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Using Brokers and Salespersons to Sell Franchises – OH MY!

Andrew P. Beilfuss
Quarles & Brady, LLP
Naples, FL

Theresa Leets
State of California -
Department of Financial Protection and Innovation
Los Angeles, CA

Brian Romanzo
REP'M Group
Cornelius, NC

Tom Wood
Floor Coverings International
Norcross, GA

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Exhibit A – NASAA Model Franchise Broker Registration Act

Introduction¹

Selling a franchise can be an inherently risky activity for franchisors, especially if they use a salesperson or franchise broker. The salesperson or franchise broker needs to understand a complex web of federal and state laws governing the franchise sales process. When not managed appropriately, utilizing a franchise broker - - who may be incentivized by commission structures - - could expose the franchisor to a high volume of liability.

This paper will explore the evolving landscape surrounding franchise sales, including recent legislative efforts aimed at increasing franchise broker accountability and transparency. The paper explores the implications of regulations such as California's Senate Bill 919 and the North American Securities Administrators Association's Model Franchise Broker Regulation Act. Additionally, the paper provides franchisors with best practices for structuring their franchise sales organization, whether through in-house sales teams or third-party franchise brokers.

By analyzing the role of franchise brokers, the risks and rewards associated with their use, the steps franchisors can take to limit liability, this paper serves as a guide for responsible franchise expansion. The ultimate goal is to provide franchise organizations with the knowledge and tools necessary to align their sales practices with long-term business objectives while maintaining compliance with federal and state franchise laws and ethical standards.

I. Franchise Broker Registration and Disclosure

California was the first state to require franchise registration under the Franchise Investment Law. The law was necessary because in the decades before regulation, in the 1960s and 1970s, the franchise industry was infused with bad actors who sold franchises as a quick way to get rich. The franchise business model became stigmatized by fraud in what some call the "Wild West" days.

The Wall Street Journal summed it up best in a May 1970 front-page article "Once considered the darling of Wall Street and the savior of the small businessman, franchising today is spurned on Wall Street and cursed on Main Street. Some business greenhorns have sunk all their savings into franchises only to see everything evaporate."²

Fifty-five years later, remnants of the "Wild West" days live on. And recent enforcement action by the Federal Trade Commission ("FTC") and California against

¹ The views expressed in this paper do not necessarily represent the views of the California Department of Financial Protection and Innovation, its commissioner, nor the North American Securities Administrators Association, Inc.

² James MacGregor, Many Franchise Firms Fall on Hard Times After a 15-Year Boom, Wall St. J., May 29, 1970, at 1.

Burgerim³ and Anchored Tiny Homes⁴ show that fraudulent sales tactics are alive and well. The stakes are high for franchisees, if a franchised outlet closes it can be financially catastrophic for a franchisee as the franchisee may lose his/her life savings and end up bankrupt. Public comments made to state franchise regulators about Premier Martial Arts⁵ and its sales process paint a vivid picture of fraud and the resulting financial loss its franchisees suffered due to its (and its franchise brokers') dishonest sales practices.

And yet, the franchise business model is a strong engine of economic growth. Industry statistics reveal there are 831,000 franchise outlets that create 8.8 million direct jobs that represent \$897 billion of economic output for the U.S. economy, which represents almost 3% of the Gross Domestic Product (GDP).⁶ Franchisors represent over 300 different business format categories.⁷

³ https://www.ftc.gov/system/files/ftc_gov/pdf/burgerim_default_judgment.pdf and https://dfpi.ca.gov/enforcement_action/burgerim-group-usa-inc-burgerim-group-inc/

⁴ https://dfpi.ca.gov/enforcement_action/anchored-tiny-homes-franchising-llc-dba-anchored-tiny-homes/

⁵ Bret and Melissa Thibeau: "We were steered heavily into this franchise by a broker who used false numbers and sales tactics to get us into this unfortunate failed Franchise model.", David and Emma Blackwell: "I was misled by unauthorized earnings claims and pressured into a franchise that wasn't a good fit." Cale Bearden: "The people you need to hear from the most never have an opportunity to comment because they don't know this [NASAA] exists. Also, 99% of franchisees are terrified of retaliation, and rightfully so. [Franchisor] has been relentless and has told franchisees they will bankrupt our grandchildren if we press forward. The VP of Operations has even threatened to assault me." Eris Lasku: "I was misled by a franchise broker regarding the profitability and operational demands of the franchise opportunity. These misrepresentations resulted in significant financial losses and personal hardship. I've had my retirement devastated. My personal funds are destroyed, and I've resorted to living paycheck to paycheck to pay off credit card debt built up from managing the studio I bought." Joe Feicht: "My wife and I had a tragedy in dealing with a franchise broker. The business only lasted about 17 months and ended in us filing bankruptcy." Lara Breuche: "None should have to endure the lies and financial ruin as myself and fellow Premier Martial Arts franchisees have." Peter and Michelle Silberman: "We closed our doors within 6 months of building out our first location. We ran out of money. We have since drained our retirement trying to avoid bankruptcy and the debt we now carry is crippling." Cale Bearden: "and brokers openly lie about the business model, they even fabricated the financials to go along with it." Colette Young: "salesman, Brett Seebohm lied and manipulated me out of hundreds of thousands of dollars by sharing false information, broken promises and flat out lies!", Graham Waters: "fraudulent and unproven business model sold to franchisees using manipulated financial data," Katie Baker: "Franchise Fast Lane was fully aware that the numbers were complete fraud with zero basis. They knew they were selling a model/system that had not been proven. But that didn't stop them.", Peter and Michelle Silberman: "FFL falsified information to make us and other people think we could be successful as a PMA owner.", Scott Rubant, Victor Marshall: "The misinformation supplied by Franchise Fastlane was a key to our decision and led to extraordinary losses financially and emotionally." Joshua and Kimberly Ragland, Morris Lifschutz: "There must be some standards and regulation for this class of sales broker to protect the franchise industry and prevent individuals like myself to lose hundreds of thousands of dollars, my reputation and my lifesaving on a misleading and fraudulent business model because a franchise broker was more concerned about filling his pocket than anything else," Scott Steele: "I am in full support of tighter regulations against franchise brokers like Franchise FastLane. Right now, it is like the wild west," Sean McNally: "I thank you for undertaking this very necessary step to protect future franchisees from deceptive and aggressive tactics used by charlatans who were only interested in taking small businesspeople to the cleaners with their franchise fees, selling us on a model that never truly existed by working in deceitful concert with Franchise Fastlane," Shane Tayler: "I do believe at one time franchising was a great way to enter and build a business but in my opinion this process of the 3rd party franchise broker being used by a franchisor creates an environment ripe with potential fraud without any sort of framework or oversight. It sheds a bad light on the entire industry when you see the amount of franchisees losing their life savings and dealing with financial ruin and it isn't an anomaly or anecdotal, it's becoming the norm," Stacey and Eric Petrosevich: "It seems that currently there are no regulations or consequences in place for brokers acting in reckless manners leading to others financial destruction."

