

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
AT RICHMOND, OCTOBER 11, 2017

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

*Ex Parte:* In the matter of  
Adopting a Revision to the Rules  
Governing the Virginia Retail Franchising Act

CASE NO. SEC-2017-00050

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Act"), § 13.1-501 *et seq.* of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: <http://www.scc.virginia.gov/case>.

**Proposed Revision to Chapter 110. Franchise Exemption for Substantial Investment in a Franchise.**

The proposed amendment to Chapter 110 provides for an exemption for franchisors that offer or sell a single unit franchise in which the actual minimum initial investment is in excess of \$5 million. This exemption requires that the franchisor provide all of the substantial purchaser information required by the registration process but allows the franchisor in these large

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transactions the flexibility to conduct the extensive negotiations required without the additional layer of the registration process.

The proposed rule requires a notice filing on Form H, a uniform consent to service of process, an entity resolution, a CD-Rom or other approved electronic media in PDF format of the franchisor's franchise disclosure document ("FDD"), and a \$500 filing fee. A material amendment of the FDD requires that the franchisor file a new Form H, a new FDD and a filing fee of \$100. The exemption must be renewed annually with a new Form H, the new FDD, and a filing fee of \$250.

The Division recommended to the Commission that the proposed revisions should be considered for adoption. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by regular mail or e-mail request and also can be found at the Division's website: <http://www.scc.virginia.gov/srf>. Any comments to the proposed rules must be received by December 1, 2017.

Accordingly, IT IS ORDERED THAT:

- (1) The proposed revisions are appended hereto and made a part of the record herein.
- (2) On or before December 1, 2017, comments or request for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Requests for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall reference Case No. SEC-2017-00050. Interested

persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons also may request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be provided to the Registrar of Regulations for appropriate publication in the *Virginia Register of Regulations*.

AN ATTESTED COPY hereof shall be sent to the Director of the Division of Securities and Retail Franchising who shall forthwith provide notice of this Order via U.S. mail or a copy of this Order may be sent by e-mail to any interested persons as he may designate.

STATE CORPORATION COMMISSION, DIVISION OF SECURITIES AND RETAIL  
FRANCHISING

Franchise Rules 2017

**21VAC5-110-75. Exemptions.**

Any offer or sale of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of § 13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:
  - a. The franchisee's entire franchise is sold or transferred and the sale or transfer is not effected by or through the franchisor.
  - b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.
2. Renewal or extension of existing franchise. The offer or sale of a franchise involving a renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business.
3. Offers and sales to existing franchisees. The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the



franchise being sold is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

4. Seasoned franchisor.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than \$15,000,000 on a consolidated basis, or \$1,000,000 on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than \$15,000,000, and the 80% owner guarantees the performance of the franchisor's obligations;

(2) The auditor's report accompanying the audited financial statements described in subdivision 4 a (1) of this section does not contain an explanatory paragraph expressing doubt as to the entity's ability to continue as a going concern; and

(3) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting substantially the same franchise business to be offered or sold for the entire five-year period immediately preceding the offer or sale;

b. The exemption set forth in subdivision 4 of this section may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision 78 of this section no later than 10 business days before the offer or sale of any franchise; and

(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision 4 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

5. Institutional franchisee.

a. The offer or sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt when the:

- (1) Purchaser is acting for itself or in a fiduciary capacity; and
- (2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision 5 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision 7\_8 a of this section, at least 10 business days before each offer or sale of each franchise.

6. Substantial Investment.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The offer or sale is of a single unit franchise in which the actual minimum initial investment is in excess of \$5,000,000;

(2) The prospective franchisee is represented by legal counsel in the transaction;  
and

(3) The franchisor reasonably believes immediately before making the offer or sale that the prospective franchisee, either alone or with the prospective franchisee's representative, has sufficient knowledge and experience in the type of business operated under the franchise such that the prospective franchisee is capable of evaluating the merits and risks of the prospective franchise investment.

b. The exemption set forth in subdivision 6 a of this section may be claimed only if the franchisor:

(1) Files a Form H, Notice of Claim of Exemption and other materials as set forth in subdivision 8 of this section no later than 10 business days before the offer or sale of any franchise; and

(2) Obtains from the prospective franchisee a signed certification verifying the grounds for the exemption.

c. The exemption set forth in subdivision 6 a of this section applies only to the registration provisions, and not the disclosure provisions, of the Act.

d. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

6 7. Disclosure requirements.

a. If a franchisor relies upon any of the exemptions set forth in subdivision 3, 4 or 5 or 6 of this section, the franchisor shall provide a disclosure document complying with 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the sale of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

~~b. Franchisors filing a claim of exemption under subdivisions 4 or 5 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.~~

7 8. Filing requirements for exemptions set forth in subdivisions 4 ~~and~~, 5 and 6 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) Franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or sale of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising;

(e) Files an undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of \$500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.



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(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

(c) Application fee of \$100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

(c) Application fee of \$250 (payable to the Treasurer of Virginia).

FORMS (21VAC5-110)

FORM A, Uniform Franchise Registration Application (rev. 7/08).

FORM B, Franchisor's Costs and Sources of Funds (rev. 7/08).

FORM C, Uniform Consent to Service of Process (rev. 7/08).

FORM E, Affidavit of Compliance -- Franchise Amendment/Renewal (rev. 7/08).

FORM F, Guarantee of Performance (rev. 3/13).

FORM G, Franchisor's Surety Bond (rev. 7/99).

FORM H, Notice of Claim of Exemption (rev. 7/08 ).

FORM K, Escrow Agreement (eff. 7/07).