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SOURCE MATERIALS

- Source 1 Directory of Franchise Regulators
Source 2A Federal Trade Commission Rule Relating To Disclosure Requirements and Prohibitions Concerning Franchising
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Source 3 [Reserved]
Source 4 The Uniform Franchise Offering Circular
Source 5 NASAA Commentary dated April 18, 1999, on the Uniform Franchise Offering Circular
Source 6 Selected State Specific Information

Source 7 Release 3-F (California): Guidelines for Determining
Whether An Agreement Constitutes a “Franchise”

FOREWORD

Franchising—a method for distributing goods and services through a chain of relatively uniform outlets, some of which are independently owned and operated by franchisees—has grown dramatically since the 1960's. In response to this dramatic growth there has been a concomitant increase in the regulation of franchising. As recently as the early 1970's, laws governing the offer and sale or termination of franchises were essentially the same as those governing the appointment or termination of an agent. Since then, however, franchising-specific federal and state laws and regulations have exploded. At every stage and level of the franchise relationship—from offers and sales of franchises, their operation, and their renewal and termination, to rights of association and succession—franchise relationships and those who create them have been singled out for special regulation. Almost without exception, this special attention has resulted from a perception that franchisors were engaged in abusive conduct and that prospective and existing franchisees needed protection. Concurrently, laws and regulations dealing with business opportunity ventures proliferated for the same reasons.

Those entering the franchising field may encounter new and unfamiliar challenges. Many prospective franchisors—expert in the business they seek to franchise—must confront an entirely new array of considerations. Similarly, their counsel must be familiar with and able to advise the franchisor on a wide variety of legal and business issues. For example, franchisor counsel must understand and be able to apply antitrust law, securities law, corporation law, federal and state tax law, bankruptcy law, laws relating to termination and renewal of franchises, laws relating to the sale of business opportunity ventures, and federal and state franchise registration and/or disclosure laws. In addition, the franchisor's lawyer should have a basic understanding of accounting principles, asset sales, stock sales, franchise sales programs, the use of operations manuals, the evolution of franchise programs and the implications of such evolution, and how to deal with franchisee advisory councils and independent franchisee associations.

Prospective franchisees and their counsel also face a variety of novel issues when moving into franchising. Franchisee counsel must be conversant with the same legal issues as franchisor counsel, but should also be able to assist their clients in understanding how to evaluate different franchise opportunities, the constraints on franchise agreement negotiations, the services that the franchisee should expect from the franchisor, and unique issues related to purchasing operating franchises from either an existing franchisee or the franchisor.

Those who have practiced in the franchising field extensively are well aware of the paucity of practical guidance for lawyers undertaking the representation of franchisors or franchisees. The need for such guidance is exacerbated by the multi-state, and sometimes multi-national, nature of many franchising programs that are subject to disparate and complex legal requirements. ***Franchising Law: Practice and Forms*** is intended to provide franchisors, franchisees, and their counsel with an essential resource containing practical advice about the business of franchising. For those inexperienced in the franchising field, this book will provide valuable information and guidance in the business and legal aspects of franchising. For the more experienced, the book will serve to supplement existing knowledge and to provide a quick-reference resource. The book is not written as a legal treatise and we have attempted to avoid the legalese and detailed footnotes characteristic of legal treatises.

Completion of this work would not have been possible without the selfless assistance and dedication of many. Several of our colleagues drafted a number of chapters that have been included in this work. Their contribution is noted at the beginning of each chapter. To them, we owe our most heartfelt thanks. In addition, we thank Ralph Jonas who initiated this project.