Franchising in New York After the Revised FTC Rule

By Thomas M. Pitegoff

Franchise sales in New York are regulated by federal and state laws. Under the franchise sales laws, a franchisor must make disclosures to a prospective franchisee before a franchise is sold. The laws requiring franchisors to make detailed disclosures to franchise buyers in a uniform format are generally patterned after the securities laws, which require disclosure to investors and prohibit fraud. In New York, the Bureau of Investor Protection and Securities of the Department of Law enforces both the franchise and securities laws.[1]

The New York Franchise Act (NYFA) became effective in 1981.[2] In addition to requiring presale disclosure, the NYFA requires franchisors to register their franchise offerings with the Department of Law and to keep those registrations current. State examiners can require changes in proposed offering circulars to bring them into compliance with state law before approving applications for franchise registration. New York is one of fourteen states that require registration of the franchise offering.[3]

The Federal Trade Commission's recent approval of a revised trade regulation rule on franchising has created a need for a change in New York's franchise laws. This need for change makes this a good time to take a fresh look at the NYFA to see what is working and what can be improved. How does the NYFA differ from the federal requirements and the laws of other states? Do these differences serve a useful purpose? Do they meet a specific need to protect franchisees? Is there evidence of such a need? Do the differences actually provide greater protection? If not, then a change in the statute may be in order to conform more closely to the revised federal rule. The continued existence of state differences serves as a trap for the unwary and an unnecessary compliance burden.

This subject is important because companies commonly franchise their businesses across state lines, and franchising has become a major sector of the U.S. economy.[4] The objective of this analysis is to make New York State and the NYFA friendlier to franchise businesses and to business generally, while preserving New York's enforcement capabilities in the field of franchising so that franchisee protection is not diminished. The recommendations outlined below are essentially technical corrections that would greatly improve New York law.

The NYFA Differs from the UFOC Guidelines

Franchisors currently make the required disclosures in the form of a "Uniform Franchise Offering Circular," or "UFOC." The UFOC Guidelines were first formulated and adopted in 1975 by the Midwest Securities Commissioners Association, the predecessor to the North American Securities Administrators Association (NASAA).[5] NASAA adopted the current UFOC Guidelines in 1993. The UFOC format meets the current Federal Trade Commission disclosure requirements.

The NYFA differs in minor respects from the UFOC Guidelines. New York has a few additional disclosure requirements that are not contained in the UFOC Guidelines. Franchisors deal with these differences by adding a state-specific addendum to their franchise offering circular in New York.

Section 683.2 of the NYFA lists the disclosures required by the statute. The regulations substantially follow the UFOC Guidelines.[6] However, New York imposes broader disclosure requirements for Item 3 (litigation) than those required by the UFOC Guidelines and by every other registration state.[7] New York imposes the additional requirement of disclosing allegations and convictions involving embezzlement, fraudulent conversion and misappropriation of property. These differences derive from the language of the NYFA itself, which could not be changed by regulation when the state adopted the UFOC Guidelines by regulation. New York also requires franchisors to include a more detailed Item 4 disclosure (bankruptcy). Another difference is that Section 683.2(s) of the NYFA requires the franchisor to represent that the disclosure document "does not knowingly omit any material fact or contain any untrue statement of a material fact."

It is not at all clear that these state differences provide additional protection to franchisees or that they serve any other necessary purpose. They do act as a trap for the unwary and increase the compliance burden for franchisors.

The Revised FTC Rule

The Federal Trade Commission has regulated the sale of franchises throughout the U.S. since 1979 under its Trade Regulation Rule on Franchising (the "FTC Rule").[8] Unlike the NYFA, the FTC Rule does not require registration and it does not allow for a private right of action. It coexists with state franchise sales laws because it specifically does not preempt state franchise laws that provide equal or greater protection to franchisees.

In January 2007, the Federal Trade Commission approved a revised FTC Rule replacing the one that had governed franchise sales nationally since 1979.[9] The content of the disclosures under the revised FTC Rule closely tracks the UFOC guidelines, but reflects a number of changes that most industry observers view as enhancements and improvements.

Steven Toporoff, franchise program coordinator at the Federal Trade Commission, stated that one goal of updating the FTC Rule "was to learn from experience . . . how the Rule has been working in the real world."[10] The review process lasted for twelve years and involved extensive hearings. As a result, the revised Rule reflects the latest thinking of franchise regulators.

