

2860.3500 INFORMATION REQUIRED.

Subpart 1. **Sequential order.** The letters, numbers, and titles used herein merely outline the disclosure information in an orderly fashion and are not a required part of the public offering statement. However, the following sequential order should be followed.

Subp. 2. **Franchisor.** The public offering statement shall include:

A. the name of the franchisor, the name under which the franchisor is doing or intends to do business, and the name of any parent or affiliate that may engage in business transactions with the franchisees;

B. the franchisor's principal business address and the address of its agent in this state authorized to receive service of process;

C. the business form of the franchisor, whether corporate, partnership, or otherwise, and the state or other jurisdiction under which the franchisor is organized;

D. the business experience of the franchisor, including the length of time the franchisor has conducted a business of the type to be operated by the franchisee, the length of time the franchisor has granted franchises for such business, and the length of time the franchisor has granted franchises in other lines of business and, if so, a description of these other lines of business.

Subp. 3. **Identity and business experience of persons affiliated with franchisor.** The public offering statement shall list by name and office held the officers, directors, trustees, general partners, or other persons who will have management responsibility in connection with the franchisor's business operations that relate to the franchises being offered. With respect to each person listed, state their principal occupations during the past five years. List the subfranchisors for this state, if any.

Subp. 4. **Litigation.** State whether the franchisor or any person identified in the public offering statement:

A. Has, during the ten-year period immediately preceding the date of the public offering statement, been convicted of a felony, pleaded nolo contendere to a felony charge, or been held liable in a civil action by final judgment if such felony or civil action involved fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, violation of any franchise law, or misappropriation of property. If so, set forth the name of the person convicted, the court and date of conviction or judgment, and any penalty or damages assessed.

B. Is subject to any currently effective order, decree, consent judgment, or other assurance relating to the business which is the subject of the franchise offered under any

federal or state securities, antitrust, monopoly, franchise, trade practice, or trade regulation law. If so, set forth:

- (1) the name of the person or entity involved;
- (2) a summary of the allegations;
- (3) the date, nature, terms, and conditions of the order, decree, judgment, or assurance; and
- (4) the court or agency involved.

C. Has any material administrative, civil, or criminal actions pending against him or her concerning the business that is the subject of the franchise offered, alleging fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, violation of any franchise law, or misappropriation of property. If so, set forth the name of the person, the court, nature and current status of any such pending actions, and an opinion of defendant's counsel regarding defendant's position on issues in any such pending actions.

D. State whether the franchisor has been, during the 15-year period immediately preceding the date of the public offering statement, adjudicated a bankrupt, or reorganized due to insolvency. As to any other person identified in the public offering statement, state whether the person is or has been a principal officer of a corporation or general partner in any partnership involved in any of the foregoing proceedings. If so, set forth the name of the person or corporation and the court, date, nature, and current status of the proceedings.

Subp. 5. **Investment of franchisee.** Set forth in detailed tabular form the total initial investment that will be required of the franchisee. This statement should include, but is not limited to, a description of the following items:

A. State the franchise fee or initial payment, if any, charged upon the signing of the franchise agreement, whether payable in lump sum or installments.

B. If an identical franchise fee or initial payment is not charged in connection with each franchise agreement, state the method or formula by which the amount is determined.

C. State whether any of the fees set forth in items B and C are refundable and, if so, under what conditions.

D. Include a statement indicating the proposed use of the proceeds to be raised from such fees.

E. State any other fees or payments or charges required by the franchisor in connection with the franchisee's preparation for entrance into the franchise.

F. State the fees or payments other than the initial franchise fee that the franchisee or subfranchisor is required to pay to the franchisor, including royalties, and payments or fees which the franchisor collects in whole or in part on behalf of a third party.

G. State to whom the above payments are due, when the payments are due, and the method by which the payments are to be made.

H. Include a statement estimating the following expenditures that prospective franchisees should anticipate making in connection with the franchised business (a low-high range may be stated, if applicable):

(1) equipment, fixtures, other fixed assets, construction, remodeling, and leasehold improvements and decorating costs, whether financed by contract or installment purchase, leasing, or otherwise;

(2) initial working capital, deposits, and prepaid expenses;

(3) all other initial goods and services, including inventory, which the franchisee could reasonably be expected to purchase or lease.

I. Describe the real property requirements for the business that is the subject of the franchise offered. This should include the approximate size of the property and building involved, the probable location (shopping center, downtown, suburban, rural, highway, etc.), and a general statement concerning the purchase or lease costs, if estimable.

Subp. 6. **Financing arrangements.** State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or the franchisor's agent or affiliate.

State any past or present practice of or any intent of the franchisor to sell, assign, or discount, in whole or in part, to a third party any note, contract, or other obligation of the franchisee or subfranchisor.

Describe any waiver of defenses or similar provisions in any financing note, contract, or other instrument to be executed by the franchisee or subfranchisor.

Subp. 7. **Obligations of franchisee to purchase items.** State whether, by the terms of the franchise agreement or by other intentional device or practice, the franchisee or subfranchisor is required to purchase or lease from the franchisor or its designated sources any goods, services, supplies, products, fixtures, equipment, inventory, or real estate relating to the establishment or operation of the franchise business, together with a general description thereof.

State the means by which the franchisor may derive income, if any, as a result of such required purchases or leases. To the extent known or estimable by the franchisor, state the magnitude of such required purchases or leases in relation to all purchases or leases that the franchisee will make or enter into in the establishment and the operation of the franchised business.

