

DEPARTMENT OF ATTORNEY GENERAL
CONSUMER PROTECTION AND CHARITABLE TRUSTS DIVISION
FRANCHISES

(By authority conferred on the department of commerce by section 41 of Act No. 269 of the Public Acts of 1974, being S445.1541 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 445.101 Definitions and explanations of terms.

Rule 101. (1) "Act" means Act No. 269 of the Public Acts of 1974, being S445.1501 et seq. of the Michigan Compiled Laws. Terms defined in the act have the same meanings when used in these rules. Terms defined and explained herein have the same meanings when used in either the act or these rules.

(2) The words "fee or charge" as used in section 3(1) of the act include, but are not limited to:

(a) Present payments, deferred payments, and royalty payments required of the franchisee by the franchisor arising from sales of goods or services offered by the franchisee or its agents or affiliates, or payments as a condition to maintaining the franchise relationship other than payment for goods at a bona fide wholesale price.

(b) Payments for a lease or sale of real property in excess of a fair rental or market value. Among the criteria for evaluation of fair rental or market value shall be the location of the property, the physical attributes of the property, and what other lessees or purchasers have paid for similar property in comparable locations.

(c) Payments for services. These payments are presumed to be in part for the right granted to the franchisee to engage in the franchise business. Ideas, instruction, training, and other programs are services and not goods, irrespective of whether offered, distributed, or communicated by word of mouth, through instructions or lectures, in written or printed form, by record or tape recording, or any combination thereof.

(d) Payments for ownership. These payments include transfer of a controlling interest in a business entity which holds a franchise, except those transfers where the franchise held is not the principal asset of the transferor and not part of a plan of distribution of franchises.

(e) Minimum purchase or minimum inventory requirements other than at a bona fide wholesale price for which there is a well-established market in this state.

(3) "Initial and deferred franchise fee" means the amount of the franchise fee charged at the time of entry into the business, whether paid in full upon commencement or paid on a deferred basis. For purposes of R 445.801, it does not include royalties or other franchise fees measured by the amount of goods or services sold during the operation of the franchise.

(4) "Prescribed in substantial part by the franchisor," as used in section 2(3)(a) of the act, shall be interpreted in light of the following:

(a) A marketing plan may be determined to be prescribed if the franchise or other written or oral agreement, the nature of the franchise business, or other circumstances permit or require the franchisee to follow an operating plan or standard operating procedure, or their substantial equivalent, promulgated by or for the franchisor. An operating plan or standard operating procedure includes required procedures, prohibitions against certain business practices, or recommended or offered practices, whether or not enforceable with economic sanctions.

(b) A marketing plan may be determined to be prescribed without regard to 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 his business.

(c) The presence of any of these factors, among others, indicates that a marketing plan or system is prescribed in substantial part by the franchisor:

(i) Representations by, or requirements of, the franchisor that the franchisee operate a business which can purchase a substantial portion of its goods solely from sources designated or approved by the franchisor.

(ii) Representations by, or requirements of, the franchisor that the franchisee follow an operating plan, standard procedure, training manual, or its substantial equivalent promulgated by the franchisor in the operation of the franchise, violations of which may, under the terms of the agreement, permit the franchisor to terminate or refuse to renew the agreement.

(iii) Representations by, or requirements of, the franchisor that the franchisee is limited as to type, quantity, or quality of any product or service the franchisee may sell, or that limit the franchisee as to the persons or accounts to which he may sell the franchisor's product or service.

(iv) Representations by, or requirements of, the franchisor that the franchisor aid or assist the franchisee in training or in obtaining locations or facilities for operation of the franchisee's business, or in marketing the franchisor's product or service.

(5) A franchisee's business is "substantially associated," as used in section 2(3)(b) of the act, with the franchisor's trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate 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 that trademark, service mark, trade name, logotype, advertising, or other commercial symbol, hereinafter referred to collectively as the "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 or represents directly or indirectly the franchisor. The following factors, among others, indicate that the business of a franchisee is substantially associated with the franchisor's mark:

(a) The identification of the franchisor's mark is utilized either by the franchisor or the franchisee to enhance the chances of the franchisee's success in respect to the franchisee's transactions with persons dealing in, or purchasing, the franchisor's products or services.

(b) An agreement or procedure providing for the franchisee to directly or indirectly contribute a portion of its operating revenue to the franchisor for advertising expenses.

(6) "Bona fide wholesale price," as used in section 3(1)(a) of the act, refers to a price which constitutes a fair payment for goods purchased at a comparable level of distribution, and no part of which constitutes a payment for the right to enter into, or continue in, the franchise business. Goods sold at a bona fide wholesale price may include, but are not limited to, goods sold to the franchisee for resale, as well as fixtures, equipment, raw materials, supplies, and other goods used by the franchisee in the conduct of the franchise business. The price charged for a trademarked product does not exceed its bona fide wholesale price merely because the price exceeds the wholesale price of nontrademarked products of comparable quality and specifications. If the trademarked product commands a premium price by virtue of the trademark it carries, the premium does not necessarily constitute the payment of a franchise fee. A payment made directly or indirectly by the franchisee to or for the benefit of the franchisor in excess of the bona fide wholesale price constitutes a franchise fee. Services, rental payments, and the lease of real or personal property are not within the category of "goods," irrespective of whether payment for the services or property constitutes a fair payment for comparable services or property. In a determination as to whether the price of goods arising from a marketing plan or system of a manufacturer, licensor, or a franchisor is a bona fide wholesale price, relevant cost, marketing, pricing, or payment information, among other factors, may be considered.

(7) The existence of a "well-established market," as used in section 3(1)(a) of the act, is a question of fact determined by the presence, among other factors, of the following:

(a) A number of presently existing wholesale and retail outlets of the franchisor or competitors in a similar line of business.

(b) The quantity and price of like or similar products presently sold in an existing geographical area in Michigan.

(c) The ability of the purchaser to resell at the suggested retail price of the manufacturer or wholesaler or at a reasonable markup over the purchaser's cost.

(d) The ability of the purchaser to return any unsold portion of the product without penalty.

(8) The existence of the following factors, among others, which shall be interpreted by considering the previous operating history of the franchisor and its existing franchisees, indicates an offer the terms of which would create an "unreasonable risk" of loss of investment or failure of a franchisee's business as used in section 13(c) of the act to a prospective franchisee:

(a) Offerings whereby a franchisor or an affiliated person has received, or will receive, a substantial portion of his income from the sale of franchises rather than from the sale of goods, services, or continuing royalties relating to the operation of the franchise, and it appears to the administrator that the success of the franchisor's program is based on the sale of franchises rather than the sale of goods and services by the franchisee.

(b) Offerings where the natural person as a franchisor, or the officers, directors, partners, or affiliates of a franchisor, have received or will receive unreasonable front-end compensation from the payment of franchise fees in relation to the present and future services to be provided or the value of the franchise right prior to the establishment of the franchise.

(c) Offerings which permit the franchisor to directly or indirectly convey, assign, or otherwise transfer its responsibility to fulfill contractual obligations to franchisees unless the commitments to establish the franchise have been met or provided for and adequate provision has been made for providing further required contractual services, and the agreement shall so state.