The revised Rule became effective July 1, 2007. During a twelve-month phase-in period, the Federal Trade Commission gives franchisors the option of complying with either the 1979 FTC Rule or the revised FTC Rule. Compliance with the revised FTC Rule becomes mandatory July 1, 2008. In practice, this means that new franchisors are likely to use the revised FTC Rule format from the start, and franchisors who are already using the UFOC format will convert to the new format when they renew their state franchise registrations.

The revised FTC Rule, like the 1979 FTC Rule, allows state regulators to require additional disclosures.[11] It also allows states to impose additional protection for franchisees by continuing to require state registration and to allow for state enforcement and a private right of action by aggrieved franchisees. States can also be more restrictive in the required mechanism of disclosure. For example, states can require franchisors to make the disclosures sooner than the FTC Rule would require.

In an Interim Statement adopted on June 22, 2007, NASAA recommended that registration states permit franchisors to file franchise disclosure documents prepared under the revised FTC Rule, with the addition of a state risk factor cover page, during the twelve-month phase-in period of the revised FTC Rule.[12]

It appears that New York will follow the NASAA recommendation and will accept franchise disclosure documents for registration in New York that follow the format of the revised FTC Rule during the phase-in period, even though New York regulations essentially follow the UFOC Guidelines. When the revised FTC Rule format becomes mandatory, July 1, 2008, it will supersede the New York disclosure requirements. This means that the New York regulations need to be revised if they are to be meaningful. New York can have additional disclosure requirements, which can appear on the cover page or a state-specific addendum, but the basic document must conform to the requirements of the revised FTC Rule.

State Differences with the Revised FTC Rule

New York would be a friendlier place for franchising if New York franchise law were more consistent with federal law and the laws of other states. Based on an exhaustive national study over several years, the Federal Trade Commission has determined that the revised FTC Rule provides adequate federal protection for franchisees and prospective franchisees. New York can continue to impose additional sanctions for violations of the revised FTC Rule, namely state enforcement and the private right of action. New York need not lose these additional sanctions by revising the NYFA to remove the unnecessary differences with the revised FTC Rule. Below is a list of these differences.

A. The Content of the Disclosure Document

Much of the content required by the revised FTC Rule differs from the UFOC Guidelines, which New York has adopted with minor variations. The NYFA has slight differences from the UFOC Guidelines that require New York franchisors to prepare state-specific language for New York, as explained above. Unless the NYFA is revised, the same differences will continue to require New York franchisors to prepare state-specific addenda under the format of the revised FTC Rule. If New York law remains unchanged, the content of the disclosure document that is required by New York law will be substantially superseded by the revised FTC Rule, rendering the New York requirements obsolete and ineffective. Accordingly, the disclosure requirements in New York need to be revised.

B. Time of Disclosure

Under the NYFA, a franchisor in New York must disclose its offering document to a prospective franchisee at the earlier of the first personal meeting or 10 business days before an agreement is signed or money is paid.[13] This is consistent with the UFOC Guidelines but inconsistent with the revised FTC Rule.

The revised FTC Rule replaces the 10 business day rule with a simpler 14 calendar day rule. Under the revised FTC Rule, the offering document must be disclosed to a prospective franchisee at least 14 calendar days before any agreement is signed or any money is paid, rather than 10 business days.

In some cases, 10 business days or the date of the first personal meeting can be more than 14 calendar days. New York can leave this requirement unchanged because it may be a higher standard than the FTC Rule requirement. However, to do so would make it a trap for the unwary franchisor without any corresponding benefit for prospective franchisees. A better solution would be to revise and modernize the NYFA.

C. Name of Disclosure Document

New York is the only state whose law refers to the franchise disclosure document as an "Offering Prospectus" rather than a Uniform Franchise Offering Circular, or UFOC. While New York law continues to refer to a "Prospectus," New York regulations stipulate, somewhat inconsistently, that the document be called a "Franchise Offering Circular."[14]

Now the Federal Trade Commission has changed the name of the document by referring to it in the revised FTC Rule as a "Franchise Disclosure Document." With this change at the federal level, a simple gesture toward uniformity would be to change the name to a "Franchise Disclosure Document" in the NYFA.

