

DOUGLAS F. GANSLER
Attorney General

KATHERINE WINFREE
Chief Deputy Attorney General

JOHN B. HOWARD, JR.
Deputy Attorney General



MELANIE SENTER LUBIN
Securities Commissioner

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
SECURITIES DIVISION

WRITER'S DIRECT DIAL NO.
Melanie Senter Lubin
(410) 576-6365

Interpretive Opinion/No Action Position
Effect of Chapter 168 of the Laws of Maryland of 2010

The Securities Division of the Maryland Attorney General's Office (the "Securities Division") is issuing this interpretive opinion/no action position regarding Chapter 168 of the Laws of Maryland of 2010 ("Chapter 168"), which revises the delivery requirements of Section 14-223 under the Maryland Franchise Registration and Disclosure Law, MD. ANN. CODE., BUS. REG., §14-201 et seq. (2004 Repl. Vol. and Supp. 2009) ("the Maryland Franchise Law").

Background

Currently, Section 14-223 of the Maryland Franchise Law requires franchisors to deliver to prospective franchisees a copy of a franchise disclosure document, also called an offering prospectus, along with a copy of each proposed agreement relating to a franchise sale ("FDD"). The FDD must be delivered at the earlier of: (a) the first personal meeting of the franchisor and the franchisee to discuss the possible sale of the franchise; or (b) 10 business days before the execution of a contract or payment of any consideration that relates to the franchise relationship.

As a result of Chapter, 168, after October 1, 2010, the Maryland Franchise Law will require FDDs to be delivered at the earlier of: (a) 14 calendar days before the prospective franchisee's execution of any binding agreement with the franchisor or payment of any consideration that relates to the franchise relationship; or (b) a prospective franchisee's reasonable request to receive a copy of the FDD.

Evolution of the Delivery Requirement

In 2007, as part of a comprehensive franchise rulemaking (the "FTC Rule"), the Federal Trade Commission adopted a new form of franchise disclosure document at the federal level. At the same time, the FTC revised its franchise delivery requirements, abandoning a first personal meeting delivery trigger altogether, and changing a 10 business day delivery trigger to a 14 calendar day trigger. That 14 calendar day trigger is shortened if the prospective franchisee in the sales process reasonably requests a copy of the FDD earlier than 14 calendar days before the sale. The FDD format required under the FTC Rule includes a receipt page that reflects the FTC's delivery requirements. The FTC Rule also allows different state franchise delivery rules, like Maryland's, that provide equal or potentially more time for prospective franchisees to review an

FDD. Consequently, the Securities Division has required a franchisor registering in Maryland to include on the FDD receipt page a separate notice regarding the Maryland-specific franchise delivery requirements.

Interpretive Opinion/No Action Position

As a result of Chapter 168, after October 1, 2010, Maryland's franchise delivery requirements will no longer differ substantively from the delivery requirements under the FTC Rule. Because of the time gap until Chapter 168 becomes law, the Securities Division is issuing this guidance on how to reflect this change on the FDD receipt page and how to effect disclosure to prospective Maryland franchisees.

As of June 30, 2010, the following interpretive opinion/no action position applies to a franchise registration application filed with the Securities Division:

- A new franchise registration application filed with the Securities Division after October 1, 2010 should include the form of receipt page required under the FTC Rule.
- For a franchise registration that currently is effective and does not expire until after October 1, 2010, the franchisor should delete the Maryland-specific notice from the receipt page by October 1, 2010. The revised receipt page of the FDD will then reflect the delivery requirements under the FTC Rule.
- For any franchisor registered as of October 1, 2010, if that franchisor revises only the receipt page of its FDD to delete the Maryland-specific notice and otherwise makes no material changes to the information in its franchise registration, the Securities Division will waive the requirements of Section 14-220 of the Maryland Franchise Law and will not require the filing of an amendment to the franchisor's then-current existing franchise registration.
- For any currently registered franchisor that complies with the delivery requirements of Chapter 168 before October 1, 2010, the Securities Division will take no action against that franchisor for violating the provisions of Section 14-223 of the Maryland Franchise Law, if the franchisor has otherwise complied with all provisions under the Maryland Franchise Law.

This Interpretive Opinion/No Action Position has no effect on any private rights of action a franchisee may have against a franchisor under the current Maryland Franchise Law.

For questions regarding this Interpretive Opinion/No Action Position, please contact Deputy Securities Commissioner Dale E. Cantone at dcantone@oag.state.md.us.

Dated: June 15, 2010

Melanie Senter Lubin
Securities Commissioner