⁶ <https://www.franchise.org/impact-of-franchising/>

⁷ <https://www.census.gov/library/stories/2021/12/franchising-is-more-than-just-fast-food.html>

The franchise industry recognizes that it is in its best interest to create both transparency and accountability in the franchise sales process. Hence, the collaboration by both the franchisor and franchisee side of the industry to support California Senate Bill 919 (“SB 919” or “bill”). SB 919 was signed into law on September 24, 2024.⁸ SB 919 amends the California Franchise Investment Law by imposing annual registration and disclosure requirements on third-party franchise sellers.

SB 919 is contingent upon an appropriation by the Legislature to be implemented. Once implemented, it would require a franchise broker to register with the State of California before offering or selling a franchise. The registration process requires the franchise broker to sign and verify under penalty of perjury a specified disclosure form. The bill would make it unlawful for a franchise broker to offer or sell a franchise in California unless the franchise broker is registered. The bill authorizes California to summarily issue a stop order suspending or revoking a registration and provides a hearing process if a written request for a hearing is received from the franchise broker. The bill also imposes recordkeeping and regulatory requirements on franchise brokers and makes various actions by franchise brokers unlawful. The bill would make these provisions operative on the later of: (1) July 1, 2026, or (2) the first anniversary of the date on which the above-described appropriation is made.

Recognizing that franchise brokers have been the subject of complaints because of unscrupulous sales tactics, the North American Securities Administrators Association (“NASAA”) commenced a public comment period for its Model Franchise Broker Registration Act (“Model Act”) – a copy of which is attached hereto as Exhibit A - aims at regulating the activities of franchise brokers on a national scale.⁹

“The [Model] Act is loosely based on Washington State’s current franchise broker registration requirements and incorporates elements of broker-dealer and securities salesperson requirements. It includes prohibited practices, disclosure obligations, and recordkeeping obligations for franchise brokers. The proposed [M]odel [A]ct is applicable to all states and is not limited to those that register franchise offerings.”¹⁰

NASAA commenced public comment on the Model Act from May 13, 2024, through June 13, 2024.¹¹ NASAA received a total of 203 public comments.¹² The NASAA

⁸ <https://legiscan.com/CA/text/SB919/id/3022455>

⁹ <https://www.nasaa.org/71980/nasaa-seeks-public-comment-on-proposed-nasaa-model-franchise-broker-registration-act/>

¹⁰ <https://www.nasaa.org/71980/nasaa-seeks-public-comment-on-proposed-nasaa-model-franchise-broker-registration-act/>

¹¹ <https://www.nasaa.org/71980/nasaa-seeks-public-comment-on-proposed-nasaa-model-franchise-broker-registration-act/>

¹² <https://www.nasaa.org/nasaa-proposals/>

Franchise and Business Opportunities Project Group is reviewing the comments and considering revisions to the Model Act. Any future revisions will be published for another 30-day comment period.

While NASAA seeks to harmonize its Model Act with SB 919, there is one key distinction that the Model Act makes that is different from SB 919. The Model Act differentiates between franchise brokers and franchise broker representatives similarly to the Illinois Franchise Act.¹³

Also, franchise brokers, unlike real estate or securities brokers, do not have a fiduciary duty to prospective franchisees, nor educational or licensing requirements to demonstrate subject matter expertise before offering and selling franchises. This can cause confusion as the prospective franchisee, in some cases, is led to believe that a franchise broker works for them and is unaware of the fact “their franchise broker” is being paid a commission by the franchisor when they sign a franchise agreement. Even though IFA has attempted to fill the educational void with its Fran-Guard Sales Management and Compliance Program¹⁴ and has become more active in protecting the franchise business model through its responsible franchising advocacy,¹⁵ it appears the franchise industry agrees more is needed.

Consequently, California legislators, state and federal franchise regulators, NASAA and franchise trade associations have turned their focus to franchise broker registration and disclosure to make the franchise sales process more transparent and accountable. Franchise broker registration and disclosure are necessary guardrails to create and maintain a vibrant franchise channel of commerce.

II. The Role of the Franchise Broker and Salesperson

Understanding the role of the franchise broker and salesperson starts with the franchisor carefully assessing the growth mission of the franchise. The role of the franchise broker and salesperson is simply to carry out this growth mission. The franchise broker is a key piece of the puzzle for growth, but it is not the only piece of the puzzle. Franchisors may very well have in house sales representatives. While, franchise brokers are independent sales agents who connect potential franchisees with franchisors, franchise salespeople, often employed by franchisors, focus on selling franchises within

¹³ Illinois Franchise Disclosure Act, 815 ILL. COMP. STAT. § 705/3(21) and (22). The Illinois Act defines “franchise broker” as “any person engaged in the business of representing a franchisor in offering for sale or selling a franchise and is not a franchisor, an affiliate of a franchisor or an officer, director or employee of a franchisor or an affiliate 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.” The Illinois Act defines “salesperson” as “**any person employed by or representing a franchise broker**, a franchisor or an affiliate of the franchisor in effecting or attempting to effect the offer or sale of a franchise” (emphasis added).

¹⁴ <https://learning.franchise.org/topclass/topclass.do?expand=OfferingDetails-viaTC=1-offeringId=2078>

¹⁵ <https://www.franchise.org/advocacy/responsible-franchising/>

their own company's system. The role of the franchise broker and salesperson is simply to carry out the growth mission of the franchisor, which is the same in many respects barring only the registration requirement.

In Washington and New York, these sales representatives may not avoid broker registration if they are employed by any entity other than the franchisor entity, even if affiliated. The franchisor entity does not include affiliates or parents for purposes of determining who is a "broker". The franchise sales personnel must be directly employed by the franchisor entity to avoid broker registrations in New York and Washington and a franchise broker that is not employed by the franchise entity or is otherwise engaged as a third-party vendor must register in these states and may need to register in the future in many more states if the Model Act is adopted.

a. The Growth Mission of the Franchise System

In order to effectively grow a franchise system, all departments within the franchise organization must work together in unison toward a common growth goal. The operations department must have systems in place that can support growth. The marketing department must be able to work together with the operations team to communicate the mission of the franchise to the end consumer and franchisees. An effective leader of any franchise organization must first decide what the growth mission of the franchise organization is and then ensure that all departments are working together toward that common goal including, and perhaps most importantly, the sales organization.

