOIS ATTORNEY GENERAL'S OFFICE, 500

SOUTH SECOND STREET, SPRINGFIELD, ILLINOIS 62706. (Any additional state disclosure time or required statutory language.)

Item 23 Instructions:

- i. Place the name of the franchisor in the blank.
- ii. Make two copies of the Receipt: one for retention by the franchisee and one by the franchisor.
- iii. Disclose the name, principal business address and telephone number of the subfranchisor or franchise broker offering the franchise in this State.
- iv. List the title of all attached exhibits.
- v. Effective Date: (Leave blank until notified of effectiveness by State regulatory authority.).

- vi. The name and address of the franchisor's registered agent authorized to receive service of process if not disclosed in Item 1.
-
-

Sample Answer 23

RECEIPT

THIS OFFERING CIRCULAR SUMMARIZES PROVISIONS OF THE FRANCHISE AGREEMENT AND OTHER INFORMATION IN PLAIN LANGUAGE. READ THIS OFFERING CIRCULAR AND ALL AGREEMENTS CAREFULLY.

IF BELMONT OFFERS YOU A FRANCHISE, BELMONT MUST PROVIDE THIS OFFERING CIRCULAR TO YOU BY THE EARLIEST OF:

- (1) THE FIRST PERSONAL MEETING TO DISCUSS OUR FRANCHISE; OR**
- (2) FOURTEEN DAYS BEFORE SIGNING OF A BINDING AGREEMENT; OR**
- (3) FOURTEEN DAYS BEFORE ANY PAYMENT TO BELMONT.**

YOU MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS BEFORE YOU SIGN ANY FRANCHISE AGREEMENT.

IF BELMONT DOES NOT DELIVER THIS OFFERING CIRCULAR ON TIME OR IF IT CONTAINS A FALSE OR MISLEADING STATEMENT, OR A MATERIAL OMISSION, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (STATE AGENCY).

Belmont authorizes Legal Process Corp at 448 West Washington Avenue, City, State to receive service of process for Belmont. I have received a Uniform Franchise Offering Circular dated _____. This offering circular included the following Exhibits:

- A. License Agreement
- B. Equipment Lease
- C. Lease for Premises
- D. Loan Agreement

Date

Franchisee

§200. APPENDIX B Franchise Broker Registration Forms

**FRANCHISE BROKER REGISTRATION APPLICATION PAGE
Appendix B--Illustration A**

File No. _____
(Insert file number of previous
filings of Applicant, if any)

FEE: _____
(To be enclosed by Applicant at
time application is initially filed)

Date of Application: _____

1. Name of Franchise Broker.

Name under which the Franchise Broker is doing or intends to do business.

2. Franchise Broker's principal business address.

Name and address of Franchise Broker's agent in the State of Illinois authorized
to receive process.

Illinois Attorney General,
500 South Second Street,
Springfield, Illinois 62706

3. Name, address and telephone number of person to whom communications
regarding this application should be directed.

**BROKER AUTHORIZATION
Appendix B--Illustration B**

To Whom It May Concern:

_____ (“Broker”) is hereby authorized to act as Franchise
Broker and sell franchises on behalf of our company.

(Check one of the Following)

_____ A. Broker shall not accept payment from any Illinois franchisee in its
own name, but shall only accept checks payable to our company and
shall forward said checks and applications to us within _____ days
after receipt of same.

_____ B. Broker shall accept payment from franchisees in its own name.

_____ C. Broker is not authorized to accept cash, checks or other payments
from prospective franchisees on behalf of our company.

Franchisor _____

By: _____

Title: _____

FRANCHISE BROKER SURETY BOND
Appendix B--Illustration C

We, _____ (broker name), a corporation, with principal offices at _____ (broker address), as principal, and _____ (name of Surety), with principal offices at _____ (Surety address), a Surety Company incorporated under the laws of the State of _____ and authorized to conduct business in the State of Illinois as Surety, are bound to the Illinois Attorney General, Obligee in the sum of _____ to be paid to the Obligee or its legal representatives, successors, or assigns, for which payment we bind ourselves and our legal representatives and successors, jointly and severally.

WHEREAS, the above-named principal has made application to the Illinois Attorney General for registration as a franchise broker under the Illinois Franchise Disclosure Act [815 ILCS 705] and is required pursuant to the Rules and Regulations promulgated under the Illinois Franchise Disclosure Act to post bond in the amount of _____.