(d) Offerings in which the franchisor is a shell or an undercapitalized corporation.

(e) Offerings which provide excessive compensation to a franchisor in relation to the services, goods, or value provided and their likely profit to the franchisee.

(f) Offerings which involve excessive sales commissions in relation to the likely profit to the franchisee.

(g) Offerings which provide that a franchisor may unilaterally, during the term of the franchise agreement, require unlimited or excessive increases in a royalty payment or require increases in price of goods and services other than on a uniform basis to all persons similarly situated.

(h) Offerings which permit or provide the opportunity for an excessive or improper conflict of interest between the franchisor and franchisee. Dual distribution systems shall not per se be construed as a conflict of interest.

(i) Offerings which permit or provide that the franchisor may receive from the franchisee, or arrange for third parties to receive a note or series of notes, singularly or in combination, not exceeding \$15,000.00, without reserving to the franchisee a defense arising out of a default by the franchisor.

(j) Offerings which fail to provide that a franchisor shall, upon demand, furnish the franchisee an accurate annual financial statement, unless the franchisor is filing annual reports pursuant to the securities exchange act of 1934 or is registered under the Michigan franchise investment law.

(9) "Material change," as used in section 19 of the act, includes, but is not limited to:

(a) The termination, closing, or failure to renew, during a 3-month period, of the lesser of 10 or 10% of the franchises of a franchisor, regardless of location, except that franchisors with an excess of 200 existing franchises shall file a report only upon the termination, closing, or nonrenewal of 5% or more of its franchises, or the termination, closing, or failure to renew, during a 3-month period, of the greater of 3 or 10% of the franchises of a franchisor located in the state.

(b) A purchase of franchises by the franchisor in excess of 5% of its existing franchises during 6 consecutive months.

(c) A change in the franchise fees charged by the franchisor.

(d) A significant adverse change in any of the following:

(i) The obligations of the franchisee to purchase items from the franchisor or its designated sources.

(ii) The limitations or restrictions on the goods or services which the franchisee may offer to its customers.

(iii) The obligations to be performed by the franchisor.

(iv) The franchise contract or agreement, including amendments thereto.

(v) The franchisor's accounting system resulting in a 5% or greater change in its net profit or loss in any 6-month period.

(vi) The service, product, or model line.

(10) "Net worth," as used in section 6(2)(a) of the act, means the excess of assets over liabilities, which is derived by the use of generally accepted accounting principles consistently applied and documented in the form of a balance sheet, with the exception that:

(a) Intangible assets shall include only the liquidation value of the intangibles.

(b) Receivables of a franchisor due from its franchisees shall be stated with an appropriate asset offset or reserve for losses.

(c) Lump sum franchise fee receipts, or a portion thereof, shall be offset by a "liability" for accrued obligations to be performed in the future in consideration for receipt of the fees.

(11) "Officer" means the president, vice president, secretary, or treasurer of a corporation, or a person occupying a similar status or performing similar functions.

(12) "Specified number of days" means calendar days, including Saturdays, Sundays, and holidays, unless the act or rule specifically indicates that business days are intended.

(13) Wherever the context of these rules requires, in order to conform to the intent of the act, the term "franchisor," as used herein, shall include subfranchisor.

(14) "Administrator," as used in these rules, means the director of the department of commerce or the director of the corporation and securities bureau.

(15) For the purposes of regulations, agents shall be divided into 2 categories:

(a) Franchise agents who represent only 1 franchisor and who are regulated pursuant to part 6 of these rules.

(b) Franchise agents who represent more than 1 franchisor or who employ persons to assist in the sale of a franchise and who are regulated pursuant to part 7 of these rules.

(c) A franchise agent does not include the following:

(i) A person effecting transactions in a franchise exempted by sections 6(2)(c), (d), (e), (f), (g), (h), (j), or (k) of the act.

(ii) A partner, officer, or director of a franchisor whose personal history is described in the prospectus and who represents the franchisor in effecting the offer or sale of a franchise.

(iii) Other persons excluded by order in the discretion of the administrator from all or part of the requirements of part 6 or 7 of these rules if:

(A) The contact of such person with prospective franchisees is minimal and does not involve a solicitation to purchase a franchise, or

(B) The person is registered under the Michigan uniform securities act, acting with written approval of his registered broker-dealer.

(d) A franchise agent may only be a natural person.

History: 1979 AC.

PART 2. REGISTRATION REQUIREMENTS

R 445.201 Documents accompanying application for registration or notification of exemption.

Rule 201. Without limiting the administrator's power to require additional information under section 8(t) of the act, an application for registration of a franchise, or a notification of an exemption pursuant to section 6(2)(a) or (b) of the act, shall be accompanied by:

(a) Upon request of the administrator, a copy of the current articles of incorporation and annual reports and amendments thereto, except that in the case of a partnership, the certificate of co-partnership shall be submitted. In the case of doing business under an assumed name, the assumed name certificate shall be submitted.

(b) A copy of any contractual agreement between the franchisor and franchise broker-agent relating to the sale of a franchise.

(c) A copy of the typical current franchise contract.

(d) A copy of the operations manual and policy manual, or their equivalent. The administrator shall, upon request, retain those portions of the document containing trade or business secrets as a confidential document.

The administrator may, in its discretion, return an operations manual and policy manual, or their equivalent, if a determination is made that the document does not contain information necessary to establish legal or economic relationships between the franchisee and franchisor. The administrator may require delivery of portions to each prospective franchisee at least 1 week prior to sale. The franchisor may require execution by that prospective franchisee of an agreement of confidentiality on a form acceptable to the administrator.

(e) Other documents or information necessary to establish the legal and economic relationships to be created between the franchisee and franchisor.

(f) Documents or information filed with the federal trade commission under its franchise disclosure requirements.

(g) An irrevocable consent to service of process, pursuant to the act, in the prescribed form, or in a uniform form satisfactory to the administrator containing substantially the same provisions.

History: 1979 AC.

R 445.202 Offering prospectus.

Rule 202. The offering prospectus shall be in the format and contain the information prescribed by the administrator. The form shall be available to the applicant at the administrator's office.

History: 1979 AC.

R 445.203 Periodic reports of sales.

Rule 203. When the administrator deems necessary to assure compliance with sections 5 or 6 of the act, it may by order require that a registrant or person exempt pursuant to section 6(2)(a) or (b) of the act file periodic reports of sales in a format prescribed by the administrator.

History: 1979 AC.

R 445.204 Conditions regarding sales.

Rule 204. In lieu of entry of a stop order pursuant to section 13 of the act, the administrator may impose conditions regarding the sale of franchises as necessary for the protection of the public.

History: 1979 AC.

R 445.205 List of franchisees and current business addresses.

Rule 205. The franchisor shall at all times maintain a list of franchisees with current business addresses and provide the list to the administrator promptly upon request.

History: 1979 AC.

R 445.206 Reports required.

