

## HOW TO RECOGNIZE A FRANCHISE

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### WHY THIS IS IMPORTANT

Franchising is a regulated form of doing business. Under Minnesota law, a franchisor may not *offer* or *sell* a franchise until the offering is registered with the Minnesota Department of Commerce, or qualifies for an exemption from registration. Once the offering is registered (or if it is exempt from registration), the franchisor may sell a franchise only if it first provides a comprehensive presale disclosure document to each prospective franchisee. The disclosure document historically has been called an “offering circular” or “UFOC” (for “Uniform Franchise Offering Circular”), or “franchise disclosure document.” Under a 2007 change in a Federal Trade Commission rule on franchise disclosure (discussed later), the “franchise disclosure document” (or “FDD”) terminology will come into wider use.

Minnesota law also provides an umbrella of protection to franchisees by prohibiting certain listed “unfair practices.”

Failure to comply with the law — by failing to register; by providing a false, misleading or incomplete offering circular; or by violating the unfair practices rules — exposes the franchisor to substantial penalties and civil liability to an injured franchisee. Any entity engaged in distribution of goods or services, or licensing of any kind, should learn the reach of this law to avoid a costly and embarrassing violation.

For someone buying into a business promotion of any kind, awareness of the existence and scope of the franchise laws assures access to both important investment information and strong laws protecting franchisee investors.

Consequently, people involved in business from almost any perspective should learn to recognize franchise arrangements. Discussion of the four most important reasons follows.

### **Receiving Pre-Sale Disclosure**

A prospective franchisee is entitled under Minnesota and federal law to receive comprehensive pre-commitment disclosure of material investment information from the franchisor. The investor should always consider whether or not the business is a franchise when contemplating investment in a business promoted by another. This will alert the investor to a variety of important considerations, including his or her entitlement to receive this comprehensive pre-commitment disclosure.

Investment commitments to a franchise offering should not be made until the required pre-commitment disclosure information has been received, studied carefully, and reviewed with a professional advisor.

Pre-commitment registration and disclosure of franchise offerings is covered in much more detail below. For now, simply note that even for companies that have recognized and properly treated their business promotion as a franchise, the quality of disclosure information varies significantly between offerings. For many other types of business promotions, the investor can recognize a critical danger signal if he or she can recognize that a particular business proposition does (or could) constitute a franchise under Minnesota state law, but the promoter has not treated the offering as a franchise.

Thus, investors have a meaningful incentive to watch for business opportunities that may constitute a franchise even if the seller does not realize that its proposal constitutes a franchise.

## **Protecting a Business Relationship**

Franchise law can provide recourse for a party already in a business relationship with another party which the other party proposes to terminate or to alter significantly to the detriment of the investor. If the investor whose interest is being threatened recognizes that the business relationship fits within the statutory definition of “franchise,” the investor sometimes can rely on these powerful legal tools to protect the relationship against unwarranted termination or certain other disadvantageous changes in the relationship.

This happens because in Minnesota (as well as Iowa, Wisconsin and about 14 other states), legislation provides a range of remedies to investors in franchises. These remedies protect against practices including termination without good cause and refusal to allow the investor to exercise a renewal or extension option. In some states, including Minnesota, the law prohibits a wide variety of additional “unfair practices.”

Invoking these legal rights requires the assistance of an attorney to interpret the law and its possible application to your particular facts and circumstances. But investors should be aware that state law may provide a means to resist an unwanted termination or a material, adverse alteration of the business relationship.

Oftentimes, dealership or distributorship-type relationships are created by parties who are unaware that the relationship might be governed by state franchise law. When this occurs, the franchisee may be able to use statutory remedies afforded to the franchisees, long after the relationship was established, even though it never occurred to anyone earlier that the business arrangement constituted a franchise.

## Escaping a Business Relationship

Conversely, franchisees sometimes can use state franchise laws to escape a business relationship that proves to be unsuccessful or materially different from what had been anticipated.

If the business arrangement was treated as a franchise from the outset, the franchisee will be well aware of the applicability of state franchise laws. If the nature of the business established by the franchisee, the level of support services provided by the franchisor, or the amount or type of investments required to establish and operate the business turn out to be materially different from what was represented in the offering circular, the franchisee may have a claim for damages. The franchisee also may be able to rescind the sale of the franchise based on the misdisclosure. Similarly, investors in business arrangements that later prove to be franchises, but weren't treated as such at the outset, may invoke the franchise laws to rescind the relationship even if an otherwise binding contract is in place, or to recover damages and other appropriate relief.