The decision to grow a franchise system is a strategic one that should be made with careful consideration. It might be tempting for a franchisor to simply say we want to grow as fast and as quickly as possible and engage a third-party franchise broker without much further thought. That would be the equivalent of building an airplane while in the air. The growth decision is a careful decision that takes into consideration how and where the franchise will grow. This is a decision that must be undertaken collaboratively with all departments within the franchisor. The following considerations are all relevant to the decision-making process:

- Will growth be concentrated in certain regions of the country?
- If the franchise is a product-based franchise, can the supply chain support growth in a variety of markets stretched across hundreds and thousands of miles?
- Are consumer preferences different in different regions of the country?
- Are the costs of goods different in different regions throughout the country and how might that impact franchisee profitability?
- Can marketing support growth on a national scale?

All of these questions must be answered in creating a growth mission for a franchise.

Not only must the growth mission be decided collaboratively within all departments of the franchisor, but the franchisor must also make sure that the growth mission aligns with the investors of the franchise. This might be a moot point for a founder owned and operated emerging franchise. However, for a private equity sponsored franchise organization the executive leadership team must ensure that the growth mission aligns with the investor's underlying investment thesis. If the private equity sponsors have a three-to-five-year transaction horizon, growth might be strategically timed around a transaction. The investors of the franchise might want to leave enough undeveloped territory known as "white space" so that the next buyer or investor can write their own growth story. The investment thesis might prohibit international development and focus on targeted regional development. Ultimately, ensuring that the growth mission is clearly defined and aligned with both the internal team and investors is crucial for the long-term success and strategic direction of the franchise.

Further, decisions to grow can be heavily influenced by the franchise brand's need for consumer awareness, product availability and the franchise brand's service distribution. As the brand grows, and consumers become reliant on their ability to have access to the brand beyond a hyper local level the franchise has a responsibility to continue responsible growth and expansion for the expressed purpose of servicing its customer base.

b. Target Franchisees

Once the decision is made about how and where the franchise intends to grow, the next decision the franchise organization must make is what the ideal franchise candidate might look like. Again, the following questions are relevant to consider:

- Is the franchise organization going to target small private equity backed groups that would operate as franchisees?
- Might the franchise grow through strategic acquisitions by acquiring regional competitors?
- Is the organization going to grow through selling large territories to area developers?

If the answer to any of the questions above is yes, then the franchise might not need a robust franchise broker-oriented sales organization. It might turn toward business brokers, small investment bankers and boutique M&A firms as avenues for growth.

The target franchisee might also vary by industry. Restaurant franchisors may seek established restaurant area developers who operate a variety of restaurant concepts with

sophisticated back-office support systems. These area developers simply tack-on a new restaurant concept within their operational portfolio. If the franchise's growth mission is to target such boutique area developers, a franchise broker might not be the best fit for this growth model.

If the franchise is a service brand with relatively low upfront costs or a lifestyle and fitness concept, the target franchisee might be individuals who saved capital after time in the corporate world and want to work for themselves in a franchise. These target franchisees are ideal for franchise broker networks.

Just as executive search firms assist (i) employers with targeting potential employees and (ii) potential employees seeking employment with targeting potential employers, franchise brokers work in sync with franchisors and franchisees alike to match targeted potential franchisees and franchisors.

c. Franchise Broker or Franchise Sales Organization (“FSO”)?

Now that the growth mission has been established and the franchisor understands what its ideal candidate might look like, the franchisor then needs to decide what kind of sales organization is best suited to carry out the growth mission. A separate section of this paper will assess whether to utilize a third-party franchise broker or an in-house sales organization.

The word “franchise broker” is often used interchangeably to describe two different kinds of broker organizations: (i) franchise sales organizations commonly referred to as “FSOs” and (ii) traditional third-party brokers. The franchisor needs to decide if an FSO or traditional franchise broker is best suited to meet their needs.

Traditional third-party franchise brokers (sometimes called franchise consultants) work with potential franchisees to help them find the right franchise opportunity. If the franchise sales process is a funnel, the franchise broker is at the beginning of the funnel working with sometimes hundreds of brands and thousands of candidates across large broker networks. The franchise broker will engage with candidates to assess their interests, skills, and financial situation, then match them with franchise opportunities that align with their goals. The franchise broker will provide guidance through the decision-making process, which may include introducing the prospective franchisee to the franchisor or an FSO.

An FSO is an entity that focuses on helping franchise brands find and recruit potential franchisees. They act as intermediaries between the franchisor and potential franchisees and take the franchise candidate from a franchise broker through a closing process. Typically, FSOs provide a larger scope of services than a traditional third-party franchise broker. These services may include designing and managing discovery days which are days when candidates visit the franchisor to gather more information about a franchise. They may provide sales consulting services concerning how to best position

the Franchise Disclosure Document and how to best market the brand to candidates. In addition, FSOs provide administrative support services such as territory checks ensuring that there might be available territory to sell. FSOs are typically more embedded in the franchisor, and one might think of them as an out-sourced Chief Development Officer. Using the sales process as a funnel analogy, the FSO is at the end of the funnel whereas the broker is at the beginning.

Both FSOs and franchise brokers are compensated through commissions which are a percentage of the initial franchise fee paid by the franchise candidate. While FSOs provide a much broader scope of services than franchise brokers, they are designed to save the franchisor from hiring a Chief Development Officer and sales department which generally require large payroll expense and, for the Chief Development Officer, typically equity grants. If a franchisor utilizes an FSO and a franchise broker, the franchisor will need to weigh cost savings from hiring an in-house sales organization versus commissions paid to both franchise brokers and FSOs.

d. Development Goals

After the franchise decides where it will grow and what the ideal franchise candidate might look like, the next step for the franchisor is deciding development goals. If the franchisor has decided that it will only grow in targeted areas of the United States, will it get there one franchise agreement at a time in the absence of selling development agreements? Alternatively, will the franchisor allow for the sale of large development agreements with development targets of 10+ franchised units over a number of years? The latter would require less transactional costs but bring with it the risk that many of the locations sold may not open. The former increases transactional costs but it also may increase the likelihood of the franchised units opening.

e. Conclusion

The role of the franchise broker or franchise sales organization is to carry out the carefully crafted growth mission of the franchise. This growth mission needs to be decided cross-collaboratively across the franchise and it involves considering growth goals, the ideal franchise candidate, development targets, the franchisor's specific industry, and what kind of franchise sales organization is best suited to carry out the growth goal. While a franchisor may avoid these laws by hiring a franchise sales representative that works directly for the franchise entity, that is not always a viable option.

