

# 1999 AMENDMENTS TO 1998 COMMENTARY ON THE UNIFORM FRANCHISE OFFERING CIRCULAR GUIDELINES

*Adopted April 18, 1999*

## **Item 1—Predecessor—Change of Ownership**

*Question:* If control of a franchisor changes, is a former controlling owner a predecessor?

*Answer:* A predecessor is defined as a person from whom the franchisor acquired directly or indirectly the major portion of the franchisor's assets. The determination of what constitutes the major portion of a franchisor's assets is made as of the date of the franchisor's acquisition of those assets. The definition of predecessor does not include persons who acquire the franchisor or its assets, nor does it include mere equity owners of the franchisor. Implicit in the definition of "predecessor" is the requirement that the predecessor contributed operating assets to *the* franchisor and itself operated or franchised a similar business. Therefore, a change in control of a franchisor does not affect the determination of whether a former controlling owner is a "predecessor." (1999)

## **Item 3—Felonies**

*Question:* Are felonies of all kinds required to be disclosed in Item 3?

*Answer:* Yes. Item 3 requires disclosure of all felony convictions and pleas of nolo contendere to any felony charge. This disclosure is not limited to felonies involving the specific matters listed in Item 3 (for example, actions alleging a violation of a law related to antitrust, securities, franchise or fraud). (1999)

## **Item 5—Fee Disclosure**

*Question:* If a franchisor occasionally sells company-owned outlets to franchisees, does the purchase price of the outlets constitute an "initial franchise fee" and, if so, must it be disclosed in Item 5 and on the cover page?

*Answer:* If a franchisor occasionally sells company-owned outlets to franchisees, it need not disclose the purchase price of those outlets on the cover page or in Item 5. However, the franchisor may be required to disclose in Item 7 the purchase price of company-owned outlets sold in the preceding fiscal year if those purchase prices exceeded the amount of the highest initial investment reflected in the Item 7 table ("Your Estimated Initial Investment"). This disclosure may be made by a footnote. The franchisor should note that it sold company owned outlets to franchisees in an amount that exceeded the initial investment listed in Item 7. The franchisor should also state the amount by which the purchase price of company-owned outlets exceeded the highest initial investment (1999).

## **Item 8—Rebate Reporting**

*Question:* Can a franchisor choose to report either the dollar amount of the rebates or the percentage paid (HI purchases by franchisees)?

**Answer:** A franchisor can choose to report rebates in either of 2 formats: the actual dollar amounts paid or the percentage rebate based on franchisee purchases. Thus, if a number of suppliers pay rebates and a franchisor chooses the latter reporting method, its circular might state that it received rebates from suppliers ranging from 1% to 5% of the amount of purchases by franchisees from such suppliers. **(1994 Issue #22)**