The law also provides that the franchisee may recover its legal fees in certain cases.

Evaluating such an action involves the application of a complex statutory scheme to infinitely variable sets of facts and circumstances. This requires the assistance of a legal advisor. Awareness of these remedies, however, always must begin with the operator of the business.

## Avoiding the Creation of Inadvertent Franchises

A business seeking to expand, or seeking outlets for its products or services through distributors or dealers, may *inadvertently* create a franchise relationship. This happens when a party enters into an arrangement with another that meets the statutory definition of "franchise" but fails to recognize that franchise law applies to the

transaction. Indeed, many business people in Minnesota and elsewhere mistakenly perceive franchising as limited to quick-service restaurants and perhaps a few other familiar industry sectors. Nothing could be further from the truth.

Businesses in virtually every sector of the economy use franchising as a distribution method or to achieve other business goals. According to U.S. Census Bureau data, approximately 6,000 U.S. companies offer franchises in at least 75 different industrial sectors. More are added every week – most by design, but some by inadvertence.

The statutory definition of a “franchise” (detailed in the following section) reaches *any* business in *any* industry that either offers to or in fact does enter into a business relationship or contract containing the elements defined in the statute (subject to a handful of narrowly defined exceptions and exemptions). If the business fitting the role of the franchisor has neither recognized that the law applies nor taken the many steps necessary to comply with it (or to qualify for exemption from it), it will have “sold” an *unregistered* franchise in violation of the law. The title on the document is of no importance, as a franchise can easily be created in a contract entitled “Lease,” “Purchase Agreement,” “License Agreement,” “Joint Venture Agreement,” “Dealership Agreement,” “Marketing Agreement,” or the like. This, in turn, exposes the business to a wide range of potentially serious civil or even criminal sanctions for failing to comply with the law. Thus, a basic awareness of the scope and content of the Minnesota Franchise Act is essential for any person seeking to distribute goods or services through other persons or businesses.

Anyone seeking to learn whether or not a particular franchise program is registered in Minnesota may inquire with the Department of Commerce in St. Paul. Franchise registration files and the master registration lists are public record documents open to inspection by anyone and for any reason. It is good practice (although not strictly required) to call the Department in advance to arrange an appointment to review a registration file.

## STATUTORY DEFINITIONS

### Minnesota Law

The Minnesota Franchise Act appears at Chapter 80C of Minnesota Statutes. Section 80C.01, Subd. 1 contains the technical definition of the word “franchise” under this statute.

Rather than attempt to analyze fully this lengthy and technical definition, we will offer a paraphrase of the definition in terms understandable to most businesspeople:

A “franchise” is created when one person or business grants another the right to offer, sell or distribute goods or services, using the trademark, trade name, commercial symbol or advertising of the grantor; the grantee pays consideration for the right to enter into or maintain the relationship; and there is an ongoing “community of interest” between the parties relative to the distribution of the goods or services.

The statute does not apply solely to written contracts for ongoing business relationships. A purely oral arrangement or even a single transaction can also satisfy the statutory definition if it contains all of the required elements.

That said, it is still necessary to elaborate upon the meaning of some of those terms in this context. To understand this definition, recognize that the law has four essential elements:

- The “grant” element
- The “trademark” element
- The “community of interest” element
- The “franchise fee” element.

All four elements must be satisfied to create a franchise. Take away any one of them, and no “franchise” is present.

The “grant” element means that one person *grants* another the *right to offer, sell or distribute* goods or services. The meaning of this element is straightforward.

The grantee need only be *allowed* (not necessarily required) to use the grantor’s trademark, logo, trade name or advertising in connection with the distribution of goods or services. For a transaction or business relationship to avoid satisfying the “trademark” element, it is not enough that the agreement is silent as to the grantee’s use of the grantor’s trademark or other commercial identification; the agreement must affirmatively prohibit the grantee from “using” the grantor’s trademark, trade name, logo or advertising.