D. International Transactions

New York does not limit the application of its franchise sales law to offerings of franchises physically located within the state. The NYFA specifically states that an offer to sell is made in the state "when the offer either originated from this state or is directed by the offeror to this state and received at the place to which it is directed."[15] The extraterritorial application of the Act was upheld in the case of *Mon-Shore Management v. Family Media*,[16] where the court held that the NYFA applies when the offer merely originates in New York, even if the offeree and the franchised businesses are outside the state.

In fact, nothing in the NYFA or the regulations or cases limits the application of the NYFA to sales within the U.S. It would appear that New York is the only jurisdiction in the U.S. that regulates international franchise sales.

Even the revised FTC Rule explicitly excludes sales of franchises located outside the U.S.[17] The Federal Trade Commission found that such a requirement would put American franchisors at a competitive disadvantage abroad and that the possible benefits of international regulation would not outweigh the burdens.

It is difficult to see why New York has an interest in regulating the sale of franchises abroad, even if the offer originates in New York. Adding an exemption for international sales would greatly improve the NYFA. An out-of-state sales exemption, discussed below, would accomplish the same end.

E. The Definition of a "Franchise"

The NYFA has a unique definition of a "franchise," which requires just two elements.[18] The revised FTC Rule and each state franchise sales law other than the NYFA has a three-element definition. The New York definition requires a fee and either a marketing plan prescribed in substantial part by the franchisor or the right to use the franchisor's trademark. All other definitions include a fee, a marketing plan and a trademark.[19] This makes the New York definition of a franchise broader than that in any other franchise sales law.

The broad definition of a franchise in New York can create a franchise in New York that would not be a franchise anywhere else. This overly broad definition can discourage some companies from doing business in New York or from setting up operations in New York. It certainly leads a cautious business lawyer to recommend that approach to companies whose business arrangements may fall within this definition and who do not want to prepare franchise offering circulars or register with the state.

Both prongs of the NYFA's definition of a "franchise" raise issues. Starting with the first prong, what does it mean to grant "the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor" without a trademark? A marketing consultant may provide a marketing plan to a client to enable that client to launch a business. Certainly the client will pay a fee. Is this a franchise? How does it constitute a "grant" of the "right" to engage in a business? What type of grant does fall within this prong of the definition? The statute is not at all clear on this point.

The second prong is easier to understand but is extremely broad. The plain language of the statute covers many license and distribution arrangements that would not be considered franchises in other states. Any trademark license granting someone a right to engage in a business in consideration for a royalty would fall within the definition of a "franchise" under the NYFA. This is not the type of business arrangement that anyone unfamiliar with New York law would expect to be a franchise. Many business people and even lawyers are surprised and shocked when they learn how broad the scope of coverage is.

There is a large "gray" area under the NYFA in which it is not clear whether a business arrangement is a franchise. Most business people want to comply with the law. In order to do so, they need clarity on what the law means. Even in New York, no one seriously expects a simple trademark license to be regulated as a franchise. Yet the law says it is a franchise. An overly broad law that is not enforced can lead to disrespect for the law. Even if there is no enforcement activity in this gray area, its existence creates uncertainty and risk, which discourages business. There is no assurance that an aggressive Attorney General in the future would not begin to read the law literally. Why would a distributor or licensor choose to be arguably subject to the extensive registration and disclosure requirements imposed on franchisors in New York when the company can avoid these requirements by going to any other state?

Narrowing New York's broad definition of a "franchise" to conform to the definition under the revised FTC Rule or the definition used by other states, such as California or Illinois, would not diminish New York's ability to prosecute franchise fraud, nor would it eliminate the private right of action. The Attorney General's Office would continue to enforce the law and aggrieved franchisees would continue to be able to initiate lawsuits. Companies that know they are franchisors and hold themselves out as franchisors in New York and other states would not be affected. At the same time, this change would make for better law and would eliminate a potential barrier to doing business in New York.

F. Exemptions

The Federal Trade Commission sought to reduce compliance burdens by adding three new sophisticated investor exemptions to the revised FTC Rule. The NYFA includes none of these exemptions.