III. The Do's and Don'ts of Using a Franchise Broker or Salesperson

Before a contract is signed with a sales organization, the franchisor should consider several "dos" and "don'ts" of engaging franchise brokers.

Dos

a. Third-party or in-house?

In a separate section we will engage in an analysis to determine if a franchisor should decide to utilize a third-party franchise broker or in-house sales organization. Before engaging with a sales organization, a franchisor must decide what kind of franchise sales organization it wants to work with and how that franchise sales organization fits with the franchise's growth mission. Would an FSO be better suited for the franchisor's needs? Or does the franchisor need to hire an in-house sales department?

b. Due Diligence

Once the decision has been made to utilize either a third-party franchise broker or franchise sales organization, the franchisor should conduct its own due diligence. This involves assessing background checks. Does the franchisor broker have a track record of making earnings claims outside of any earnings claims made in the franchisor's Franchise Disclosure Document? Have they been named in litigation? What kind of compliance training processes does the franchise broker organization have in place? What do other franchisors say about the franchise brokers or sales representatives group? Do engage in this careful due diligence before working with a third-party franchise broker or franchise sales organization.

c. Sales Contract

After deciding what kind of franchise broker or franchise sales organization is best suited for the franchisor's needs and after due diligence, it is time to engage the franchise broker or franchise sales organization through a contract. Do hire an experienced franchise attorney to negotiate the contract with the franchise broker or franchise sales organization. Do make sure that the contract has a carefully crafted development schedule with termination rights if the development schedule is not met. Do make sure that the contract has an indemnification provision protecting the franchisor against any lawsuits associated with an action that the franchise broker or franchise sales organization engage in that are violative of state and/or federal franchise laws (including, without limitation, making earnings claims outside of the franchisor's Franchise Disclosure Document). Do make sure that the contract requires the franchise broker or franchise sales organization to only sell to candidates approved by the franchisor and in the form and manner approved by the franchisor.

d. Compliance Programs

A well drafted contract will only go so far as to protect the franchisor from liability exposure. When engaging with a franchise broker or franchise sales organization, do ensure that there are layers of liability protection in place that starts with the contract and ends with a compliance program. Ask the franchise broker or franchise sales organization how they are trained in selling franchises and how frequently they attend compliance training programs. Does the franchise broker or franchise sales organization have access to franchise attorneys who can assist in navigating complex questions associated with the franchise sales process and avoiding unlawful earnings claims?

e. Creative Compensation

Do consider creative compensation structures when engaging with franchise brokers and/or franchise sales organizations. Traditional commission-based compensation may create the opportunity for irresponsible growth, as brokers and franchise sales organizations may prioritize closing deals over ensuring the long-term success of franchisees. To mitigate that risk, the franchisor should create a compensation structure that gives the franchise broker and/or franchise sales organization more stake in the game. This can be in the form of equity or synthetic equity compensation¹⁶. These forms of equity-like grants put often a large portion of compensation tied to the transaction of the franchisor. Tying a significant portion of broker earnings to the franchisor's long-term performance, naturally aligns brokers with the interests of the franchisor and franchisees. When brokers benefit from the brand's long-term success, they are incentivized to seek franchisees who are well-qualified, adequately capitalized, and aligned with the company's values. This alignment fosters a more strategic, measured approach to expansion, reducing the risk of high turnover or failing locations. By creating a compensation structure that rewards sustained performance rather than short-term sales, franchisors can foster responsible growth.

f. Skill Sets

Do conduct a thorough review of the potential broker network and the individual brokers to assess if the network is skilled in attracting and placing franchisees that meet the specific criteria of the franchise. Each franchise broker and franchise sales organization is unique in their methods and abilities and excel with targeting certain types of candidates. While some franchise brokers and franchise sales organizations are adept at recruiting and targeting high net worth candidates that would thrive in a multi-unit franchise that places a premium on leading a large organization, other franchise brokers and franchise sales organizations are more apt at attracting lower net worth candidates that are better suited for single unit operations. Identifying the correct franchise broker(s)

¹⁶ Synthetic equity, also known as "phantom equity," provides the recipient with a cash payment that is tied to a negotiated percentage of the sale proceeds from a whole business transaction. Some companies may have limitations on their ability to grant equity for a variety of reasons. There are also more legal and transactional costs associated with granting equity that may involve amending the company operating agreement. One way to replicate equity while avoiding the complexities and transactional costs associated with granting equity is the issuance of synthetic equity.

and/or franchise sales organization for the needs of the franchise is imperative for responsible and effective growth.

Don'ts

a. Inadequate Sales and Operations Infrastructure

Don't engage a franchise broker or franchise sales organization without ensuring that the franchisor has an adequate infrastructure in place to support growth. Does the franchisor have access to mapping software that can map territories and assess the demographics of various regions so that it can determine if a territory might be viable? How will the franchisor go about disclosing the Franchise Disclosure Document and ensuring that the franchise agreement can lawfully be signed? Who is going to administratively handle the franchise sales closing process? These administrative items may seem small, but they are crucial to ensuring successful growth.

Additionally, don't engage a franchise broker and/or franchise sales organization without ensuring that the franchisor is adequately prepared to train and support the new franchisees. Each new franchisee requires careful training, individual support and resources that will ensure that the franchisee has the best chance for success. A proper operational support team is a significant investment for the franchise.

b. The Rogue Broker

Don't allow a franchise broker or franchise sales organization to sell to whomever they want without franchisor oversight. Make sure that there are frequent check-ins between the franchisor and the franchise broker and/or franchise sales team about candidates and the sales pipeline.

c. Over-Reliance

Don't rely exclusively on franchise brokers or franchise sales organizations to expand your franchise system. After a franchisor engages a franchise broker or franchise sales organization, the franchisor should continue its organic lead generation. This ensures some level of control over the sales process.

d. Candidate Screening

Don't assume that a candidate screened by a franchise broker or franchise sales organization is automatically good enough for the franchise system. The franchisor should still review and approve all candidates.

e. Growth Mission

Don't engage a franchise broker or franchise sales organization that is misaligned with your growth mission. If the franchise growth mission is slow, steady conservative growth perhaps a third-party franchise broker or franchise sales organization might not be the best fit. If the franchisor has ambitious growth goals, an in-house expensive sales team especially for an emerging brand might not be the most cost-effective and efficient option.