What does “using” the grantor’s trademark mean? The answer is not entirely clear under Minnesota law. While the Minnesota courts have held that a franchisee need not “hold itself out as the franchisor” to establish “use” of a trademark, “using” the grantor’s trademark probably means using the mark (or other form of trade identification) in a way that leads a customer to think that the grantee, the dealer or distributor, is part of the grantor’s business organization or part of a chain of affiliated businesses – rather than an independent merchant simply reselling someone else’s branded product or service. Minnesota courts have not ruled clearly on this point, but “using” a trademark, logo or trade name probably means more than a dealer merely offering a branded product or service and identifying the product by its brand. To illustrate this concept, consider the example of “Smith Hardware Company” advertising or placing banners in its windows to advise the public that it has “Wilson” brand sporting goods available for sale. Smith Hardware is probably *not* “using” the “Wilson” trademark in the sense required by the Minnesota Franchise Act. Similarly, if Best Buy advertises that it has “Sony” brand televisions available for sale, it is probably not “using” the “Sony” trademark within the meaning of the statute. Again, our courts have not ruled definitively on this point.

If, however, the Olson Widget Company appoints the Jones Company to operate a retail widget dealership where the name over the door of the dealer's shop is "Olson Widgets," the dealer is certainly "using" the "Olson" trademark in the sense meant by the Minnesota Franchise Act. It may also be "using" the "Olson" trademark even if the Jones Company operates an Olson Widget dealership under its own trade name, "Jones Company," but its sole or primary business activity is the promotion and sale of "Olson" brand widgets. (See, *Martin Investors, Inc. v. Vander Bie*, 269 N.W.2d 868 (Minn. 1978) and *Unlimited Horizon Marketing, Inc. v. Precision Hub*, 533 N.W.2d 63 (Minn. 1995).)

Another potentially tricky part of the "trademark" element is its reference to using the grantor's *advertising* to satisfy it. This aspect of the definition has never been tested in the Minnesota courts. Nonetheless, if the other basic elements of a "franchise" are present in any particular contract or transaction, the use of common advertising or advertising provided by or closely associating the dealer with the grantor may be enough to throw the arrangement over the line into the category of a "franchise." This occurs by creating the appearance to the public that the dealer or distributor is part of an affiliated group of businesses.

It is also noteworthy that the "trademark" element can be satisfied by a single contract or transaction, or a single offer to enter into one. It does not depend upon either a widespread pattern of public offerings of such arrangements or even an ongoing business relationship.

The *community of interest* element is difficult to analyze because its meaning is not particularly clear. Virtually any commercial arrangement for the distribution or resale of goods or services involves some shared economic interest between buyer and seller, even if only in increasing the volume of sales. Thus, it is not at all clear what this element adds to the definition. Another way to think of this is that it would be extremely rare for a distribution relationship to be excluded from the franchise definition due

solely to the absence of a “community of interest” in the distribution of the goods or services. In one early case in the mid-1970s, a transaction was found not to be a franchise because the supposed “franchisee” was a subcontractor who sold back to the “franchisor” the goods the “franchisee” had received and reprocessed. It therefore did not have a community of interest in the *distribution* of the goods. (But note that this kind of arrangement might constitute a “business opportunity.”)

Courts in other states have struggled with similar concepts under other states’ laws. They have concluded that a “community of interest” requires more of a shared interest in a business relationship than exists in a single, arm’s-length sale transaction. Thus, courts have tended to look at such factors as the duration of the relationship, the dependence of the dealer upon the relationship for its commercial success, the percentage of the dealer’s sales derived as a consequence of the relationship, the scale of investment required of the dealer to satisfy the arrangement, the proportion of the dealer’s investment that is usable only for the business associated with that relationship, the extent to which the dealer’s day-to-day business activities are directed by the franchisor, the existence of any pooled or shared advertising obligations or participation in profits, and similar factors in deciding whether a “community of interest” exists in the distribution of goods or services.

In Minnesota, the courts have interpreted “community of interest” very liberally; it takes very little in a business relationship to satisfy this element. Wisconsin courts have construed a similar phrase in the Wisconsin Fair Dealership Law more narrowly.

The *franchise fee* element is what most often separates “ordinary dealership” or distributorship type relationships from franchises. This is because in most cases a dealer or distributor does not pay separate consideration for the right to enter into or maintain the relationship, at least in combination with a grant of rights to use the grantor’s trademark or other trade identification as described

previously. The “ordinary” dealer buys inventory but does not pay separate consideration for the privilege of becoming a dealer in those goods either in the form of fees or required ancillary purchases of equipment, training or services.

In many cases where a dealer is trying to resist termination by a manufacturer or is seeking to escape a relationship that had not been recognized or treated as a franchise, finding a “hidden” or “indirect” payment of a franchise fee can bring what the parties had theretofore considered an ordinary dealership arrangement within the scope of the Minnesota Franchise Act. This means the dealer may have remedies against an unwanted termination or the tools to break out of the unwanted relationship. This outcome always comes as a considerable shock to the careless or unfortunate company that created the inadvertent franchise.