WHEREAS, the Obligee intends to assign this bond to the respective purchaser(s) of the aforementioned franchise upon sale of the aforementioned franchise(s) to said purchaser(s).

THEREFORE, the condition of this obligation is that the principal:

1. Comply with the Illinois Franchise Disclosure Act and Regulations promulgated thereunder; and
2. Pay all damages suffered by any person by reason of the Broker's violation of said Illinois Franchise Disclosure Act or any Rules or Regulations promulgated thereunder or any acts, rules, regulations, or orders amendatory thereof, and/or supplementary thereto, or hereafter enacted, or by reason of any misrepresentation, deceit, fraud or omission to state a material fact necessary in order to make any statement made, in the light of the circumstances under which such statement was made, not misleading.

This bond and obligation hereunder shall be deemed to run continuously and shall remain in full force and effect for four full years after the date of execution shown below.

In the event that any action or proceeding is initiated with respect to this bond, the parties agree that the venue thereof shall be the County in which the offer or sale of the franchise occurred.

IN WITNESS WHEREOF, Principal and Surety have executed this instrument at _____ this _____ day of _____, _____.

Principal

Surety

BROKER GUARANTY OF PERFORMANCE
Appendix B--Illustration D

For value received _____ (name of guarantor), located at _____ (address), absolutely and unconditionally guarantees the performance by broker, _____ (name of broker), of all obligations under the Illinois Franchise Disclosure Act and Rules, incurred in the sale of franchises in the State of _____ and any underlying contractual responsibilities resulting from the sale of franchises occurring after this date with franchisees under the jurisdiction of the Illinois Franchise Disclosure Act, as the same have been or may hereafter be amended, modified, renewed or extended from time to time. This guaranty shall continue in force until all such obligations of broker shall have been satisfied or until such liability of broker to such franchisees has been completely discharged, whichever first occurs. Guarantor shall not be discharged from liability hereunder as long as any such claim by a franchisee against broker remains outstanding. Notice of acceptance is waived. Notice of default on the part of broker is not waived. This guaranty shall be binding upon guarantor, its successors and assigns.

In witness whereof, guarantor has, by a duly authorized officer, executed this guarantee at _____, this _____ day of _____, _____.

ATTEST

Guarantor

By: _____

Title: _____

§200.APPENDIX C ESCROW FORMS

ESCROW AGREEMENT
Appendix C--Illustration A

Agreement, made this _____ day of _____, _____ by _____ (name of franchisor), a _____ (type of business entity) organized under the laws of the State of _____ (hereinafter referred to as "Franchisor"), and _____ hereinafter referred to as "BANK", as Escrowee for the franchisees of Franchisor;

WHEREAS, Franchisor is desirous of establishing franchises in the State of Illinois; and
WHEREAS, it is in the discretion of the Illinois Attorney General as administrator of the

Illinois Franchise Disclosure Act, to require an escrow of the franchise fees; and

WHEREAS, in order to conform to the procedures for arranging an escrow account, Franchisor desires to enter into an escrow agreement with BANK, pursuant to which initial franchise fees are to be held in escrow until Franchisor has met its initial obligations to its franchisees.

NOW THEREFORE, with the foregoing recitals hereinafter incorporated by reference and made a part hereof, it is agreed as follows:

1. Franchisor shall deposit with BANK initial franchise fees received from franchisees that are required to be escrowed under the order of the Administrator, but BANK shall not be responsible for insuring that any part or all moneys received by Franchisor from each or any one franchisee are deposited with BANK.

2. Franchisor will supply BANK with the name and address of each franchisee, together with the amount of the deposit which represents moneys paid by each franchisee and BANK will maintain records containing the same information.

3. All moneys received by BANK from Franchisor shall be held by BANK as escrowee for the exclusive purpose herein described and will be placed in a single segregated account designated substantially as follows:

_____ (Name of Bank), AS ESCROWEE FOR
FRANCHISES OF _____ (Name of Franchisor) (hereinafter
referred to as "Escrow Account.")

4. BANK shall accept such funds as Franchisor shall deliver to BANK, as escrowee, and BANK shall acknowledge the receipt of funds from Franchisor; however, BANK shall not be responsible for the accuracy of the information provided to it by Franchisor.

5. Any funds deposited hereunder in the Escrow Account shall be invested and kept invested by BANK, at the option of the Franchisor, in instruments of its choosing, until they are to be disbursed as provided in paragraph 6 hereof. All interest received and any increment thereon shall be added to the funds so deposited in the Escrow Account and shall be distributed as provided in paragraph 6.