IV. The Risk and Reward of Using a Franchise Broker or Salesperson Rewards

Rewards

a. High Growth

Perhaps the most rewarding factor for the entire franchise organization in utilizing franchise brokers or franchise sales organizations is the high growth factor. Franchise brokers are highly skilled and trained salespeople. Franchise brokers and franchise sales organizations typically have a "bench" of ready, willing and able candidates looking for the right franchise opportunity. The franchise broker or franchise sales organization is a matchmaker marrying the bench of candidates with the franchisor. This results in fast growth, typically much faster than a franchisor could achieve on their own.

This fast growth is not only good for the franchisor, but it is also rewarding for the franchisees. A high growth franchisor generates more brand awareness which results in more consumer foot traffic and higher revenues increasing franchisee profitability. High growth, done in a careful way, can be beneficial for the entire franchise system. This also has some risks which we will revisit later.

b. Broader Geographic Reach

Franchise brokers and franchise sales organizations have a broader geographic reach giving the franchisor access to markets it would not otherwise reach on its own. This can be especially helpful for franchisors struggling to grow outside of their home market.

c. Professional Organization

Franchise brokers and franchise sales organizations are professional organizations all competing to hire the best salespersons within their organization and all competing to work with the best franchisors. As with any professional organization, there are reputational costs associated with franchise brokers and franchise sales organizations not growing in a responsible way. If a franchise broker or franchise sales organization gets a reputation for irresponsible growth or is consistently named in earnings claims related litigation, franchisors should not want to engage such organizations as such irreputable organizations may expose the franchisor to liability.

d. Low Cost

Franchise brokers and FSOs can help save franchisor costs. For emerging franchisors that cannot afford to hire a Chief Development Officer and its accompanying entire in-house sales team, they may be a low-cost alternative to hiring highly skilled and experienced salespersons. For private equity sponsored franchise organizations looking for cost synergies, they can also be a great way to save operating costs while facilitating growth.

e. Compliance Expertise

Selling a franchise is not like selling a new pair of shoes or a used car. Franchising is a highly regulated industry with complex federal and state laws governing franchise sales. If an emerging franchisor wants to hire a franchise broker or an in-house salesperson and decides to hire someone with no franchise sales experience because that might be all the franchisor can afford, it can be a recipe for disaster. This may create the opportunity for earnings claims made by the salesperson thereby exposing the franchisor to liability. Franchise brokers are experienced professionals who specialize in matching candidates with the right franchise under the requirements of the law.

In sum, the key benefits of utilizing franchise brokers and/or franchise sales organizations include access to a wider pool of qualified candidates, cost savings, faster growth with reduced risk. When managed properly, franchise brokers and franchise sales organizations can be a powerful tool for scaling a franchise system.

Risks

a. Growth

High growth that can be generated from engaging a franchise broker and/or franchise sales organization can be both a reward and a risk. The franchise broker, especially if it is a third-party organization, may be incentivized to grow too quickly and out of synch with the franchisor. Increasingly, franchise brokers and franchise sales organizations have been named in litigation concerning unlawful sales practices. In addition, certain practices of franchise brokers and franchise sales organizations have

been the genesis of broker related legislation mentioned elsewhere in this paper. The statistical probability of a franchisor being named in franchise sales-related claims would naturally increase with the more franchises being sold. If there are more transactions, there comes a greater risk that something could go wrong in the franchise sales process such as an unlawful earnings claim, misrepresentation, or failure to properly vet franchisee candidates.

b. Compensation

Third-party franchise brokers and franchise sales organizations are typically compensated solely or at least largely through commissions. This creates a risk that franchise brokers and franchise sales organizations will sell franchises to candidates (whether or not qualified) to just get to closing and will have no regard for how successful the franchise candidate might be and even if the franchise candidate would even open a location in the future.

c. Lack of Control Over the Sales Process

Franchisors utilizing franchise brokers and/or franchise sales organizations can lose a degree of control over the sales process and how their brand is presented. Franchise brokers and franchise sales organizations may prioritize selling quickly which could result in misrepresenting the franchise opportunity. Franchisors need to ensure that the franchise broker or franchise sales organization is trained properly to represent the franchise accurately, free from misrepresentations or omitting crucial information that is important for the buyer to understand. Effective franchisor and franchise broker relationships and processes involve the franchise broker/franchise sales organization and the franchise sales team working in conjunction to represent the franchise, vet the candidate and to ensure that when a Franchise Agreement is signed that all parties are clear of the responsibilities of each.

d. Liability exposure

While franchise brokers and franchise sales organizations are well trained sales professionals, having a compensation structure that is based largely on commissions creates the incentive for irresponsible growth. This may result in unlawful earnings claims that end in costly and protracted litigation. If the franchise broker or franchise sales organization is particularly a smaller organization compensated largely on commissions, they may not have the financial wherewithal to honor the indemnity rendering it virtually worthless. This leaves the franchisor on the hook for such costly claims.

e. Over-Reliance on Broker Leads

If a franchise relies too heavily on leads from franchise brokers or franchise sales organizations, this may create an over-reliance on third parties for growth. This can be problematic if the franchise broker's/franchise sales organization's performance dips or if they steer candidates to the next best brand.

In summary, there are several risks associated with utilizing franchise brokers and/or franchise sales organizations. Such risks include over-saturated growth, misaligned compensation, potential liability exposure and lack of control over the sales process. Franchisors knowledgeable of these risks can more effectively work with franchise brokers and franchise sales organizations and use them to help facilitate the franchise growth mission.

V. An Analysis of Deciding Whether to Use Employed or Third-party Salespersons/Brokers

There are many factors that a franchisor needs to consider when assessing whether to have an in-house or third-party franchise broker and/or franchise sales organization.

a. Budget

The first factor is the franchisor's budget. If the franchisor is an emerging franchisor, can it afford to hire an in-house sales team? Experienced franchise sales professionals command high salaries, plus commissions and often equity grants. Sales personnel are often the most highly compensated individuals within an organization and on an annual basis may earn more than its CEO.

If a franchisor does not have the budget to accommodate market compensation for in-house sales personnel, franchisors should proceed with caution when hiring below market compensated in-house sales personnel. Given the complex nature of franchise sales, hiring someone with less experience might create even more of an opportunity for risk.