The after-the-fact classification of a business relationship as a “franchise” comes about because of the broad scope of the statutory definition of a *franchise fee*. The statute very simply defines a franchise fee as *any* payment made, directly or indirectly, in consideration for the right to enter into or maintain the relationship, subject to a few narrow exclusions. This applies to payments for goods or services and applies whether or not other valuable consideration is received in exchange for the payment. It applies to *all* payments for intangibles, including services provided by the grantor and even tangible products – unless specifically excluded by one of the exclusions spelled out in the statute.

For example, if a manufacturer, in establishing a distributorship arrangement, requires the distributor to attend a two-week training program for which the manufacturer charges a \$600 fee, the training fee is clearly a franchise fee. Similarly, if a manufacturer requires its dealers to contribute to a pooled advertising program or to subscribe to a bookkeeping or accounting service sponsored by the manufacturer, those payments clearly constitute a franchise fee. This is the case even

though perfectly sound and valuable training, advertising, or bookkeeping services are provided in exchange for the payments.

The test is whether the manufacturer would authorize the dealer or distributor to enter into and maintain the relationship wholly without reference to whether or not the fees are paid. If fees for such collateral services are genuinely optional and paid as a matter of truly free choice by the dealer or distributor, they are not franchise fees because they are not required in order to obtain or maintain the position as a dealer or distributor. But if the payment is required by contract or practical necessity, then they will be treated as franchise fees. Some other states' franchise laws define "franchise fee" even more broadly than Minnesota by providing fewer exclusions or exceptions from the "any payment" provision.

One significant exclusion under Minnesota's law is for the payment of the *bona fide* wholesale price of inventory merchandise, in reasonable quantities. Thus, if the dealer or distributor pays no more than the *bona fide* wholesale price of the inventory goods handled, and no other fee or payment is made to obtain or keep the dealership, then no franchise fee is present. A *bona fide* wholesale price is the price paid by others for comparable goods in a free market environment. If a manufacturer is selling unique goods for which it is the only source, then there is no external market by which the reasonableness of the purported wholesale price can be measured. Thus, a disgruntled dealer could easily attack even payments for inventory of such products as an indirect or hidden franchise fee.

Even if a manufacturer charges only a *bona fide* wholesale price, but imposes unreasonably large inventory obligations on the dealer or requires that the dealer acquire that inventory prematurely relative to true market demand for the items, then an indirect franchise fee is probably present by virtue of the front-end loading required by the manufacturer. These situations obviously present very fact-intensive issues that require a careful and professional application of the law to the particular facts and circumstances. Sometimes, these disputes must be resolved by the courts.

Other exclusions from the definition of a franchise fee include repayment of a *bona fide* loan, providing real estate, fixtures or facilities at their fair market value, and other similar exclusions spelled out in the statute.

A franchise fee is not limited under Minnesota law to payments made to the “franchisor.” If a company requires its distributor or dealer to make payments (other than those payments specifically excluded from the definition, like payments for inventory) to a third party, then a franchise fee may still be present. Some courts have indicated that they would not consider payments, required or not, to be “franchise fees” if they were made to third parties for business essentials that *any* business would purchase – like business permits, office operating supplies, insurance, or basic marketing costs. Nonetheless, this issue is not fully resolved.

### **Exemptions From The Registration Requirement**

Before leaving the Minnesota definition of “franchise”, we must note the existence of a number of exemptions from registration under the statute. An exemption means that even though the transaction or relationship fits the definition, the arrangement need not be registered with the Department of Commerce before it is offered or sold. These include: sale of a franchise by the franchisee-owner; a sale to a bank or insurance company; sales of registered securities; a single isolated sale of a franchise under specified conditions; sale of a franchise to a franchisee with specified experience in the business and who derives 80 percent or more of its total sales from other sources; sale of a foreign franchise to a nonresident of Minnesota under specified conditions; and sales exempted by order of the Commissioner of Commerce.

For the most part, these exemptions are of relatively limited use either to a franchisor or franchisee, as they exempt the franchisor only from compliance with the registration required before a franchise may be offered to the public. They do not exempt the franchisor either from the requirement to make pre-commitment

disclosure or from the antifraud and other remedial sections of the statute. That said, these exemptions can be very useful in a narrow range of circumstances where a producer or manufacturer may be able to structure a particular transaction so as to be able to take advantage of an exemption. Needless to say, these planning initiatives require the close assistance of an experienced franchise lawyer to assure that the transaction does not violate the statute.