6. BANK shall pay out funds, plus interest, if any, from the Escrow Account upon the occurrence of one of the following conditions:

- (a) Upon receipt of a letter from an officer of Franchisor directing BANK to pay out such funds to Franchisor, accompanied by a written notice from the Administrator stating that he takes no exception (hereinafter referred to as "No Exception Notice") to the release, BANK shall pay part or all of the moneys held in escrow for the benefit of a specified franchisee, plus interest, if any, to Franchisor.
- (b) Upon written notice from the Administrator BANK shall return part or all of the deposited franchise fee and other funds, plus interest, if any, to a specified franchisee.
- (c) BANK shall pay funds into court or disburse or deliver them in accordance with any final order of any court of competent jurisdiction.

BANK shall not be personally liable for any act taken or omitted by it in good faith and in the exercise of its own best judgment. BANK shall also be fully protected in relying upon any written notice, demand, certificate or document which it in good faith believes to be genuine.

7. BANK is authorized, in its sole discretion, to disregard any and all notices or instructions given by any of the undersigned or by any other person, firm or corporation, except only such notices or instructions by the Administrator as are hereinafter provided for and orders of process of any court entered or issued with or without jurisdiction. If any property subject hereto is at any time attached, garnished, or levied upon under any court order or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case of any court order affecting such property or any part thereof, then and in any of such events BANK is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel of its own choosing is binding upon it; if it complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person, firm or corporation by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

8. Written consent of BANK to act in the capacity of escrowee shall be manifested upon the duly authorized execution of this Agreement. The Administrator may, at any time, inspect the records of BANK, insofar as they relate to this Escrow Agreement. At the Administrator's discretion, statements indicating status of the escrow shall be furnished by BANK to the Administrator. An executed duplicate original of this Agreement shall be filed with the Administrator at Illinois Attorney General, Franchise Division, 500 South Second Street, Springfield, Illinois 62706.

9. BANK shall be paid by Franchisor for any expenses incurred by it and reasonable compensation for its services hereunder. Funds held by BANK pursuant to this Agreement shall not be subject to any liens or charges by BANK.

10. If BANK believes it to be reasonably necessary to consult with counsel concerning any of its duties in connection with this Agreement, or in the event BANK retains counsel upon becoming involved in litigation on account of any deposit or of this Agreement, Franchisor shall reimburse BANK for and indemnify and hold BANK harmless against any and all costs, attorney's fees, charges, disbursements and expenses in connection with such consultation or litigation.

11. Franchisor unconditionally guarantees that, in the event BANK misapplies, dissipates, converts or is otherwise responsible for a deficiency in the funds deposited in the Escrow Account through the exercise of less than a fiduciary standard of care, Franchisor shall reimburse each and every franchisee to the extent of such deficiency if such amounts deposited are required to be returned to such franchisee under paragraph 6(a) through (c) hereof.

12. Franchisor shall give each franchisee a copy of this Agreement prior to collecting any moneys from such franchisee.

13. BANK's duties as escrowee shall terminate upon final distribution of all moneys received under this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed, the parties intending to be legally bound hereby.

ATTEST:

Its Secretary

BANK _____

By: _____

Its: _____

FRANCHISOR _____

By: _____

Its: _____

FRANCHISOR'S PETITION FOR RELEASE OF ESCROWED FUNDS
Appendix C--Illustration B

_____)
_____)
_____)

IN THE MATTER OF:

FRANCHISOR: _____

FRANCHISEE: _____

BEFORE THE ATTORNEY GENERAL OF ILLINOIS
AS ADMINISTRATOR OF THE FRANCHISE DISCLOSURE ACT

The undersigned franchisor hereby requests the Administrator to authorize release from escrow the sum of \$ _____, plus accrued interest representing the franchise fee paid by _____ on the _____ day of _____, _____.

The undersigned franchisor hereby represents that it has fulfilled the initial obligations owed to the franchisee under the franchise and other agreements and that the franchisee has commenced doing business.

Escrowee Bank

Address of Bank

Phone Number of Bank

Subscribed and sworn to before me

this _____ day of _____, _____.