If the franchisor's budget will not allow for in-house sales personnel, third-party options are a good alternative. The franchisor would need to assess what scope of work they need from such a third-party option. Depending upon scope, they can decide if they want to work with an FSO or a traditional franchise broker or both.

b. Control

Budget is just one factor in assessing whether to engage a third-party franchise broker or franchise sales organization. The franchisor should assess how much control and oversight do they want to have over the sales process. An in-house sales organization are employees of the franchisor. As a result, they are embedded within the

culture of the organization. For larger franchisors, they may interact daily with the franchisor's legal, operations and marketing departments. Their performance can be assessed just like any other employee, and they can be fired for poor performance or irresponsible sales decisions. From a compliance perspective, there is a lot of benefit to having a high degree of control over the sales organization, but this can come at a high financial cost.

c. Agility

With an in-house sales organization the franchisor can be nimbler in responding to the franchise sales process. If the franchisor relies solely on an FSO or a third-party franchise broker, the franchisor has effectively outsourced to that third-party the entire administrative infrastructure to support growth. As such, it becomes very difficult to exit that FSO and franchise broker relationship from a practical standpoint.

If the franchisor wants to disengage the franchise broker or FSO, or if the FSO or franchise broker miss a development target thereby causing the sales contract to be terminable, it might cost the franchisor a great deal in administrative expense to move to another third-party franchise broker or FSO or take the sales process in-house. In addition, and perhaps most importantly, the sales process might lose all momentum which can be disruptive for the franchise's growth.

VI. The Steps Franchisors Should Take to Minimize its Liability Exposure When Using a Broker and/or Salesperson

Franchise brokers and franchise sales organizations play a critical role in carrying out the growth mission of the franchise. They are matchmakers linking interested candidates with franchisors and guiding candidates through the sales process. Brokers are often seen as intermediaries and can be perceived by a candidate as almost imbedded within the franchise organization. Therefore, franchisors must take steps to limit liability exposure when using franchise brokers. Franchisors are well suited to create layers of protection ranging from thorough background checks, a well drafted sales contract, compliance programs and audits. This section will explore steps the franchisor can take to limit liability exposure in greater detail.

a. Broker Due Diligence

Even before a contract is signed, a thorough background check concerning the franchise broker can go a long way to protecting the franchisor. There is currently a low barrier to entry in the franchise broker world. Anyone can start a franchise broker group with little effort. The franchisor should hire experienced brokers. The due diligence should involve a review of whether the franchise broker and/or franchise sales organization has a track record of making unlawful earnings claims. In addition, the franchisor should speak to other franchisors who have worked with the franchise broker and/or franchise

sales organization in the past. This validation is key to developing a level of trust with a franchise broker or franchise sales organization. Just as franchisee candidates validate a franchise by talking to other franchisees, so too should franchisors validate their franchise brokers and/or franchise sales organizations.

b. A Well Drafted Contract

A key feature in protecting the franchisor from irresponsible brokers is a well-drafted sales contract. The sales contract should include, at a minimum, the following features:

- **Scope of Work-** The contract should clearly define the roles and responsibilities of the franchise broker and/or franchised sales organization and the franchisor. The contract should indicate that the franchise broker and/or franchised sales organization can only sell to candidates that meet the franchisor's approval. The franchisor needs to have sole right and authority to dictate the franchisee qualifications and ultimately approve the franchisee. In addition, the contract should require that the franchise broker and/or franchise sales organization can only sell in the form and manner approved by the franchisor. There should be clearly defined roles and responsibilities concerning important administrative tasks in the sales process, who is responsible for disclosing the candidates, for assembling closing documents, as well as undergoing territory checks? Clearly defining the scope of work can help ensure a smooth sales process.
- **Development Schedule-** The contract should also contain a realistic development schedule. This is the core business component of the sales contract. If the development schedule is too aggressive, this may create the opportunity for irresponsible sales tactics which can ultimately impact the franchisor. In addition, the development schedule should have teeth where if a schedule is not met by a specific deadline, then the contract can be terminable.
- **Exclusivity-** Closely related to the development schedule is the idea of exclusivity. Whether or not a broker has the exclusive right to sell franchises should correlate with the development schedule in terms of its sales volume. If a franchise broker or franchise sale organization has exclusive sales rights, the development targets would naturally be higher than if it was a non-exclusive relationship.
- **Indemnification-** A crucial legal component of the contract is its indemnification language. The indemnification section is designed to protect either party from being brought into claims due to the other party's wrongful acts or omissions. Indemnification should be mutual. The indemnification provision should protect the franchisor from being brought into claims associated with the franchise broker's and/or franchise sales organizations'

unlawful earnings claims or other actions or omission in violation of state and federal franchise laws. In the same respect, if a franchisor makes an earnings claim that impacts a franchise broker or franchise sales organization it too should indemnify the franchise broker or franchise sales organization.

- **Insurance-** The contract should also include insurance requirements. Both the franchise broker/franchise sales organization and the franchisor should have appropriate coverage. Insurance policies such as professional liability insurance or errors and omissions policies can serve to protect all parties in the sales process.

c. Marketing Material Review

In addition to the contract, an important added layer of protection is having a legal review of all marketing materials associated with the franchise sales process. An experienced franchise attorney should review all email campaigns, discovery day presentations, and social media posts that are disseminated to franchise candidates. The purpose of the review is to ensure that all marketing materials tie directly to the Franchise Disclosure Document. In addition, the review should make sure that all materials include the appropriate disclaimers.

d. Compliance Training

An additional layer of protection that supplements the underlying contract and a marketing material legal review is a compliance training program. Franchise brokers and franchise sales organizations should ensure that all of its employees undergo legal compliance training at onboarding and each year. There should be a resource available to franchise brokers and franchise sales organizations that can answer any question they may have during the sales process. Everyone within the franchise broker organization should be included in the compliance training, including administrative support personnel. There are multiple individuals involved in the sales process and its imperative that each and every person is trained in selling under the requirements of federal and state franchise laws. Franchise brokers should create a compliance culture where “if you see something, you say something.”

e. Franchisor Oversight

After a franchisor conducts due diligence, selects a broker, negotiates the contract, and ensures that there is a compliance program and legal oversight on key areas of the sales process, franchisors shouldn't just “set it and forget it.” A key area of further liability protection is regular franchisor oversight over the sales process. The franchisor should check-in with their franchise broker and/or franchise sales organization often to assess their performance. The check-in should not be limited to meeting the development

schedule. Compliance performance must be assessed as well. Franchisors should consider auditing the franchise broker's/franchise sales organization's use of marketing materials to make sure that they do not contain unlawful earning claims or other misrepresentations. Franchise broker and franchise sales organization should audit the sales process of their own employees to ensure that the sales are undertaken in accordance with the law. This added step of ongoing oversight can go a long way toward liability protection.