Rule 206. Pursuant to the authority granted by sections 8(g), (r), and (t) of the act, the administrator may require franchisors, directly or indirectly offering to sell or selling franchises in this state under section 6(1) of the act, to file with the administrator, within a period of 120 days from the last date of its fiscal year, both of the following:

(a) A copy of their annual report, if any, and audited certified financial statements, or unaudited financial statements prepared by a certified public accountant if the requirement for audited financial statements has been waived by the administrator.

(b) A graphic representation of specific geographical sites sold to franchisees in Michigan in the last fiscal year, either by the franchisor or with franchisor approval of location.

History: 1979 AC.

R 445.207 Failure to process application.

Rule 207. For purposes of section 13(h) of the act, an applicant has failed to diligently process an application when 7 consecutive months have elapsed since the submission of an application that has not become effective.

History: 1979 AC.

R 445.208 Revising, amending, or supplementing prospectus or operations manual; review.

Rule 208. (1) If the prospectus, operations manual, or a part thereof becomes misleading as to a material fact, or omits to state a material fact necessary in order to make the statement made, in the light of the circumstances under which they are made, not misleading, it shall be revised or supplemented, and the revision or supplement shall be submitted to the administrator prior to use.

(2) The administrator shall promptly review the amendment and advise the registrant when the administrator's objection to the use of the amended prospectus ceases. An offer or sale shall not be made prior to notification by the administrator.

(3) If the registration renewal statement, or an amendment to an application for registration or notification of an exemption, alters the text of the offering prospectus, or of an item, exhibit, or other document previously filed as a part of an application for registration, or notification of an exemption, the changes in the text shall be indicated by means of underscoring or in some other appropriate manner.

History: 1979 AC.

R 445.209 Permissible omissions.

Rule 209. The administrator may permit the omission of an item of information or document from a registration statement.

History: 1979 AC.

R 445.210 Fees.

Rule 210. (1) The fee for filing an application for registration with the department shall be \$500.00. The annual renewal registration fee shall be \$250.00. The payment shall be in the form of check or money order made payable to the "State of Michigan" and shall not be postdated.

(2) The fee for filing a notification of exemption with the department for a transaction exempted from registration shall be \$100.00 and shall be in the form of check or money order payable to the "State of Michigan" and shall not be postdated. The fee for filing a notification of exemption pursuant to section 6(2)(h), 6(2)(j), or 7 of the act shall be \$10.00.

(3) If a company offers 2 or more franchises which are sufficiently similar in nature that it is feasible, in the opinion of the administrator, to combine the required application document and prospectus in a single application for registration, it may, at the request of the franchisor, authorize the filing of a single application for registration covering the similar franchises and the payment of a single filing fee covering the franchises.

(4) If a company offers 2 or more franchises which are sufficiently dissimilar that a single registration would tend to confuse prospective franchisees, the administrator may require separate registrations for each franchise and the payment of a separate fee for each franchise.

History: 1979 AC.

R 445.211 Effectiveness of first filings.

Rule 211. (1) A franchise offering which becomes effective between January 13, 1975, and June 30, 1975, shall be registered, unless the administrator approves a different period of registration, for period determined according to the following schedule:

If the Franchisor's Name Commences With: The Franchise Offering is Registered
or Exempted for a Period of:

A through H 15 months from the effective date of
 registration or exemptions I through P
14 months from the effective date of
 registration or exemptions Q through Z
13 months from the effective date of
 registration or exemptions

(2) This rule shall not be of force and effect on or after October 1, 1976.

History: 1979 AC.

PART 3. ESCROW

R 445.301 Imposition of escrow.

Rule 301. If the department finds that the applicant failed to demonstrate that adequate financial arrangements were made to fulfill obligations to provide real estate, improvements, equipment, inventory, training, or other items included in an offering, the administrator may impose, as a condition to registration or exemption, an escrow of not more than 100% of the franchise fees and other funds paid by the franchisee or subfranchisor until these obligations are fulfilled.

History: 1979 AC.

R 445.302 Escrow requirements.

Rule 302. When an escrow is imposed in connection with the registration or exemption of a franchise offering, the account shall comply with the following requirements:

(a) Checks shall be made payable to the depository approved by the administrator.

(b) The account shall be established in a bank or trust company acceptable to the administrator, and the funds shall be kept and maintained in an account separate and apart from the franchisor's business and personal accounts.

(c) All proceeds so deposited shall remain the property of the franchisee and shall not be subject to any liens or charges by the escrow agent, or judgments, garnishments, or creditor's claims against the franchisor until released to the franchisor as hereinafter provided. This escrow is for the benefit of each franchisee in the amount paid by each franchisee.

(d) At the administrator's discretion, a statement indicating the status of the escrow shall be furnished by the bank or trust company to the administrator.

(e) A trust or escrow agreement shall be entered into between the bank or trust company, and the franchisor, which shall state that its purpose is to protect the franchisee or subfranchisor and shall authorize the administrator to inspect the records of the bank or trust company, as trustee, relating thereto, and shall state that, upon order of the administrator or a court of competent jurisdiction, the trustee shall release and pay over the funds, or a portion thereof, to the franchisor, subfranchisor, or franchisee, as directed.

(f) The department, by its administrator, shall execute an acknowledgment on the face of each escrow or trust agreement. This acknowledgment indicates approval on the form and content of the agreement, but shall not be construed to make the department a party thereto.

History: 1979 AC.

R 445.303 Purchase receipts.

Rule 303. When an escrow is imposed, the franchisor shall deliver to each franchisee or subfranchisor a purchase receipt in a form approved by the administrator. Purchase receipts shall be consecutively numbered and prepared in quadruplicate: The original given to the franchisee or subfranchisor, the first copy to the depository together with the payment received, the second copy retained by the franchisor, and the third copy sent to the administrator.

History: 1979 AC.

R 445.304 Release of escrowed funds.

Rule 304. (1) The administrator shall authorize the depository to release to the franchisor those amounts of the escrowed funds applicable to a specified franchisee or subfranchisor upon a showing satisfactory to the administrator that the franchisor has fulfilled its obligations under the franchise agreement to establish the franchise, or that the escrow is not required for the protection of the franchisee.

(2) An application for an order of the administrator authorizing the release of escrowed funds to the franchisor shall be verified and shall contain:

(a) A statement of the franchisor that required proceeds from the sale of franchises have been placed with the depository in accordance with the terms and conditions of the escrow agreement.

(b) A franchisee's verified statement of completion of franchisor's obligations for release of funds from escrow.

(c) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of escrowed funds placed with the depository when required by the administrator.

(d) The names of each franchisee or subfranchisor and the amount held in escrow for the account of the franchisee or subfranchisor.

(e) A showing that the franchisor, with respect to a franchise, the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training, or other items.

(f) Other information the administrator may reasonably require.

(3) If the administrator finds that any conditions of this agreement have not been satisfied or that any provisions of the Michigan franchise investment law or rules have not been complied with, or the registration of the franchises has been revoked, then the administrator may withhold such authorization for release of funds by the escrow agent to the franchisor and may direct the full return of funds by the escrow agent to the franchisees.

History: 1979 AC.

R 445.305 Surety bond in lieu of escrow.

Rule 305. (1) In lieu of the imposition of an escrow, a franchisor at his option may post a surety bond of a surety company in the amount required by the administrator as protection of the franchisees requires.