One new exemption is for large investments.[20] Disclosure is not required if: (1) the estimated investment exceeds $1 million, excluding (a) financing from the franchisor or its affiliate, and (b) real estate costs, and (2) the franchisee signs an acknowledgment verifying the grounds for the exemption. A prospective franchisee's level of investment is one measure of sophistication.[21] This exemption provides a bright-line standard that offers tangible benefits to franchisors in transactions that are likely to be negotiated. Maryland and Wisconsin also exempt large investments.[22]

Another new exemption is for large franchisees. Transactions with large franchisees are often negotiated by sophisticated counsel.[23] This exemption applies if the prospective franchisee has been in business for 5 years and has a net worth of at least $5 million.[24] California and Rhode Island also exempt large franchisees.[25]

A third new exemption is for franchisor insiders. When an insider buys a franchise, one can reasonably assume that the prospective franchisee is already familiar with the franchise system and its risks.[26] Disclosure in this case would serve little purpose. This exemption applies if one or more purchasers with combined ownership of at least 50% has either (1) two years of management responsibility for the sale of the franchisor's franchises or the administration of the franchised network, or (2) for two years has been an owner of at least 25% of the franchisor.[27] California also exempts franchisor insiders.[28]

New York can benefit by the Federal Trade Commission's exhaustive study of franchising nationally. Adding exemptions in New York that conform to the exemptions in the revised FTC Rule would make New York a more business-friendly state and would not diminish New York's protection of franchisees.

New York does allow certain exemptions in its statute and regulations.[29] Several of these exemptions are specifically exemptions "from the registration requirements" of Section 683. This implies that the disclosure requirements continue to apply. A company whose offering is exempt from registration must nevertheless prepare a franchise disclosure document. The lion's share of the legal compliance work in establishing a new franchise is preparing the franchise disclosure document. Registration is relatively simple once the disclosure document is completed.

Because these "exemptions" do not relieve companies of the burden of disclosure compliance, they merely serve as traps for the unwary. A far better approach would be to exempt these transactions in their entirety.

G. The Single Trademark Exclusion

The revised FTC Rule excludes a single trademark license from its scope.[30] Adding a similar exclusion to New York law would make it clear that simple trademark licenses are not franchises. This change would also facilitate international franchising, particularly when a foreign franchisor seeks to enter the U.S. by granting a single license to one company that will act as its master franchisee for the entire U.S. market, with the right to grant franchises to others. The NYFA today exempts a single license from the registration requirements but not the disclosure requirements of the law, and this exemption does not apply when the licensee has the right to sublicense.[31]

H. Brokers

Under the revised FTC Rule, franchise brokers are no longer obligated to furnish disclosure documents. This is the sole responsibility of the franchisor.[32] Brokers must be disclosed only if they fall within the definition of a "franchise seller" under the revised FTC Rule.

New York imposes a technical requirement of a one-time registration of "franchise sales agents."[33] This requirement is confusing. Most franchisors disclose franchise brokers in the disclosure document to the extent required by the UFOC Guidelines, and the Attorney General's Office rarely asks for more, other than sometimes charging a small additional fee.

The requirement to register franchise brokers is peculiar to New York and two other states.[34] It creates an unnecessary burden that has no corresponding benefit.

Other Changes

If the NYFA is to be revised to conform more closely to the revised FTC Rule, it can also be improved in several other ways, as noted below.

A. Out-of-State Sales Exemption

The NYFA would no longer apply to international transactions if New York were to adopt an out-of-state sales exemption. Several states have out-of-state sales exemptions, including California, Hawaii, Illinois, Maryland, Michigan, Minnesota, Rhode Island and Wisconsin. A franchisor based in one of these states can sell franchises in other states without registering in the franchisor's state as well as the franchisee's state. The existence of the exemption does not appear to have had an adverse effect on any of these states.

The extraterritorial application of the NYFA discourages companies from establishing their offices in this state. A company may decide to establish an office in another state to test its franchise concept before opening an office in New York. This enables the company to postpone registering the franchise offering in New York. Conversely, a company that is based in New York would not be able to postpone registration, even if all of its franchisees are outside of the state. Accordingly, the addition of an out-of-state sales exemption would improve the NYFA.