Franchisors who utilize franchise brokers and/or franchise sales organizations to expand their networks must take proactive steps to limit liability exposure. By selecting reputable franchise broker and/or franchise sales organization, carefully negotiating the sales contract, and maintaining vigilant oversight, franchisors can significantly reduce their legal risks.

VII. Strategies to Maximize Franchisor Valuation

As referenced above, a core function of a franchise broker is to help the franchisor raise the valuation and growth of the franchise system to achieve its expansion goals. These goals and the associated timelines can be critical due to the race to gain market share, grow the brand to create more revenue for other expansion opportunities, or even lower expenses to the franchisee community via lower supply chain pricing, and thus higher unit level economics. As referenced generally above, to ensure that the brand reaches its goals, the franchisor and franchise broker would be well-advised to collaborate to identify the valuation drivers in the market segment and ensure that the development strategy and broker compensation models are designed to capture the maximum amount of valuation possible for the brand. Done well, the franchisor can quickly increase both its valuation and multiples. Done poorly, however, a flawed development strategy can kill the value of the brand or even threaten the viability of the franchise system. The following section discusses strategies to ensure that franchisors and franchise brokers are aligned to identify and drive enterprise level brand valuation.

a. Unit Sales Strategies

Franchise unit growth has become a bit of a "Goldilocks" paradigm in recent years for franchisors seeking to increase their valuations. If the franchisor does not sell enough units to capture the market share in a territory, it risks the viability of that market for the brand later, as well as the negative impact on a lack of brand recognition in the territory. If the franchisor oversells development rights, however, there is a high chance that units will never actually be developed, thus increasing the franchisor's litigation risk, market share impact, and the need for a potential acquirer to assume liability for development support that was supposed to be funded by development fees, which are often not accrued and instead misused for other growth initiatives. The franchisor may also have other business issues if it grows too quickly, before it has the infrastructure to support the growth.

Thus, “smart” growth – or growth within a reasonable number of units and development rights – is an essential aspect of franchise development planning. This will increase the chances of units being opened on schedule, decrease litigation risk, and mitigate against any carried development obligations that negatively impact valuation. Currently, valuations appear to be maximized for franchisors that are selling between three to five development rights, each with an opening requirement of one year or less.

In addition to determining the proper number of units to be sold, a clear identification of franchisee candidate qualifications is critical. Franchisors must identify various indicators of success stemming from prior business experience to capitalization, to other business interests, to overall fit for the brand. Providing clear screening criteria to the franchise broker networks ensures that the franchisor is “awarding” a franchise opportunity (as opposed to simply selling one) to a franchisee that is more likely to open and drive favorable unit level economics once operating. These same criteria may help to set the foundation for later multi-unit expansion with the franchisee.

b. Focus on Prospects Capable of Operational Success

In addition to unit count, unit level economics is a key valuation driver in a franchise M&A process. As used in this setting, unit level economics generally refers to the franchise location’s gross sales figures. Increasing these unit level economics then raises the franchisor’s royalty income, which is a primary metric in determining the company’s valuation, especially given the margins present in most royalty streams. Although franchise brokers are not necessarily guarantors of a prospect’s success, they can be instrumental in determining which prospects are the proper fit for the brand in terms of experience, financing, and even soft skills that impact franchisee performance.

Selecting the right prospects is also critical to enhance same store sales and other repeat business metrics that are continuing to be emphasized in the franchisor valuation process. Same store sales can be enhanced via a prospect’s skills in a variety of business processes such as local marketing, operational efficiencies, staffing, and focusing on the customer experience. These repeat sales to the same locations greatly enhance buyer confidence in the brand and the “lasting” power of the brand, as well as the brand recognition in the market. This, in turn, drives valuation multiples.

Next, franchisee turnover, as reported on the Item 20 charts, can negatively impact franchisor valuation. Selecting high performing prospects and right sizing the number of development rights sold to each prospect ensures both getting locations open per the projections made in Item 20, but also the successful operation of the unit once opened. Still further, once multiple units are opened, a successful prospect would be able to identify synergies further enhancing the economics and performance of each individual outlet, further enhancing system valuation and Item 19 metrics (to the extent used by the franchisor).

Finally, the authors recognize that several of the factors above can be difficult to predict and that the simple fact that a prospect does not have certain skills or experiences yet, it does not mean that they are not capable of being a successful single or multi-unit operator. Organizations – including the IFA – are providing multi-unit training and qualification certifications for prospective franchisees seeking to either immediately become multi-unit/multi-brand operators or to grow into one in the future. Franchisors using such programs can increase the likelihood of success by selling to existing franchisees with whom they have a track record of performance, rather than immediately selling multi-unit rights to an unfamiliar prospect. Where this is an issue, creative franchise grants may be possible to allow a prospect to start with a single location, while reserving or qualifying for more locations based on certain factors in the future.

c. De-risk the System Through Broker Best Practices

The final major area that will impact a franchisor's valuation is its legal compliance. A very significant source of risk and litigation exposure is often derived from the use of franchise brokers. This is because the franchise sales process is heavily regulated and carries harsh penalties for non-compliance. Such penalties can include remedies like recession or statutory damage enhancers. Pre-sale litigation claims are often premised on franchise broker errors or improper sales tactics, such as making unauthorized earnings claims, high pressure sales tactics, or outright misstatements to close a deal. Franchisors would be well-advised to create a thorough franchise development audit and compliance process to best mitigate against the risk of pre-sale law violation exposure. These audit and compliance practices, some of which were discussed above, often include the following:

- Regular franchise sales trainings and compliance certifications.
- The use of checklists to ensure uniformity and compliance.
- Ensuring that all documentation is properly identified and collected, including all Item 23 receipt pages and any and all documentation that was provided to a prospect and all of the broker's notes. It is recommended that the Franchisor store all of this information, at minimum, for the life of the relationship with each franchisee. It is further recommended that any changes to a franchise agreement be identified via an addendum, rather than making changes to in the body of the agreement. This makes it easier to recognize franchise owners with unique terms that differ from other franchisees in the system.
- If using external franchise brokers, ensure proper contracts are in place, which include things like additional insured requirements and indemnities.
- Ensure that the franchisor has proper insurance coverages for pre-sale violations, including E&O and D&O coverages which do not expressly exclude the franchise sales process. This will both help mitigate any exposure while

the franchisor owns the system but also allows the franchisor to buy insurance products (such as “tail policies”) to cover them for claims that may be raised post-sale regarding alleged violations that occurred during its ownership.