(2) The surety company must be authorized to transact business in Michigan.

(3) The administrator shall take into consideration the amount of the franchise fees and other fees to be charged as well as the number of franchises to be offered, granted, or sold in determining the initial amount of the surety bond and shall amend the amount as public interest requires, using the same factors.

(4) Should the franchisor fail to complete the obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training, or other items included in the offering, the surety company may pay the appropriate money to the administrator or his designee, as obligee, for the benefit of all franchises in accordance with their contribution of franchise and other fees or amounts.

(5) If the surety bond expires or is canceled and the franchisor is still under an obligation to provide real estate, improvements, equipment, inventory, training, or other items, the franchisor at his option may either post another surety bond or have an escrow of franchise and other fees imposed by the administrator. Until another surety bond acceptable to the administrator is purchased or escrow is imposed, the franchisor shall not make any new sales.

(6) The state may be a party to the surety bond and shall, through the administrator, review its form and content.

History: 1979 AC.

PART 4. EXEMPT TRANSACTIONS

R 445.401 Exemptions based on franchisor's net worth or initial investment.

Rule 401. (1) Franchisors relying on the exemptions provided by section 6(2)(a) or (b) of the act shall file the information required on the form and accompanying instructions currently prescribed by the administrator, as well as the documents listed in R 445.201.

(2) A franchisor seeking to claim the exemption provided by section 6(2)(a) or (b) of the act shall so state on the cover of its prospectus and agree to abide by the prospectus delivery requirements of section 16 of the act.

History: 1979 AC.

R 445.402 Exemptions based on limited number of offerees.

Rule 402. The exemption provided by section 6(2)(k) of the act shall pertain to only those franchisors who:

(a) Do not have more than 1 existing franchise within or without the state prior to the offer of a franchise under this part, and

(b) Provide disclosure to the franchisee offeree as required in sections 5(1)(b) and 5(2) of the act.

History: 1979 AC.

R 445.403 Reports to be filed.

Rule 403. (1) Franchisors, directly or indirectly offering to sell or selling franchises in this state under section 6(2)(a) or (b) of the act, shall file with the administrator, within a period of 120 days from the last day of its fiscal year, a copy of their annual report, if any, and an audited certified financial statement or unaudited financial statement prepared by a certified public accountant if the requirement for submission of an audited financial statement has been waived by the administrator.

(2) A franchisor, directly or indirectly offering to sell or selling franchises in this state under section 6(2)(a), (b), or (j) of the act, shall file with the administrator, within a period of 120 days from the last day of its fiscal year, graphic representations of the geographical locations sold to the franchisees in the state in the last fiscal year.

History: 1979 AC.

R 445.404 Material changes to be reported.

Rule 404. Franchisors whose franchises are exempted under section 6(2)(a) or (b) of the act shall be required, as a condition of maintenance of the exemption after confirmation thereof as required by the act, to notify the administrator, in writing, within 30 days after the occurrence of any material fact or material change affecting the franchisor.

History: 1979 AC.

R 445.405 Sales and offers by existing franchisees.

Rule 405. (1) A franchisee seeking to offer or sell a franchise for his own account, whose franchisor is currently registered or exempted under section 6(2)(a) or (b) of the act, shall comply with the following disclosure requirements by providing:

(a) The offeree with a copy of the franchisor's current prospectus.

(b) Full access to the books and records of the franchise in the actual or constructive possession of the franchisee.

(c) Full disclosure relating to the risks of the franchise of which the selling franchisee knows and which are not readily apparent to an offeree considering the purchase of that franchise.

(d) Additional material information relating to the franchisor known to the present franchisee.

(2) A franchisee seeking to offer or sell a franchise for his own account, whose franchisor is not currently registered under the act but was so registered or exempted under section 6(2)(a) or (b) of the act in the past, shall comply with the following disclosure requirements by providing:

(a) The offeree with the most recent prospectus of the franchisor used in this state or elsewhere.

(b) The offeree with access to the material reports and correspondence in the actual or constructive possession of the franchisee, from the franchisor, relating to the economic or legal relationship between the franchisee and the franchisor, from the date of the last prospectus to the present.

(c) Additional material information relating to the franchisor known to the present franchisee.

(d) Full access to the books and records of the franchise in the actual or constructive possession of the franchisee.

(e) Full disclosure relating to the risks of the franchise of which the selling franchisee knows and which are not readily apparent to an offeree considering purchase of that franchise.

(3) A franchisee seeking to offer or sell a franchise for his own account, whose franchisor is not now and has not been registered or exempted under section (6)(2)(a) or (b) of the act, shall comply with the following disclosure requirements by providing:

(a) Full access to the books and records of the franchise in the actual or constructive possession of the franchisee.

(b) Full disclosure relating to the risks of the franchise of which the selling franchisee knows and which are readily apparent to an offeree considering purchase of that franchise.

(c) Additional material information relating to the franchisor known to the present franchisee.

(4) The franchisee shall, if requested by the franchisor, furnish an affidavit that he has complied with the above disclosure requirements.

(5) The exemptions provided by this section shall not be available to a franchisee who wishes to divide or subdivide his territory, exclusive or otherwise, and sell more than 1 portion or division, except upon written authorization of the administrator.

History: 1979 AC.

PART 5. FINANCIAL STATEMENTS

R 445.501 Accounting principles.

Rule 501. A financial statement required to be filed in connection with an application for registration under section 6(1) of the act or for an exemption under section 6(2)(a) or (b) of the act shall be prepared in accordance with generally accepted accounting principles. A financial statement shall be audited by an independent certified public accountant, except when the particular form or these rules permit the use of an unaudited statement for an interim period or generally.

History: 1979 AC.

R 445.502 Balance sheet; profit and loss statement; audit; auditor's opinion.

Rule 502. (1) The financial statement required to be filed by a franchisor refers to:

(a) A balance sheet as of a date within 90 days prior to the date of the application.

(b) A profit and loss statement for each of the 3 fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of the fiscal years and the date of the balance sheet, unless this requirement is waived or modified by the administrator.

(2) If the balance sheet referred to in subrule (1)(a) is not audited, there shall be filed, in addition, an audited balance sheet as of the end of the franchisor's last fiscal year, unless such last fiscal year ended within 90 days of the date of the application, in which case there shall be

filed an audited balance sheet as of the end of the franchisor's next preceding fiscal year.

(3) The profit and loss statement shall be audited up to the date of the last audited balance sheet filed, if any, unless this requirement is waived or modified by the administrator.

(4) The auditor's opinion shall be filed with the statement when an audited financial statement filing is required.

History: 1979 AC.

R 445.503 Waiver of audit; conditions and restrictions.

Rule 503. (1) The administrator may, in his discretion, waive the requirement of audited statements:

(a) For small franchisors when a certified financial statement is not required for protection of the public, and the franchisor agrees to furnish a certified audit within a reasonable time.

(b) In extraordinary cases, if the statements have been prepared by an independent certified public accountant, and the administrator is otherwise satisfied as to the reliability of the statements and as to the ability of the franchisor to perform future commitments.