### **Federal Trade Commission Rule - 16 C.F.R. § 436**

Franchise sales are also regulated by federal law. In 1979, the United States Federal Trade Commission joined the 15 states that then regulated the offer and sale of franchises. It did this by promulgating a Trade Regulation Rule on Franchising and Business Opportunities Ventures, commonly referred to as the “FTC Rule.” In 2007, the Federal Trade Commission amended the FTC Rule to reduce inconsistencies with state franchise disclosure laws. The FTC Rule is a self-implementing precommitment disclosure mandate that preempts any contrary or less-protective state disclosure requirements. Unlike state law, however, there is no requirement under the FTC Rule that a franchise offering be registered, nor is there any federal review of franchise offering circulars.

The definition of a “franchise” under the FTC Rule is conceptually similar to the state definition previously outlined, but not identical. The FTC definition may be paraphrased as follows:

A “franchise” is a continuing commercial relationship in which (i) a franchisee redistributes goods or services which are identified by the trademark, commercial symbol or advertising of the franchisor, or where the franchisee operates its business under a name using the franchisor’s trademark, commercial symbol or advertising, and (ii) the franchisor provides significant assistance to or imposes significant controls over the franchisee’s method of operation, and (iii) the franchisee is required to pay the franchisor (or its affiliate) \$500 or more (except for the *bona fide* wholesale price of inventory goods) at

any time through the first six months after the franchisee commences business.

The FTC Rule then exempts a number of types of transactions from the disclosure requirement. These include:

- Relationships that involve a leased department within a general merchandise store;
- A franchise granted to a franchisee with prescribed levels of prior experience in the business and where more than 80 percent of the franchisees' total sales will be derived from other sources;
- Franchisees making initial investments of more than \$1 million, excluding unimproved land and amounts that are financed by the franchisor;
- Sales to franchisees that have been in the business for at least five years and have a net worth of \$5 million or more;
- Certain "insider" sales where the franchisee is an owner of a certain percentage of the franchisor's equity, or an officer, director, general partner or other person with at least two years management responsibility for sales in the franchise system; or
- Where there will be no written document describing the relationship.

Petroleum marketers and resellers covered by the Petroleum Marketing Practices Act also are exempt from the disclosure requirement. Exemption under the FTC Rule takes a transaction entirely out of the Rule's coverage, but does not determine whether the franchise is or is not exempt from Minnesota's or any other state's franchise law.

## Other States

In addition to Minnesota, 19 other states regulate the offer and sale of franchises. These states are:

California	North Dakota
Florida	Oregon
Hawaii	Rhode Island
Illinois	South Dakota
Indiana	Texas
Kentucky	Utah
Maryland	Virginia
Michigan	Washington
Nebraska	Wisconsin
New York	

The Canadian provinces of Alberta, New Brunswick, Ontario and Prince Edward Island also regulate offers and sales of franchises, as do a small but growing number of foreign countries.

The pattern of definition in these other state laws (*i.e.*, the description of the types of business transactions covered) is remarkably similar to Minnesota law. Most of these laws contain the “granting”, “trademark” and “franchise fee” elements. Some states replace the “community of interest” element with the question of whether the grantee is required to operate under a “marketing plan” prescribed in substantial part by the grantor. A marketing plan exists when the grantor prescribes significant restrictions on the grantee in the conduct of the grantee’s business, or provides significant assistance to the grantee in operating the business. Examples of business arrangements that can constitute a “marketing plan” include providing a mandatory training program, prescribing the appearance of the grantee’s business premises, prescribing a territory or location, dictating hours of operation, or exercising controls over the grantee’s advertising. Any of these provisions could also be used in Minnesota to show the existence of a “community of interest.” It is worth noting that some states do have different requirements. For example, in the

franchise relationship laws in Arkansas and New Jersey, the definition of “franchise” does not include a requirement that the franchisee pay the franchisor a fee.

For all practical purposes, an arrangement that would be a franchise under any one of these laws is highly likely to be covered by all of them. It is sometimes useful in a multi-state transaction, therefore, to be aware that more than one state’s franchise laws may apply. This may give the franchisee a broader range of possible remedies should a problem arise with the transaction or relationship.

