

Franchise Act Interpretive Statement FIS-01

RE: Subfranchisor Registration Requirements

Questions Presented:

1. What is a subfranchise?

RCW 19.100.010(9) defines "subfranchisor" to mean a person to whom an area franchise is granted.

RCW 19.100.010(8) in turn defines "area franchise" to mean "any contract or agreement between a franchisor or subfranchisor whereby the subfranchisor is granted the right to sell or negotiate the sale of franchises in the name or on behalf of the franchisor."

"Sale" or "sell" includes every contract of sale, contract to sell, or disposition of a franchise, as set forth in RCW 19.100.010(14). "Offer" or "offer to sell" includes every attempt or offer to dispose of or solicitation of an offer by buy a franchise or an interest in a franchise. RCW 19.100.010(15). An area franchise involves the contractual right of the subfranchisor to direct and conduct the sale or arrangement for sale of franchises within a specified area. This relationship is distinguished from a franchise broker or selling agent who is merely an agent of the franchisor and has no separate contract right to direct and conduct the negotiation or sale of a franchise.

2. When must a subfranchisor register?

RCW 19.100.020 makes it unlawful for any franchisor or subfranchisor to sell or offer to sell any franchise in this state unless the offer of the franchise has been registered under the Franchise Investment Protection Act or is exempted from registration. If a subfranchisor offers or sells or is a substantial factor in arranging the offer and sale of a franchise, the offering by the subfranchisor must be registered or exempted there from. A subfranchisor, in making such an offer, may avail itself or the exemptions of RCW 19.100.030(4), but then only to the extent that the offers and sales by the franchisor and subfranchisor taken together meet the requirements set forth in the exemption.

3. When must both the franchisor and the subfranchisor file a registration statement?

A subfranchisor that intends to offer or sell in the state must in all cases make application for registration as required by RCW 19.100.040. If the franchisor also intends to offer franchises in the state, it too must comply with RCW 19.100.040. The Securities Administrator requires the franchisor and its subfranchisors to file separate registration statements and pay separate filing fees for their offerings.

4. Must a subfranchisor file audited financial statements?

RCW 19.100.040(7) sets forth the requirement for financial statements of the franchisor. Subsection (7) of RCW 19.100.040 allows the Securities Administrator to determine the form and content of financial statements, the circumstances under which consolidated statements can be filed and sets the circumstances in which audited financial statements are required. As previously stated, RCW 19.100.040(24) requires the same financial information concerning the subfranchisor. Therefore, a subfranchisor must file its financial statement along with those of the franchisor. See also WAC 460-80-125(5).

The financial statements of the subfranchisor must be audited. The administrator has promulgated WAC 460-80-140 with regard to financial statements. This rule states that all financial statements shall be audited by a certified public accountant (with certain exceptions). Waiver of audited financial

statements is allowed in extraordinary situations as set forth in (b) of WAC 460-80-140. A subfranchisor may request waiver of audited financial statements pursuant to this subsection. In certain instances the need for audited financial statements of the subfranchisor may be waived if the financial soundness of the subfranchisor is guaranteed by the franchisor.

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Replaces Statements of Policy 82-13 and 86-66

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