B. Consent to Process

New York requires franchisors to file a consent to service of process with the office of the Secretary of State at the time they register their franchise offerings with the Department of Law. Other franchise registration states require franchisors to file the consent to process with the same administrative office that handles the franchise registration.

Franchisors and franchise attorneys outside of New York would be grateful if New York were to change its law so that a franchisor registering in New York is required to file a consent to service of process only with the Department of Law, and not with the office of the Secretary of State. The dual filing requirement is a minor annoyance for franchisors that is of questionable value to franchisees.

C. Advertising

New York requires franchisors to file their advertisements of franchise offerings with the Department of Law before their use, and all such advertisements must bear a prescribed legend.[35] While a few other states require a similar filing, no other state requires a similar legend.

It is not clear that the filing of the advertisements or the addition of the legend provides any additional protection for prospective franchisees. These requirements constitute an unnecessary burden for franchisors. Their removal would be a welcome change.

D. Sales by Franchisees

The revised FTC Rule specifically exempts franchise resales,[36] as do the franchise laws of several other states. These states include California, Hawaii, Illinois, Indiana, Maryland, Minnesota, North Dakota, Rhode Island, South Dakota, Washington and Wisconsin. Only New York specifically requires a franchisee to make disclosures to the prospective buyer of its business. Section 684.5 of the NYFA exempts from the registration provisions of Section 683 (but not the disclosure provisions) the offer or sale of a franchise by a franchisee for his own account.[37]

This disclosure requirement poses a problem for franchisees. The franchisee is not in a position to have the latest version of the offering circular currently registered with the Department of Law, especially if a new filing is made during the course of the sale process. Moreover, the franchisee cannot possibly have the current offering circular if the franchise registration has lapsed. In that case, compliance is impossible. In actual practice, it appears that the requirement that a franchisee disclose when the franchisee sells the business is not enforced. Nevertheless, it remains the law, creating uncertainty and risk. Its removal would improve the New York law.

E. Filing vs. Registration

One possible change in the NYFA can reduce government cost without reducing franchisee protection. The Attorney General's office might act only as an enforcer of the law rather than a reviewer of franchise documents. In Wisconsin, Indiana, Hawaii and South Dakota, franchise registration is effective upon filing or a certain time period shortly after filing. Michigan also requires a simple filing of a notice of sale. This change would ease the administrative burden of the Department of Law without diminishing its ability to prosecute those who violate the NYFA and without eliminating the private right of action. It would also allow franchisors to begin doing business in New York more quickly.

As an alternative, New York might take an approach similar to that of Illinois. New York might continue to require an initial registration review but allow franchisors to amend their registrations by filing without awaiting the examiner's approval. This approach allows the franchisor to deliver an amended disclosure document to a prospective franchisee as soon as the document is ready. It eliminates the need to wait for approval. It also eliminates the current requirement under the NYFA to use the old disclosure document while the amended one is pending.[38]

The Case for Revising the NYFA

New York needs to conform its franchise sales law to the revised FTC Rule. This need creates an opportunity to modernize and improve the NYFA generally.

The NYFA might be revised to provide that the content of the disclosures will be those required by the revised FTC Rule as amended occasionally, or as otherwise set forth in the regulations. The regulations can include the NASAA cover page and anything else that New York determines from time to time. This approach would allow for flexibility over time and would eliminate unnecessary anomalies.

Narrowing the scope of the NYFA would add clarity to a law whose scope creates a great deal of uncertainty and risk, and arguably is far broader than necessary to achieve its purpose of protecting franchisees. This change would entail a narrowing of the definition of a franchise and the addition of exemptions and exclusions.

Reducing the geographic coverage of the NYFA to franchise sales where the franchisee or the franchised business is located in the state would eliminate the international application of the NYFA and the need for franchisors to comply with two or more sets of laws when they sell to franchisees outside the state.

Changes in the timing of the disclosure requirements to conform to the revised FTC Rule would eliminate unnecessary traps for the unwary.

If changes are to be made, they should also include eliminating requirements that serve little or no purpose while creating a burden for franchisors. These include the requirements to register franchise sales brokers, to file a consent to process with the Department of State rather than the Department of Law, and to include a legend in franchise advertising. Removal of the requirement that franchisees disclose when they sell their business would also be a great relief to franchisees, especially those that are unable to comply.