(2) A waiver shall ordinarily be granted only upon a showing that the franchisor has not had prior audited statements; that the close of the most recent or current fiscal year is so near the time of filing of the application; that it would be unreasonably costly or impractical to provide audited statements with the application; and that audited statements shall be furnished within a reasonable time after the end of the most recent or current fiscal year. In those cases, the administrator may impose an impound condition and other conditions and restrictions, as in his discretion, he deems appropriate.

(3) The use of an unaudited financial statement as provided herein does not relieve the applicant or any person from liability for false and misleading statements contained in a financial statement.

(4) In all instances in which the requirement for audited financial statements has been waived for a specified period of time, a franchisee who purchases a franchise during that period shall be entitled to damages or rescission under the same terms as provided under section 31 of the act if, upon availability of audited financial statements or any other valid basis, it is revealed that material adverse financial conditions existed at the time of the purchase which were not disclosed, and the prospectus shall so state.

History: 1979 AC.

R 445.504 Exempt franchisor.

Rule 504. A financial statement of a franchisor exempt from registration under section 6(2)(a), (b), or (j) of the act shall be certified and audited by an independent certified public accountant, unless that requirement is waived by the administrator as not in the public interest or for the protection of investors.

History: 1979 AC.

R 445.505 Disclosure.

Rule 505. (1) Whenever an unaudited financial statement is utilized pursuant to this rule, it shall be accompanied by the following written disclosure or a substantially equivalent statement, immediately adjacent thereto, in 10-point type:

"This financial statement is prepared without an audit. Investors in or sellers of franchises should be advised that a certified public accountant has not audited these figures or expressed his opinion with regard to their contents or form."

(2) If an unaudited financial statement is referred to orally, it shall be accompanied by an oral statement containing a caveat approximating the language in subrule (1).

History: 1979 AC.

R 445.506 Delays; updated statement or information.

Rule 506. (1) If amendments or other delays cause a financial statement to become more than 4 months old as of the effective date of the registration statement:

(a) An updated financial statement, as of a date within 4 months of the effective date, shall be filed if the franchisor fails to have an established record of earnings or is currently showing losses or a weak financial condition.

(b) A paragraph containing later information as to sales, net income, and financial condition may be added in lieu of updating the financial statement, in the discretion of the administrator, when the franchisor has an established record of earnings and is in sound financial condition.

(2) A financial statement shall be not more than 6 months old as of the effective date of the registration statement.

(3) If a delay carries the effective date beyond the end of the franchisor's fiscal year, and by applying due diligence the registrant and accountant may complete the audit prior to the effective date, a certified statement shall be filed as of the end of the fiscal year.

History: 1979 AC.

R 445.507 Certified public accountant's opinion.

Rule 507. The certified public accountant's opinion shall comply with the following requirements:

(a) The opinion filed with the administrator shall be dated and manually signed, and shall identify the financial statement covered by the opinion.

(b) The opinion shall state whether the audit was made in accordance with generally accepted auditing standards, and shall disclose auditing procedures generally recognized as normal or deemed necessary under the circumstances of the particular case which have been omitted, and the reasons for the omission.

(c) The opinion shall state clearly:

(i) The opinion of the accountant with respect to the financial statement covered by the report and the accounting principles and practices reflected therein.

(ii) The opinion of the accountant as to any changes in accounting principles or practices which have a material effect on the financial statement.

(d) The opinion shall state, specifically and clearly, matters to which the accountant takes exception, and, to the extent practicable, the effect of each exception on the related financial statement, given either in the auditor's opinion or in a footnote to the financial statement.

History: 1979 AC.

R 445.508 Certified public accountant's statement.

Rule 508. A financial statement filed with the administrator shall include a manually signed and dated statement of the certified public accounting firm approving the use of its name and its opinion in the prospectus and registration statement.

History: 1979 AC.

R 445.509 Change in accountants.

Rule 509. If the independent certified public accountant who has been engaged as the principal accountant to audit the franchisor's financial statements was not the principal accountant for the franchisor's most recently filed certified financial statements:

(a) The franchisor shall furnish the administrator with a statement of the date when the current independent accountant was engaged and whether, in the 18 months preceding the engagement, there were any disagreements with the former principal accountant on a matter of accounting principles or practices, financial statement disclosure, or auditing procedure, which, if not resolved to the

satisfaction of the former accountant, would have caused that accountant to make reference in connection with its opinion to the subject matter of the disagreement.

(b) The franchisor shall request the former accountant to furnish the franchisor with a letter stating whether it agrees with statements contained in the letter of the franchisor and, if not, stating the respects in which it does not agree.

(c) The franchisor shall furnish such a letter to the administrator, together with its own.

History: 1979 AC.

R 445.510 Disclosure of accountant's interest.

Rule 510. When a report pursuant to this act or these rules is prepared by an independent public accountant or certified public accountant who holds, or intends to acquire, a position or interest in the applicant or registrant covered by the report, full disclosure thereof shall be made to the administrator and, where appropriate, full disclosure shall be made in the prospectus.

History: 1979 AC.

R 445.511 Consolidated and separate statements.

Rule 511. (1) When a franchisor owns, directly or beneficially, a controlling financial interest in another corporation, the financial statement required to be filed shall reflect, on a consolidated basis, the financial condition of the franchisor and each of its subsidiaries.

(2) A separate financial statement shall be required for each franchisor or subfranchisor filing for registration or exemption in this state.

(3) A company controlling 80% or more of a franchisor shall be required to file its financial statement for review by the administrator, and the financial statement shall not be included as part of the prospectus except as provided by R 445.512.

(4) A consolidated and separate financial statement shall be prepared in accordance with generally accepted accounting principles.

History: 1979 AC.

R 445.512 Statement of controlling company.

Rule 512. A complete financial statement of a company controlling the franchisor shall be required when the controlling company guarantees to assume the duties and obligations of the franchisor under the franchise agreement. If the franchisor wishes to file a controlling company financial statement, the controlling company shall guarantee the obligations of the franchisor or post an acceptable surety bond at the discretion of the franchisor. Such surety bond must be purchased from a surety company authorized to transact business in the state of Michigan and in an amount required by the administrator as protection of the public requires. The amount may be amended by the administrator on the basis of the amount of fees and the number of franchises sold. If the surety bond is terminated or canceled while the franchisor is still under an obligation to provide real estate, improvements, equipment, inventory, training or other items, another surety bond acceptable to the administrator must be purchased or a guarantee acceptable to the administrator of the franchisor's obligations must be given before additional sales can be made.

History: 1979 AC.

R 445.513 Books and records.

Rule 513. (1) The franchisor, unless exempt pursuant to section 6(2)(e) or (k) of the act, shall make and keep current the following books and records relating to the purchase or sale of franchises:

(a) Records of original entry containing an itemized daily record of purchases and sales of franchises, receipts of cash, other debits and credits.

- (b) Copies of contracts of purchase or sale.
 - (c) Records of payments made to persons, directly or indirectly, in connection with the offer, sale, or purchase of a franchise, itemizing the persons to whom payments were made, the date and amount of each payment, the reason for the payment, and the transaction from which payment arose.
 - (d) Individual registration records for each franchisee, with name and address, aggregate amount to be paid, and terms of the payments.
- (2) A franchisor shall preserve these records for not less than 6 years.