## **COMMON CHARACTERISTICS OF FRANCHISES**

Fortunately, we can distill the many technical definitional issues into a simple definitional concept that any businessperson can use to determine whether franchise laws might apply. This shorthand definition of a “franchise” is:

Does one party pay something extra for the privilege of distributing goods or services, using a brand, trade identification or advertising other than that person’s own name or advertising, where the parties have an ongoing common interest in their shared enterprise, or one party dictates to the other how to run its business?

If the answer to that question is “yes” or even “maybe,” further scrutiny into the possible application of franchise laws would be prudent.

In some cases, business transactions become subject to franchise or other laws where a distribution arrangement takes on a structure that is unusually or needlessly complex. This is common in some multilevel distribution schemes, or pyramid schemes, where parties to the relationship are obligated by contract or economic necessity to recruit others into the distribution scheme in order to profit from it themselves.

## BUSINESS OPPORTUNITIES LAWS

Business opportunities have been mentioned several times in earlier sections. They are a curious phenomenon in American business. When the scam artists and crooks were run out of franchising by the franchise registration and disclosure laws, some turned to closely related forms of “business” promotions aimed at novice or unsophisticated consumer-investors. These ranged from questionable deals at best to outright frauds at worst. Examples included “worm farms,” chinchilla breeding deals, some work-at-home schemes, and various vending machine and rack jobber route deals. This kind of promotion came to be characterized as “business opportunities” schemes. Between the late 1970s and 1984, these schemes led about 25 states to enact laws to control and eliminate them.

Deciding what constitutes a “business opportunity” is even more complicated and varied from state to state than deciding what constitutes a “franchise.” Nonetheless, for our purposes, these definitions can be paraphrased into the following concept:

A business opportunity exists where a seller provides goods or services to a buyer to enable the buyer to start a business; the buyer makes any payment in excess of a stated threshold (usually \$100 or \$500; payments for “inventory” are *not* excluded); and the seller makes any of a number of prescribed representations to the buyer to the effect that the buyer’s investment is safe because the seller (i) will find locations for vending machines or racks to be serviced or stocked by the investor, (ii) will buy back the buyer’s output of goods produced using whatever the seller initially provided, or refund the buyer’s money if the buyer becomes dissatisfied with the deal, (iii) represents that the buyer will derive income from the scheme greater than what was paid for it, or (iv) represents that a market is assured for the buyer’s output due to a marketing plan to be provided by the seller.

Business opportunities are somewhat closely related to many product-oriented franchise arrangements. They differ from them largely in the representations made by the promoter or seller indicating that the buyer's investment is safe or secure for any of the reasons listed in the various definitions. They are, therefore, characterized less by a "get rich quick" theme than by a "you can't lose" assurance.

In most states (including Minnesota), business opportunities are regulated in a manner similar to franchising: the law requires that a business opportunity offering be registered with a state administrative authority and that prescribed disclosures be made to prospective investors before any commitment can be made. Bonds or other forms of financial assurance often are also required. Curiously, under the Minnesota Franchise Act, business opportunities are defined as an alternative type of "franchise." As a result, the regulatory consequences are identical for the two different types of business promotions.

Other states have separate regulatory procedures for business opportunities, including detailed regulation of various features that they either must or may not contain. Before its amendment in 2007, the FTC Rule, like Minnesota, treated business opportunities as an alternative definition of the word "franchise". The 2007 amendment to the FTC Rule removed "business opportunities" from the franchise Rule into a separate regulation. The Federal Trade Commission will adopt a new, separate, Business Opportunity Rule, 16 C.F.R. Part 437, to regulate business opportunities. The Business Opportunity Rule would require a shorter, one-page disclosure of five topics: explanation of any earnings claims being made; a list of criminal or civil actions brought against the seller or its representatives that involve fraud, misrepresentations, securities, deceptive or unfair trade practices; a description of the seller's refund or cancellation policies; the number of purchasers in the last year and how many of those purchasers have sought a refund or to cancel the agreement; and a list of references.

Business opportunities generally are beyond the scope of this book. Expert legal advice should be sought and great care exercised before offering or selling such an arrangement or buying into one.

It should be noted in passing, however, that although many of the business opportunity promotions that led to the enactment of business opportunities laws included highly questionable or fraudulent deals, many legitimate, mainstream businesses have employed techniques to distribute their products that come within the scope of the state business opportunities laws. As a result, many legitimate business offerings today are made under the coverage of a business opportunity law. One reputable business magazine even published an annual listing of 500 leading “business opportunities.”