Revisions to modernize and clarify the NYFA and make it more consistent with federal law and with the franchise laws of other states would make New York a friendlier place to do business. At the same time, these revisions would not diminish the protection that New York law already affords to franchisees. These are technical improvements, but they would enhance respect for the law. They would also greatly facilitate the work of New York lawyers who advise business clients on how to comply with the NYFA.

Endnotes

1. *See* <http://www.oag.state.ny.us/franchise/franchise.html>.
2. N.Y. General Business Law §§ 680-695 (GBL); Business Franchise Guide (CCH) ¶ 3320; N.Y. Comp. Codes R. & Regs. tit. 13, §§ 200.1 *et seq.* (N.Y.C.R.R.); Business Franchise Guide (CCH) ¶ 5320.
3. The states that conduct a full review are California, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode Island, Virginia and Washington. The states that require simple filings without a full review are Hawaii, Indiana, South Dakota and Wisconsin. Michigan only requires that a notice of sale be filed; the disclosure document itself is not registered. Some other states have disclosure laws with no filing requirements at all, and others may require filings under business opportunity laws. *See generally* CCH ¶¶ 3000 *et seq*.
4. National Economic Consulting Practice, Price Waterhouse Coopers, Economic Impact of Franchised Businesses: A Study for the Educational Foundation of the International Franchise Association (2004), <http://www.franchise.org/files/EIS6_1.pdf >.
5. <http://www.nasaa.org>.
6. N.Y.C.R.R. § 200.2..
7. GBL § 683(2)(e)(1); N.Y.C.R.R. § 200.2(c)(3).
8. 16 CFR pt. 436.
9. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. 15,544 (March 30, 2007) (to be codified at 16 C.F.R. pt. 436), *available at* <http://www.ftc.gov/os/2007/01/R511003FranchiseRuleFRNotice.pdf>.
10. *Q&A with Steven Toporoff, Franchise Program Coordinator, FTC,* LJN's Franchising Bus. & L. Alert (Am. Lawyer Media, New York, N.Y.), Mar. 2007.
11. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,473.
12. Instructions for Filing a Unif. Franchise Registration Application using the "New FTC Franchise Rule" After July 1, 2007 (June 22, 2007), <http://www.oag.state.ny.us/franchise/interim.franchise.state.guidelines.pdf>.
13. GBL § 683(8).
14. N.Y.C.R.R. § 200.2(a)(1).
15. GBL § 681.12(b).
16. 584 F. Supp. 186 (S.D.N.Y. 1984); CCH ¶ 8150.
17. 16 C.F.R. § 436.2; Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,468.
18. GBL § 681.3.
19. The revised FTC Rule defines a franchise to include significant control or assistance by the franchisor rather than a marketing plan. 16 C.F.R. § 436.1(h).
20. 16 C.F.R. § 436.8(5)(1).
21. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,522.
22. Md. Code Regs. 02.02.08.10(E); Wis. Stat. Ann. § 553.235.
23. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,527.
24. 16 C.F.R. § 436.8(6).
25. Cal. Corp. Code § 31109 (2007); R.I. Gen Laws §§ 19-28.1(d).
26. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,528.
27. 16 C.F.R. § 436.8(a)(6).
28. Cal. Corp. Code § 31106.
29. GBL § 684; N.Y.C.R.R. § 200.10.
30. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,529.
31. GBL § 684.3(c).
32. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,461.
33. GBL § 683.13; N.Y.C.R.R. § 200.11.
34. Illinois and Washington.
35. GBL § 683.12 and N.Y.C.R.R. § 200.9(d) require this legend: "This advertisement is not an offering. An offering can only be made by a prospectus filed first with the Department of Law of the State of New York. Such filing does not constitute approval by the Department of Law." A smaller notice is permitted for classified advertisements.
36. Disclosure Requirements and Prohibitions Concerning Franchising, 72 Fed. Reg. at 15,461.
37. This exemption has three conditions: (a) The sale must be an isolated sale and not part of a plan of distribution of franchises. (b) It cannot be effected by or through a franchisor. (c) The franchisee must furnish to the prospective purchaser a copy of the offering prospectus of the franchisor currently registered with the Department of Law.
38. N.Y.C.R.R. § 200.3(3).

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