History: 1979 AC.

R 445.514 Special financial reports.

Rule 514. The administrator may at any time require the filing of a special financial report by a franchisor currently registered under section 6(1) of the act or exempt under section 6(2)(a) or (b) of the act if it finds that the filing is in the public interest.

History: 1979 AC.

PART 6. FRANCHISE AGENTS

R 445.601 Registration required; limitation on representation; agent as natural person.

Rule 601. (1) A franchise agent may not participate in the offer or sale of a franchise currently registered or exempted under section 6(1) or 6(2)(a) or (b) of the act, unless the franchise agent is registered with the administrator on the appropriate forms filed by the franchisor or a franchise agent. A franchise agent, except an agent working exclusively for another franchise agent pursuant to part 7, may not represent more than 1 franchisor, unless the administrator specifically authorized by order the multiple employment on terms and conditions as are appropriate to the public interest.

(2) A franchise agent may only be a natural person.

History: 1979 AC.

R 445.602 Application for registration; examination; registration order.

Rule 602. (1) An application for franchise agent registration shall be on the form and contain the information specified by the administrator. In the alternative, a uniform form, with any necessary supplement satisfactory to the administrator, may be submitted.

(2) An application for franchise agent registration shall be accompanied by a completed fingerprint record on a form prescribed by the administrator, unless this requirement is waived by the administrator.

(3) An applicant for registration as a franchise agent may be required to pass a written examination, testing his knowledge of the franchise investment law and other appropriate laws or rules. This examination and the minimum passing grade may be varied for any class of applicants.

(4) A registration order shall be issued to the franchisor or franchise agent registered pursuant to part 7. Upon termination of employment for any cause, the order shall promptly be returned to the administrator for cancellation.

History: 1979 AC.

R 445.603 Failure to complete, or withdrawal of, application.

Rule 603. If an applicant for agent registration fails to complete, or withdraw, an application within 3 months of the date of filing, the administrator may deny the application. The administrator may deny a request to withdraw an application.

History: 1979 AC.

R 445.604 Agent registration or application; denial, suspension, or revocation.

Rule 604. The administrator may, by order, deny, suspend, or revoke an agent registration or application if it finds that the applicant or franchise agent has engaged in conduct set forth in R 445.704.

History: 1979 AC.

R 445.605 Effective date of registration; expiration; renewal.

Rule 605. (1) A franchise agent's registration may become effective on any date during the year.

(2) A franchise agent's registration expires on the date of the expiration of the registration or exemption of the franchisor, or on the date of the expiration of the franchise agent registration pursuant to part 7, whichever is applicable.

(3) An agent's registration may be renewed if the franchisor or subfranchisor provides to the administrator, on the form prescribed by the administrator, a list of all franchise agents, including therewith current home and business addresses and telephone numbers, or may be renewed by a franchise agent as provided in R 445.705.

History: 1979 AC.

R 445.606 Sales on behalf of multiple franchisors.

Rule 606. In the event that a company controls more than 1 franchisor, franchise agents of these companies may offer franchises on behalf of each franchisor if the agent files an application for franchise agent registration to act on behalf of each franchisor.

History: 1979 AC.

R 445.607 Concurrent registration.

Rule 607. A franchise agent may not be concurrently registered with a franchisor or subfranchisor and a franchise agent pursuant to part 7 except as provided herein.

History: 1979 AC.

R 445.608 Franchise compliance officer.

Rule 608. (1) A franchisor, subfranchisor, or franchise agent employing franchise agents shall designate a franchise compliance officer, whose responsibility it shall be to:

(a) Determine that the activities of its franchise agents are in compliance with the statutes and rules of the state.

(b) Prepare and forward to the administrator a compliance manual which shall thereafter be distributed to each franchise agent.

(c) Insure that each agent is at all times familiar with the act and rules thereunder, and the compliance manual.

(2) The compliance manual shall consist of a copy of the act, rules, and instructions necessary to relate the statutes and rules to the franchise being offered and the procedures of the offering.

(3) Should an agent be terminated by a franchisor, or voluntarily terminate his employment due to actions involving a violation of the franchise investment law or rules thereunder, the franchise compliance officer shall promptly report the termination and the cause therefor on the form prescribed by the administrator.

History: 1979 AC.

PART 7. FRANCHISE AGENTS

R 445.701 Registration order as condition to commencing activities; expiration of registration; effective date of renewal registration.

Rule 701. A franchise agent pursuant to this part shall receive a registration order from the administrator prior to commencing those activities which constitute that person to be a franchise agent. Registrations expire on March 31, following effectiveness, unless otherwise ordered by the administrator. A renewal registration is effective on the date prescribed by the administrator by order.

History: 1979 AC.

R 445.702 Initial or renewal registration; filing and contents of application.

Rule 702. (1) A franchise agent may obtain an initial or renewal registration by filing with the administrator an application, together with a consent to service of process on the form prescribed by the administrator. This application shall contain the information the administrator requires relating to the following:

(a) The qualifications and business history of the applicant and its partners, officers, directors, or other persons occupying similar status or performing similar functions or a person, directly or indirectly, controlling the franchise agent.

(b) The applicant's financial condition.

(c) The applicant's proposed form of doing business.

(d) Past misconduct on the part of the applicant or its partners, officers, or directors.

(e) Other information necessary for the protection of the public.

(2) An application for franchise agent registration shall be accompanied by a complete fingerprint record of the partners, officers, and directors of the franchise agent who shall be engaged in offers or sales of franchises in this state, the principal officer of the franchise agent, and the compliance officer on a form prescribed by the administrator, unless this requirement is waived or modified by the administrator.

History: 1979 AC.

R 445.703 Failure to complete, or withdrawal of, application.

Rule 703. If an applicant for franchise agent registration fails to complete, or withdraws, an application within 3 months of the date of filing, the administrator may deny the application. The administrator may deny a request to withdraw an application.

History: 1979 AC.

R 445.704 Denial, suspension, or revocation of registration.

Rule 704. The administrator may, by order, deny, suspend, or revoke a registration of a franchise agent if the administrator finds that the order is in the public interest and the applicant or registrant or a person directly or indirectly controlling the applicant or registrant:

(a) Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact.

(b) Has violated or failed to comply with the act, or a rule or an order under the act.

(c) Has been convicted of a misdemeanor involving moral turpitude, or of a felony.

(d) Is the subject of a final administrative order of a state or federal agency relating to, or is permanently or temporarily enjoined by a court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of, the securities, franchise, real estate, or insurance business.

(e) Is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, investment advisor, or franchise agent under part 6 or 7 of these rules or other similar registration.

(f) Is the subject of an order entered by the securities or franchise administrator of another state, or by the securities and exchange commission, denying or revoking registration as a broker-dealer, agent, or investment advisor, or the substantial equivalent of these terms, or is the subject of an order of the securities and exchange commission suspending or expelling that person from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States post office fraud order.

(g) Has engaged in dishonest or unethical business practices, including, but not limited to, the following practices:

(i) Recommending to a franchisee the purchase, sale, or exchange of a franchise without reasonable grounds to believe that the recommendation is suitable for the person.