By taking the steps above, the risk of expensive individual or mass litigation with the franchisee community is greatly mitigated. This can be particularly important to both the buyer and the seller, as private equity investors often search to exercise reserved rights that may increase cost structures to the franchisees or to reduce the franchisee’s rights or income. Because franchise agreements are generally very well drafted and the franchisee’s goal is to exit the system to avoid compliance with the reserved right being exercised, franchisees will often revert to pre-sale violation allegations, due to the remedies potentially available if they succeed with their claim (specifically, recession). Having proper processes, documentation, and – if needed – insurance coverage and indemnities can be essential to protect both the franchisor and the brokers, as well as the potential purchaser of a franchise brand. It will also avoid either downward valuation drivers for any pending unliquidated liabilities or a later reduction in purchase price dispute between the buyer and seller of the system.

Conclusion

Ensuring an effective, while compliant, franchise development program is critical to all parties to the franchise relationship. Done properly, a compliant franchise development program will benefit both the franchisor and franchisee. The franchisor can best ensure that its focus is on “awarding” franchise locations to the best qualified candidates, who are most likely to get the awarded units open and to operate them properly to help advance the brand and increase the system’s market share. If, however, the franchise development program is focused on improper sales tactics to simply “sell” a franchise location to anyone with the financial means to qualify and pay an initial franchise fee (thus triggering the broker’s or salesperson’s right to a commission), the risk to the system increases exponentially. This is true not only in terms of legal risk of a violation due to the pre-sale laws and related remedies that can have a devastating impact on the franchise system, but also the business risk of over-selling units that will not be opened, selecting franchisees who may not be qualified operators, over-paying franchise brokers and salespeople, and putting existing franchisees’ market share and brand reputation at risk. In contrast, the offending broker or salesperson often times is long gone by the time that the violation is discovered or unable to meet any indemnity obligations to the franchisor (and required “additional insurance” requirements often lapse over time). The new laws regulating franchise brokers and salespersons regulation will assist in this process by ensuring that brokers are both qualified and accountable for their actions. Nevertheless, as stated in the body of this paper, the enactment of legislation alone is not enough. Franchisors would be well-advised to take additional actions to protect itself and ensure that the franchise development process is run in conjunction with the franchisor’s qualifications criteria, pursuant to its growth strategy, and operated in full compliance with the various pre-sale laws. The combination of the new legislation and an effective growth strategy and compliance programs (including, requiring annual trainings,

secret shopping, and documentation processes) will help to ensure the health and growth of the system and optimize the performance of its franchisees at the unit level.

Speaker Bios

ANDY BEILFUSS

Andy Beilfuss is a partner and National Chair of the Franchise, Distribution and Direct Sales Team at Quarles & Brady LLP. He is a multi-disciplinary attorney, with extensive litigation, transactional, and regulatory compliance experience in the franchise and distribution context. Andy is unique in his ability to connect legal principles to business objectives efficiently and in ways that non-law trained businesspeople can understand and execute. He has advanced business education and experience and frequently serves as an outsourced general counsel, advising clients on growth strategies, preparing systems for mergers and acquisitions and assisting them through the M&A process, daily operational issues, dispute avoidance, international expansion, contract drafting, cyber security, artificial intelligence, and other statutory compliance. He is a leader of the International Franchise Association's Wisconsin Franchised Business Network, served on the IFA's membership board, and has been elected on three occasions in statewide elections to the governing body for the State Bar of Wisconsin. He is individually Chambers rated in Franchise Law, has consecutively been named a Franchise Times "Legal Eagle", recognized in the Best Lawyers in America, named a "Super Lawyer" in franchise and distribution law, and Who's Who Legal in Franchise law and Litigation. He has also authored a number of articles and spoken on a variety of franchise law topics at the ABA Forum on Franchising and IFA Annual Legal Symposium. He earned his law degree, cum laude, from Marquette University Law School and his undergraduate and master's degrees from the University of Wisconsin-Milwaukee. Andy can be reached at the law firm of Quarles & Brady, LLP via telephone at (414) 277-5111 or via e-mail at andrew.beilfuss@quarles.com.

THERESA LEETS

Theresa Leets is the Assistant Chief Counsel in the Legal Division at the California Department of Financial Protection and Innovation (DFPI). She is responsible for supervising the Department's programs under the Franchise Investment Law. She is also the Chair of the North American Securities Administrators Association (NASAA) Franchise and Business Opportunities Project Group. Theresa speaks frequently on topics related to franchise law. Theresa is currently serving as Senior Vice President of the Los Angeles County Bar Association (LACBA). She is also Chair of the California Lawyers

Association's (CLA) International Law and Immigration Section (ILS). Theresa is a licensed California real estate broker with an inactive Mortgage Loan Origination (MLO) endorsement. She is the first franchise regulator to earn a Certified Franchise Executive (CFE) designation from the International Franchise Association (IFA). Theresa received her B.A. degree from the University of California at Santa Barbara and her J.D. degree from the University of California at Davis.

TOM WOOD

Tom Wood is CEO and President of Floor Coverings International and has served in that position since 2005. Floor Coverings International is currently recognized at the #1 Flooring Company in North America for customer satisfaction as well as tops in it's class in most franchise ranking services. Prior to his post with Floor Coverings International he started with the parent organization, FirstService Corp., while still a college student in 1985 and has held several key positions in its various organizations over the past 34 years. After helping found CertaPro Painters in 1992, he became President of the Franchise Development Center in 1998. Dedicated to the growth and development of new franchises for several of the brands owned by FirstService, he placed more than 600 franchises for CertaPro Painters, California Closets, Stained Glass Overlay, Paul Davis Restoration, and NutriLawn. In 2005, he became President and CEO of Floor Coverings International. Tom also is a volunteer for many non-profits in Atlanta, including the Central Night Shelter.

BRIAN ROMANZO

Brian Romanzo serves as Secretary and General Counsel for the Rep'm Group where he advises the company on all legal, regulatory and compliance matters affecting this full-service franchise sales and development organization. Brian previously served as in-house counsel for Driven Brands in a variety of roles, ultimately as Vice President and Deputy General Counsel and brand General Counsel for Meineke Car Care Centers. In addition to his franchising roles, Brian previously served as general counsel for a global consumer electronics company and began his career as an associate with the law firm of Sidley Austin LLP. Brian received his law degree from the University of Notre Dame and his undergraduate degree from Princeton University.

Exhibit A

NASAA Model Franchise Broker Registration Act

[INSERT PDF OF MODEL ACT FOR FINAL DRAFT]