Subp. 8. **Terms of franchise.** State the following with respect to the franchise and any related agreements:

- A. the term and whether the term is affected by the term of any other agreement;
- B. the conditions under which the franchisee may renew or extend;
- C. the conditions under which the franchisor may refuse to renew or extend;
- D. the conditions under which the franchisor may terminate;
- E. the conditions under which the franchise may terminate;
- F. the obligations of the franchisee after termination of the franchise, whether such termination be by the franchisor, the franchisee, or the expiration of the franchise;
- G. the conditions under which the franchisee or its owners may sell or assign, in whole or in part;
- H. the conditions under which the franchisor may sell or assign, in whole or in part;
- I. the conditions under which the franchisor may repurchase, in whole or in part (if the franchisor has the right or option to repurchase the franchise, state whether there will be an independent appraisal of the franchise and recognition of goodwill or other intangibles associated therewith in the repurchase price to be given to the franchisee);
- J. describe the provisions regarding the franchisee's equity upon sale, termination, or refusal to renew or repurchase;
- K. the conditions under which the franchisee may modify;
- L. the conditions under which the franchisor may modify;
- M. the contractual rights of the heirs or personal representative of the franchisee to the franchise upon the death or incapacity of said franchisee; and
- N. the conditions of any covenant not to compete.

Subp. 9. **Limitation on goods and services offered by franchisee.** State any restriction or condition imposed by the franchisor, whether by the terms of the franchise agreement or by other device or practice of the franchisor, whereby the franchisee is limited in the goods or services offered to customers.

State fully the obligation of the franchisee, whether by the terms of the franchise agreement or any other device or practice, to participate personally in the direct operation of the franchised business.

Subp. 10. **Obligations of franchisor.** State the obligations that the franchisor agrees, by contract or otherwise, to perform, both prior to the opening of the franchise business and during the operation of the franchise business.

When the obligations are to be completed by a certain date or within a specified time period, state the date or period. If the obligations previously mentioned are not performed, state the rights of the franchisee to any refund of money paid or to rescission of the franchise contract or other transaction related thereto.

Describe the method, if any, used by the franchisor to select the location for the franchisee's business.

Describe the training program, supervision, and assistance the franchisor will provide the franchisee, including:

- A. the location, duration, and content of the promised training program;
- B. when the training program is to be conducted;
- C. the amount of experience the instructors have had with the franchisor;
- D. who shall bear the expenses, including travel and living expenses, incurred in connection with the training program; and
- E. the number of and average length of training programs and refresher courses made available to the franchisee after the initial training period and whether the franchisee will be required to attend the same.

Subp. 11. **Arrangements with public figures.** State any compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of the public figure in the name or symbol of the franchise or the endorsement or recommendation of the franchise by the public figure in advertisements, and the extent to which such public figure is involved in the actual management of the franchisor.

State whether the franchisee has the ability to use the name of a public figure or celebrity in promotional efforts and advertising and any charges to be made to the franchisee in connection with such usage.

For the purposes of this disclosure, "public figure" shall include any cartoon or fictionalized character.

Subp. 12. **Exclusive area or territory.** State whether the franchisee or subfranchisor receives an exclusive area or territory. State whether the franchisor may establish another franchisee or a company owned operation within that area or territory.

State whether the franchisor specifies a defined area or territory within which it can conduct, or grant franchises for the conduct of, a limited number of franchised businesses.

State whether the franchisor or its parent or affiliate may establish other franchises or company owned operations selling or leasing similar products or services under a different commercial symbol within that area or territory.

State whether the continuation of the exclusivity of the grant is dependent upon the volume of sale generated or penetration of the potential market by the franchisee. State whether, and under what circumstances, the area or territory can be reduced.

If applicable, attach a map of the area or territory drawn to scale.

Subp. 13. **Other franchises.** State, as of the filing date of this statement, the following:

A. the total number of franchises presently operating in the United States, and of that number, the total number of franchises presently operating in the state of Minnesota (if the franchisor owns or operates any of the outlets, the number of such operations shall be stated independently);

B. the number of franchises in the United States and the state of Minnesota for which a business is not yet operational although a franchise agreement has been signed;

C. estimate the total number of franchises to be sold or granted in the United States for the 12-month period following the date of this statement; of that number, estimate the total number of franchises to be sold or granted in the state of Minnesota for the 12-month period following the date of this statement;

D. state that a list of the names, addresses, and business telephone numbers of all franchisees in the state of Minnesota will be given to the prospective franchisee immediately upon request and that the prospective franchisee will be permitted to retain the list. The list of all franchisees in the state of Minnesota, as of the date of application, together with the date upon which the franchise agreement was signed by each, shall be filed with the commissioner as a condition of registration.

Subp. 14. **Estimated or projected operations.** The public offering statement shall include a copy of any estimated or projected franchisee earnings, proforma statements, or break even statements prepared for presentation to prospective franchisees or subfranchisors. Include a statement setting forth the assumptions or data upon which the estimations or projections are based. This statement should clearly indicate such information as the number of operations involved, the length of time the operations were in business, the period covered by the data, and the ownership status of the operations (purely franchised versus owned, operated, or controlled by the franchisor). All such estimations or projections shall indicate the percentage of the franchises not owned, controlled, or operated by the franchisor which were in operation during the entire preceding 12-month period which have, to the franchisor's knowledge, actually attained or surpassed that estimated or projected level.

Subp. 15. **Franchise contract.** The public offering statement shall include a copy of the entire franchise contract or agreement proposed for use, including all amendments thereto.

Subp. 16. **Financial statements.** The public offering statement shall include a copy of the financial statements that meet the requirements of parts 2860.1200 to 2860.1600. These statements are to be an actual part of the public offering statement rather than contained in a separate document.

Statutory Authority: *MS s 80C.18*

History: *17 SR 1279*

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