(ii) Acting as agent for both buyer and seller without fully disclosing the relationship to both parties.

(iii) Charging the franchisee or franchisor more than a reasonable commission in connection with the sale.

(iv) Personally borrowing money from a present or prospective franchisee.

(v) Effecting transactions not reported to the franchisor.

(vi) Operating an account under a name not registered with the administrator.

(vii) Representing to a franchisee that, as a condition of realizing significant earnings from the franchise, the franchisee may have to recruit others who may likewise invest in a franchise or distributorship, or require that the franchisee shall so recruit.

(h) Is insolvent, either because liabilities exceed assets or because obligations cannot be met as they mature.

(i) Is not qualified on the basis of factors such as training, experience, or knowledge of the franchise business.

(j) Has failed to supervise franchise agents in its employment as defined in part 6 to insure that sales are made only to persons for whom the franchise is a suitable investment.

(k) Has failed to pay the proper filing fee. The administrator may enter only a denial order under this subdivision, and it shall vacate the order when the deficiency has been corrected.

History: 1979 AC.

R 445.705 Renewal of registration.

Rule 705. A franchise agent pursuant to this part may apply for renewal of its registration by filing with the administrator a complete list of franchise agents pursuant to part 6 employed, including therewith current home and business addresses and telephone numbers, a report of activities in the form designated by the administrator, and a statement of financial condition prepared in accordance with generally accepted accounting principles.

History: 1979 AC.

R 445.706 Records.

Rule 706. Every franchise agent pursuant to this part shall make and keep current the following books and records relating to his business:

(a) Records of original entry detailing the sale of the franchise, to whom sold, the aggregate price, the initial payment, the installment payments, if any, and the commission paid to the franchise agent or its employees.

(b) An individual registration record for each franchisee, including name, home and business address, telephone numbers, occupation, aggregate amount paid, terms of payment, and the name of its selling franchise agent employee.

(c) A copy of advertising used by the agent in the offer of franchises, including, but not limited to, radio, newspapers, TV, letters and brochures.

(d) The records, books, and memoranda that relate to a franchise sale, and the records required to be kept under the act and rules, for a period of not less than 6 years after the sale.

History: 1979 AC.

R 445.707 Special financial reports.

Rule 707. The administrator may, at any time, require the filing of a special financial report by a franchise agent if it finds that the filing is in the public interest.

History: 1979 AC.

R 445.708 Surety bond.

Rule 708. (1) A franchise agent whose net worth, derived by the use of generally accepted accounting principles, does not exceed \$100,000.00 shall file with the administrator a surety bond in the amount of \$25,000.00 on a form provided by the administrator, and shall maintain the bond in that amount at all times while registered as a franchise agent.

(2) If a franchise agent fails to maintain the minimum net worth of \$100,000.00, or fails to file or to maintain its bond, the franchise agent shall immediately cease business and notify the administrator of this failure.

(3) If a suit is brought to enforce liability on the bond, the franchise agent shall promptly notify the administrator thereof. If the bond principal amount is reduced by any recovery against it, the bond shall be immediately restored to \$25,000.00.

(4) Prior to the disbursement of funds, a court shall require a claimant to publicize the claim against the franchise agent's bond in a manner reasonably calculated to inform other franchisees of the pendency of the action and to permit intervention and filing of claims.

(5) The bond shall also be for the use and benefit of persons who may have a cause of action in this state by reason of embezzlement, defalcation, or misappropriation of securities or funds by the principal, its agents, and employees.

(6) The administrator may exempt a registered franchise agent from this bond requirement, or may vary its terms, only if justified and appropriate under special circumstances.

History: 1979 AC.

R 445.709 Notification of agent's termination.

Rule 709. Within 7 days after an agent for a franchise agent terminates his employment or is terminated, notice of termination shall be filed by the franchise agent on a form prescribed by the administrator, setting forth fully the reasons for termination. If an agent is terminated for cause, including a violation of the act or rules, the notice shall set forth the cause of termination.

History: 1979 AC.

R 445.710 Escrow account.

Rule 710. The franchise agent shall not receive funds from franchise sales or other business conducted on behalf of the franchisor or subfranchisor. Payments from the sale of a franchise shall be made only to an escrow account designated by the franchisor or the subfranchisor for deposit.

History: 1979 AC.

PART 8. ADVERTISING

R 445.801 Contents of advertisement.

Rule 801. (1) Pursuant to section 24 of the act, advertising, as defined in section 2(1) of the act, to be used to offer a franchise shall be filed in the office of the administrator in duplicate not less than 10 business days prior to the publication.

(2) An advertisement shall not contain a statement or inference that a purchase of a franchise is a safe investment or that failure, loss, or default is impossible or unlikely, or that earnings or profits are assured.

(3) An advertisement, other than the offering prospectus used pursuant to section 6(1) or 6(2)(a) or (b) of the act, shall not contain a projection of future franchisee earnings, unless the projection is:

(a) Based on a past earning record, over a reasonable period of time, of all franchisees operating under conditions, including location, substantially similar to conditions affecting the franchise being offered, including terminations, cancellations, reacquisitions, nonrenewals, and other operational failures, together with existing operational franchise data.

(b) For a reasonable period only.

(c) Substantiated by data which clearly supports the projection.

(d) Accompanied by a chart showing the estimated break-even point of the franchise operation.

(e) Accompanied by appropriate caveats relating to the projection.

(f) Based upon reasonable assumptions clearly set out immediately adjacent to the projection.

(4) An advertisement shall contain the name and address of the person responsible for sponsoring or placing the advertisement, and shall identify the franchisor.

(5) If the advertisement contains an indorsement or recommendation of the franchise by a public figure, whether express or implied, the advertisement shall state that the celebrity has received, or shall receive, consideration to indorse this franchise, unless the name of the celebrity appears in the title of the franchise and the title is prominently disclosed.

(6) An advertisement of a franchise offered pursuant to exemptions under section 6(2)(c), (d), (e), (f), (g), (h), (j), or (k) of the act shall disclose fairly and accurately the relevant facts concerning the liabilities created thereunder as are necessary to make the advertisement not misleading in light of the advertising and other material to be furnished by the franchisor to the franchisee prior to the sale of the franchise.

(7) An advertisement which refers to a registered franchise under section 6(1), or to an exempted franchise under section 6(2)(a) or (b) of the act, shall contain, in letters of not less than 8-point type, the following legend:

"PURSUANT TO THE MICHIGAN FRANCHISE INVESTMENT LAW, SALES MAY NOT BE MADE UNLESS A PROSPECTUS HAS BEEN DELIVERED 1 WEEK PRIOR TO ENTERING INTO A FRANCHISE AGREEMENT OR PAYING CONSIDERATION."

(8) The franchisor shall disclose in any advertising placed in the communications media the required total initial and deferred franchise fee, or range of fees.

History: 1979 AC.

R 445.802 Exempt communications; contents.

Rule 802. (1) A notice, circular, or other communication which is published or transmitted only after a registration or exemption pursuant to section 6(2)(a) or (b) of the act need not be filed with the administrator if the franchise is effective and the notice, circular, or communication contains only the statements required or permitted to be included therein by the following provisions of this rule.