Notary Public

Franchisor

By: _____
Name and Title

Printed Name of Franchisee

Address of Franchisee

FRANCHISEE'S PETITION FOR RELEASE OF ESCROWED FUNDS

Appendix C--Illustration C

_____)
_____)
_____)

IN THE MATTER OF:

FRANCHISOR: _____

FRANCHISEE: _____

BEFORE THE ATTORNEY GENERAL OF ILLINOIS
AS ADMINISTRATOR FOR THE FRANCHISE DISCLOSURE ACT

The undersigned franchisee hereby requests the Administrator to authorize release from escrow the sum of \$ _____, plus accrued interest representing the franchise fee paid by me on the _____ day of _____, _____.

The undersigned franchisee hereby represents that the franchisor has not fulfilled the initial obligations owed to me under the franchise and other agreements and that I have not commenced doing business.

Franchisee Signature

Subscribed and sworn to before me
this _____ day of _____,
_____.

Printed Name of Franchisee

Address of Franchisee

Notary Public

§200.APPENDIX D GUARANTY FORMS

**GUARANTY OF PERFORMANCE
Appendix D--Illustration A**

For value received, _____ (name of guarantor), located at _____ (address), absolutely and unconditionally guarantees the performance by franchisor, _____ (name of franchisor), of all obligations under the Illinois Franchise Disclosure Act and Rules, and of all of the obligations of franchisor to furnish goods and/or services necessary to establish and open the business of franchisees to whom franchises are granted by franchisor pursuant to the registration of such franchises in the State of _____ and the terms and conditions of its franchise and other agreements entered into after this date with franchisees under the jurisdiction of the Illinois Franchise Disclosure Act, as the same have been or may hereafter be amended, modified, renewed or extended from time to time. This guaranty shall continue in force until all such obligations of franchisor shall have been satisfied or until such liability of franchisor to such franchisees has been completely discharged, whichever first occurs. Guarantor shall not be discharged from liability hereunder as long as any such claim by a franchisee against franchisor remains outstanding. Notice of acceptance is waived. Notice of default on the part of franchisor is not waived. This guaranty shall be binding upon guarantor, its successors and assigns.

In witness whereof, guarantor has, by a duly authorized officer, executed this guarantee at _____, this _____ day of _____, _____.

ATTEST:

Guarantor

By _____

Title _____

CORPORATE RESOLUTION
Appendix D--Illustration B

RESOLVED, that it is desirable and in the best interest of this Corporation that the franchisor be authorized to offer and sell franchises in the State of Illinois; that the President, any Vice-President, the Secretary, or any Assistant Secretary are hereby authorized to execute on behalf of this Corporation any Guaranty of Performance of all of the duties and obligations of franchisor under the Illinois Franchise Disclosure Act and Rules, and obligations to furnish goods and/or services necessary to establish and open the business of franchisees to whom franchises are granted by franchisor pursuant to the registration of such franchises in the State of Illinois, and the terms and conditions of its franchise and other agreements entered into with franchisees under the jurisdiction of the Illinois Franchise Disclosure Act, as the same have been or may hereafter be amended, modified, renewed, or extended from time to time; and that the execution of previous such Guarantees of Performance of franchisor by any of the aforesaid officers is hereby ratified and approved.

SECRETARY'S CERTIFICATE
Appendix D-- Illustration C

The undersigned hereby certifies that the undersigned is the _____ Secretary of _____ (name of guarantor), a corporation organized and existing under the laws of the State of _____, that the foregoing is a true and correct copy of the resolution duly adopted at a meeting of the Board of Directors of said corporation held on the _____ day of _____, _____, at which meeting a quorum was at all times present and acting; that the passage of said resolution was in all respects legal; and that said resolution is in full force and effect.

Dated this _____ day of _____, _____.

Secretary

(Corporate Seal)

§200.APPENDIX E SURETY BOND

We, _____ (name of franchisor), a corporation ; with principal offices at _____ (address of franchisor), as principal, and _____ (name of surety company) , a surety company with principal offices located at _____ (address of Surety) incorporated under the laws of the State of _____ and authorized to conduct business in the State of Illinois, as Surety, are indebted to the Administrator, Illinois Attorney General, 500 South Second Street, Springfield, Illinois 62706, Obligee in the sum of _____ to be paid to the Obligee or its legal representatives, successors, or assigns, for which payment we bind ourselves and our legal representatives and successors, jointly and severally.

WHEREAS, the above-named principal has made application to the Administrator for registration of the offer of its franchises under the Illinois Franchise Disclosure Act and is required pursuant to said law to provide the Administrator with a Surety Bond.