(2) A communication shall include, subject to the requirements of these rules, the following items of information which need not follow the numerical sequence of this subrule:

(a) The name of the franchisor.

(b) An identification of the type of business to be conducted by the franchisee.

(c) The total initial and deferred franchise fee required to be made on a franchise purchase or, if the amount of the fee varies, the method of its determination or the probable price range.

(d) The name and address of the sender of the communication.

(e) The logotype or symbol of the franchisor, if desired by the franchisor.

(f) A statement, in letters of not less than 8-point type, that:

"PURSUANT TO THE MICHIGAN FRANCHISE INVESTMENT LAW, SALES MAY NOT BE MADE UNLESS A PROSPECTUS HAS BEEN DELIVERED 1 WEEK PRIOR TO ENTERING INTO A FRANCHISE AGREEMENT OR PAYING CONSIDERATION."

(g) The correct legal name and address of the individual or organization from whom an offering prospectus may be obtained.

(3) A franchisor making an offer in reliance upon the exemptions of section 6(2)(e) or (f) of the act need not file advertising with the administrator unless this exemption is revoked by order of the administrator.

History: 1979 AC.

R 445.803 False, fraudulent, misleading, and deceptive advertising.

Rule 803. (1) The following practices shall constitute, without limitation, false, fraudulent, misleading, and deceptive advertising in connection with the offer or sale of a franchise:

(a) Failure to disclose in any communications media advertising the required total initial and deferred franchise fee for the franchise, or misrepresent, in any way, the fee.

(b) Misrepresentation of the training or management assistance available to the franchisee. The failure to disclose that little or none is provided, unless this requirement is waived by the administrator, constitutes a misrepresentation.

(c) Misrepresentation or causing confusion or misunderstanding regarding the source, sponsorship, approval, or certification of franchised goods or services.

(d) Dissemination of an advertisement in a language other than English without including therein the required disclosures or limitations on the offer advertised in the language principally used in the advertisement.

(e) Obtaining leads to prospective franchisees by placing classified advertisements designated or captioned "men wanted to train for . . .," "help wanted," "employment," "business opportunities," or by words or terms of similar import, so as to represent directly or by implication that employment is being offered when, in fact, it is not.

(f) Designation or reference to sale representatives as "registrars," "counselors," "advisors," or words of similar import that misrepresent, in any manner, the titles, qualifications, training, experience, or status of salesmen, agents, employees, or other representatives.

(g) Representation in an advertisement that a person receive goods or services "free," "without charge," or any other term of similar import when the product or service is not, in fact, free.

(2) An advertisement of a guarantee or warranty relating to the sale of franchised goods and services to the franchisee, or relating to the repurchase of the goods, shall clearly and conspicuously disclose the following:

(a) The nature and extent of the guarantee, including disclosure of the following:

(i) The product or service being guaranteed.

(ii) The characteristics or properties of the designated product or service covered by or excluded from the guarantee.

(iii) The conditions one claiming under the guarantee shall meet before the guarantor will fulfill its obligation under the guarantee.

(b) The manner in which the guarantor will perform.

(c) The identify of the guarantor.

(3) A franchisor shall not advertise or represent that a product is guaranteed, or that it shall repurchase the product for a specified price, when it cannot promptly fulfill its obligations under the guarantee.

(4) Deceptive price advertising in connection with the offer or sale of a franchise includes, among other practices, the following:

(a) Falsely representing, in any manner, that goods or services are offered for sale at a reduction.

(b) Representing that prices being charged are a reduction by "comparing" prices of goods of like kind and quality, where the comparison being made is not with other goods of essentially similar quality, obtainable in the area, and at an established price.

(c) Advertising a special price or limited offer to persons when, in fact, the offer is not limited and is being made to many persons on a mass advertising or marketing basis, or when the price is the same as that charged to those occupying a status similar to that of a franchisee.

History: 1979 AC.

R 445.804 Modification and republication of advertisement.

Rule 804. The administrator may, by order, require modification of an advertisement deemed false, fraudulent, misleading, or deceptive, and may require, prior to publication of a subsequent advertisement, publication of an advertisement in all media previously used by the franchisor, retracting the prior advertisement. A retraction, in language approved by the administrator, shall be in an advertisement at least as large as that originally used, and shall be as prominently displayed in the media as previously advertised.

History: 1979 AC.

PART 9. DECEPTIVE OR FRAUDULENT PRACTICES

R 445.901 Enumeration of deceptive or fraudulent practices.

Rule 901. Deceptive or fraudulent practices committed, directly or indirectly, in connection with the offer, sale, or purchase of a franchise include, but are not limited to, the following practices:

(a) Misrepresentation of, or failure to disclose, the required total initial and deferred franchise fee for the franchise.

(b) Misrepresentation of the training and management assistance available to the franchisee, or failure to disclose that little or none is available.

(c) Misrepresentation or failure to disclose that the franchisor does not have significant experience in the sale of the franchised product or service in this state.

(d) Failure to disclose that the franchisor does not have material information about the existence of a market for the product or service, if such is the case, or misrepresentation of that information.

(e) Misrepresentation of, or failure to disclose, the franchisor's efforts to sell or establish more franchises than it is reasonable to expect the market or market area for the particular franchise to sustain.

(f) Misrepresentation of the quantity or quality of the products or services to be sold or distributed through the franchise.

(g) Misrepresentation, or causing confusion or misunderstanding, regarding the source, sponsorship, approval, or certification of franchised goods or services.

(h) Representation that goods are new if they are deteriorated, altered, reconditioned, used, or secondhand, or failure to disclose such a condition.

(i) Misrepresentation of the number of franchisees the franchisor shall appoint or designate to operate within a given territory or shall locate within a given territory, or representation that a franchisee shall be or is the only franchisee appointed or located within a specified franchise territory when, in fact, the franchisee is not.

(j) Misrepresentation by failure to disclose, or otherwise, the termination, cancellation, reacquisition, transfer, or renewal provisions of a franchise agreement.

(k) Falsely claiming or inferring that a primary marketer, other than franchisor of trademark products or services, sponsors or participates directly or indirectly, in the franchise operation, or that the offeror has an affiliation, or connection with, or is attributed some special status by, the marketer.

(l) Representation that locations for the franchised business, facilities, machines, or other devices are secured, or shall be secured, by the franchisor when, in fact, they are not or shall not be.

(m) Representation that machines, equipment, products, or displays of a brand or kind are of a specific ability or nature when, in fact, they are not.

(n) Misrepresentation or failure to disclose that a person is being offered a franchise in a business, trade, or profession which requires a registration or license to conduct.

(o) Representation, in any manner, that goods or services are offered for sale at a reduced price when they are not.

(p) Representation of a reduction of prices charged by "comparing" prices of goods of like kind and quality, where the comparison being made is not with other goods of essentially similar quality and obtainable in the area.

(q) Representing a special price or limited offer to persons when, in fact, the offer is not limited and is being made to many persons on a mass advertising or marketing basis, or the price is the same as that charged to those occupying a status similar to that of the franchisee.

History: 1979 AC.