WHEREAS, the Principal proposes to offer in Illinois _____ franchise(s) within one year from the effective date of the proposed registration under the Illinois Franchise Disclosure Act; and

WHEREAS, the Obligee intends to assign this bond to the respective purchaser(s) of the aforementioned franchise(s) upon sale of the aforementioned franchise(s) to said purchaser(s).

The conditions of this bond are that if the Principal, its agent or employees shall:

1. Comply with the Illinois Franchise Disclosure Act and all rules and orders promulgated thereunder; and
2. Pay all damages suffered by any person by reason of the violation of the Illinois Franchise Disclosure Act or any rules or orders promulgated thereunder or any acts, rules or orders amendatory thereof and/or supplementary thereto, or hereafter enacted, or by reason of any misrepresentation, deceit, fraud or omission to state a material fact necessary in order to make any statement made in the light of the circumstances under which such statement was made, not misleading, including, but not limited to, the failure to disclose, as required by Illinois Franchise Disclosure Act and the rules and regulations promulgated thereunder, the true financial condition of franchisor; and
3. Fully completes its obligations under the Franchise Agreement and all related Agreements to provide real estate, improvements, equipment, inventory, training and other items included in the franchise offering, then this obligation shall be void; otherwise this obligation will remain in full force and effect.

This bond and obligation hereunder shall be deemed to run continuously and shall remain in full force and effect for four full year after the date of execution of this document.

In the event that any action or proceeding is initiated with respect to this bond, the parties agree that the venue thereof shall be the state or province in which the offer or sale of the franchise occurred.

IN WITNESS WHEREOF, Principal and Surety have executed this instrument at _____ this _____ day of _____, _____ .

Principal

Surety

§200.APPENDIX F CERTIFICATE OF DEPOSIT FORMS

FRANCHISOR'S PETITION FOR RELEASE OF CERTIFICATE OF DEPOSIT
Appendix F-- Illustration A

_____)
_____)
_____)

IN THE MATTER OF:

FRANCHISOR: _____

FRANCHISEE: _____

BEFORE THE ATTORNEY GENERAL OF ILLINOIS
AS ADMINISTRATOR FOR THE FRANCHISE DISCLOSURE ACT

The undersigned franchisor hereby requests the Administrator to authorize release of the Certificate of Deposit in the name of the Administrator in the sum of \$_____, plus accrued interest representing the franchise fee paid by _____ on the _____ day of _____, _____.

The undersigned franchisor hereby represents that it has fulfilled the initial obligations owed to the franchisee under the franchise and other agreements and that the franchisee has commenced doing business. In furtherance of this request, the undersigned franchisor submits the franchisee's statement indicating the franchisee has no objection to this request. By this statement the franchisee has not waived any rights which he may have against the undersigned franchisor.

Franchisor

By: _____
Name and Title

Subscribe and sworn to before me
this _____ day of _____, _____.

Printed Name of Franchisee

Notary Public

Address of Franchisee

FRANCHISEE'S PETITION FOR RELEASE OF CERTIFICATE OF DEPOSIT
Appendix F--Illustration B

_____)
_____)
_____)

IN THE MATTER OF:
FRANCHISOR: _____
FRANCHISEE: _____

BEFORE THE ATTORNEY GENERAL OF ILLINOIS
AS ADMINISTRATOR FOR THE FRANCHISE DISCLOSURE ACT

The undersigned franchisee hereby requests the Administrator to authorize the release of the Certificate of Deposit issued in the name of the Administrator in the sum of \$ _____, plus accrued interest representing the franchisee fee paid by me on the _____ day of _____, _____.

The undersigned franchisee hereby represents that the franchisor has not fulfilled the initial obligations owed to me under the franchise and other agreements and that I have not commenced doing business.

In furtherance of this request, the undersigned franchisor submits the franchisee's statement indicating that it has no objection to this request.

Signature

Printed Name of Franchisee

Address of Franchisee

Subscribed and sworn to before me
this _____ day of _____, _____.

Notary Public

THE FOLLOWING IS AN EDITED VERSION OF WHAT CONSTITUTES AN ILLINOIS BUSINESS OPPORTUNITY EFFECTIVE 1/1/96. YOU MUST READ THE BUSINESS OPPORTUNITY SALES LAW TO FULLY UNDERSTAND YOUR RIGHTS AND OBLIGATIONS. THIS INFORMATION IS PROVIDED TO REMIND YOU THAT, IF A BUSINESS RELATIONSHIP IS NOT A FRANCHISE, IT MAY BE COVERED BY THIS ACT. DISCUSS THE FRANCHISE AND BUSINESS OPPORTUNITY LAWS AND OTHER LAWS AFFECTING YOUR CHOSEN BUSINESS WITH YOUR ATTORNEY BEFORE PURCHASING A BUSINESS SYSTEM.

Copies available: Illinois Secretary of State
Securities Division
Lincoln Tower, Suite 200
520 South Second Street
Springfield, Illinois 62701

BUSINESS OPPORTUNITY
[815 ILCS 602 §5-5.10(a) of the Business Opportunity Sales Law]

Agreement to provide to purchaser for payment in excess of \$500: a product; equipment; supplies; or services, enabling purchaser to start a business, and the seller represents orally or in writing that:

1. Seller will assist purchaser in finding locations for the use or operation of vending machines, racks, display cases on third party premises;
2. Seller will assist in finding outlets for purchaser's products or services;
3. Seller will purchase work produced by purchaser;
4. Seller guarantees purchaser will derive income from the business in excess of the purchase price;
5. If purchaser is dissatisfied, seller will refund all or part of the price paid to seller, or repurchase products, equipment or supplies provided by seller; or
6. Seller will provide a marketing plan. (Doesn't apply to sale of marketing plan made in conjunction with licensing of a registered trade or service mark).

EXCLUDED
[§ 5-5.10 (b)]

1. Sale of ongoing business in its entirety by seller operating business;
2. Business Opportunity offer that is substantially similar to business purchaser is already in;
3. Franchise under Illinois Franchise Disclosure Act;
4. Illinois Registered Security;
5. \$1,000,000 seller net worth and personal guarantees of seller obligations when selling business opportunity involving a marketing plan and license of a federally registered mark;
6. Offer or sale through court or statutory authority; or
7. Cash payments under \$500 for not-for-profit sale of demo equipment, samples or inventory sold to purchaser at a bona fide wholesale price.

• • • • •

THE FEDERAL TRADE COMMISSION "FRANCHISE RULE" ALSO APPLIES TO "BUSINESS OPPORTUNITIES." CONTACT THE REGIONAL OFFICE OF THE FTC IN CHICAGO FOR FURTHER INFORMATION [312-353-4423]

THE FOLLOWING IS AN EDITED VERSION OF WHAT CONSTITUTES AN ILLINOIS BUSINESS BROKER EFFECTIVE 1/1/96. YOU MUST READ THE BUSINESS BROKER ACT TO FULLY UNDERSTAND YOUR RIGHTS AND OBLIGATIONS. THIS INFORMATION IS PROVIDED TO REMIND YOU THAT, IF YOU ARE A BUSINESS MATCHMAKER, THIS ACT MAY APPLY TO YOU. DISCUSS THE BUSINESS BROKER ACT AND OTHER LAWS WITH YOUR ATTORNEY BEFORE PERFORMING ANY BROKER SERVICES.

Copies available: Illinois Secretary of State
Securities Division
Lincoln Tower, Suite 200
520 South Second Street
Springfield, Illinois 62701

BUSINESS BROKERS
[815 ILCS 307 sec. 10-1 of the Business Brokers Act]

Any person who, in return for a fee, commission, or other compensation:

1. Promises to or assists in procuring a business for any person;
2. Negotiates, offers, attempts or agrees to negotiate the sale, exchange, or purchase of a business;
3. Deals in options on businesses;
4. Advertises or represents himself as a business broker;
5. Assists in the procuring of prospects;
6. Offers, promotes, lists...a business for sale, lease or exchange.

EXEMPTIONS FROM ACT
[sec. 10-80]

1. Attorney.
2. Licensed Real Estate Broker/Salesperson engaged in real estate transactions.
3. Dealer/Salesperson/Investment Advisor registered under or engaged in exempt transactions under the Illinois Securities Law of 1953, or persons registered under federal securities law.
4. Banks, Savings and Loans and their holding companies

RULES AND REGULATIONS
[14 IL. ADMIN.CODE §140-802]

5. Registered Illinois Franchise Brokers are exempt from the Business Brokers Act with regard to franchise sales. (This Rule was part of the emergency /Rules implemented by the Secretary of State pursuant to the Business Brokers Act and effective through May 30, 1996. Check current Rules to learn whether this Rule remains in effect).

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(A/I) = Appendices/Illus.
(O/I) = Other Information

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FRANCHISE BUREAU
500 SOUTH SECOND STREET • SPRINGFIELD, IL 62706
217-782-4465 • TTY: 217-785-2771