

CR 89-141

CERTIFICATE

RECEIVED

STATE OF WISCONSIN)
OFFICE OF THE) ss.
COMMISSIONER OF SECURITIES)

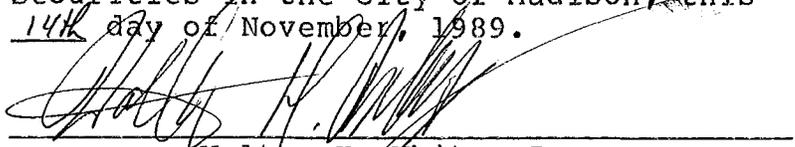
NOV 14 1989
4:30pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Walter H. White, Jr., Commissioner of the State of Wisconsin Office of the Commissioner of Securities, as custodian of the official records of said agency, do hereby certify that the annexed rules relating to the operation of Ch. 551, Wis. Stats., the Wisconsin Uniform Securities Law and Ch. 553, the Wisconsin Franchise Investment Law, relating to: securities and franchise registration exemptions; securities and franchise registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures, including permanent rules to replace emergency rules adopted effective August 15, 1989, relating to brokered certificates of deposit; and fees for delinquent filings under the securities and franchise laws; were duly approved and adopted by this agency on November 14, 1989.

I further certify that said copy has been compared by me with the original on file in this agency and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the Office of the Commissioner of Securities in the City of Madison, this 14th day of November, 1989.



Walter H. White, Jr.
Commissioner of Securities
State of Wisconsin

[SEAL]

1-1-90



FINAL ORDER OF THE
OFFICE OF THE COMMISSIONER OF SECURITIES
STATE OF WISCONSIN
ADOPTING, AMENDING AND REPEALING RULES

To renumber SEC 3.23(2)(i) and 7.01(7)(f); to amend SEC 2.02(4)(c)(Intro.), (c)1 and (c)2(Intro.), 2.02(5)(c), 2.02(5)(d)3, 3.06(5)(c), 3.23(2)(g), 3.23(3), 3.27(2), 4.03(1)(j), 4.035(1), 4.05(6), 5.03(1)(h), 5.05(2)(a), 5.05(7), 7.01(7)(a), (b) and (c), 7.01(7)(e), 32.06(2) and 32.07(1); to repeal and recreate SEC 4.04(3) and 7.01(7)(d); and to create SEC 3.23(2)(i), 4.11, 5.04(5), 5.06(11), 7.01(5)(d), 7.01(7)(f), (g) and (h), 7.01(8), 9.01(1)(a)5 and 35.01(5), relating to: securities and franchise registration exemptions; securities and franchise registration and disclosure standards, requirements and procedures; securities broker-dealer, securities agent and investment adviser licensing requirements and procedures, including permanent rules to replace emergency rules adopted effective August 15, 1989, relating to brokered certificates of deposit; and fees for delinquent filings under the securities and franchise laws.

Pursuant to the authority vested in the Office of the Commissioner of Securities by ss. 551.63(1) and (2), 551.23(8), (10) and (11), 551.25(2)(a), 551.26(2), 551.27(10), 551.28(1)(e), 551.32(7), 551.33(1), (2) and (6), 551.52(1)(b) and (4), 553.27(3), 553.30, 553.58(1), and 553.72(2), Stats., the Office of the Commissioner of Securities proposes to repeal, amend and adopt rules interpreting those sections as follows:



SECTION 1. SEC 2.02(4)(c)(intro.), 1 and 2(intro.) are amended to read:

SEC 2.02(4)(c) ~~Is~~-a A venture capital company as a result of meeting any of the following requirements:

1. ~~Operates~~ Operating a small business investment company licensed under the small business investment act of 1958, as amended 15 USC sec. 631.

2. ~~Is~~ Being a corporation, partnership or association that has been in existence for 5 years or whose net assets exceed \$250,000 and either:

ANALYSIS: This SECTION makes minor grammatical corrections so that the syntax of par. (c) is consistent with pars. (a) and (b) of SEC 2.02(4).

SECTION 2. SEC 2.02(5)(c) is amended to read:

SEC 2.02(5)(c) A reasonable commission or fee may be paid to a broker- dealer or agent licensed in this state for services rendered in connection with a sale of securities effected under s. 551.23(10) or (11), Stats.; a commission or fee will be presumed reasonable if it does not exceed the amount permitted under s. SEC 3.01(1); and



ANALYSIS: This amendment is added primarily as clarification language in the rule to provide that a licensed agent, as well as a licensed broker-dealer, may receive a sales commission incident to effecting transactions pursuant to the non-public offering securities registration exemptions in secs. 551.23(10) and (11), Wis. Stats. The ability of a licensed agent to receive a commission already is expressly provided for under sec. 551.23(10), but not in sec. 551.23(11). The amendment reflects the fact that transactions effectuated by a licensed broker-dealer under either of the exemptions necessarily involve an agent of the firm as well; thus both technically need authorization to receive commissions as is provided in this rule.

SECTION 3. SEC 2.02(5)(d)3 is amended to read:

SEC 2.02(5)(d)3. Any offer or sale of securities ~~registered~~ pursuant to a registration statement under the securities act of 1933 or exempted by regulations A or B thereunder, unless permitted by order of the commissioner in compliance with such conditions as the commissioner may prescribe.

ANALYSIS: This amendment clarifies that the withdrawal of use of the "10-offeree"/ non-public offering registration exemption under the rule does not continue indefinitely to securities that at one time were the subject of a registration under the federal Securities Act of 1933. Rather, the exemption withdrawal applies only during the time when offers and sales of the securities are being made pursuant to the federal 1933 Act registration statement.

SECTION 4. SEC 3.06(5)(c) is amended to read:

SEC 3.06(5)(c) Securities of an issuer ~~whose-financial structure-of,~~ the issuance of whose securities is regulated by a federal or state governmental authority.

ANALYSIS: This amendment removes ambiguous language from the rule because no specificity is provided in the rule, nor is there legislative history (dating back to the rule's enactment in 1970) regarding the nature or scope of the federal or state "regulation" of an issuer's financial structure intended to be covered by the rule--such as maintaining certain regulatory authority-established asset, net worth or times-interest-earned ratios.

SECTION 5. SEC 3.23(2)(g) is amended to read:

SEC 3.23(2)(g) ~~The~~ If the offering is the subject of a registration statement under the securities act of 1933, the following ~~statement~~ statements in bold-face type:

~~THE-REGISTRATION-OF-THESE-SECURITIES-BY-THE-WISCONSIN COMMISSIONER-OF-SECURITIES-DOES-NOT-SIGNIFY-THAT-THE COMMISSIONER-HAS-APPROVED-OR-RECOMMENDED-THESE-SECURITIES, NOR-HAS-THE-COMMISSIONER-PASSED-UPON-THE-ACCURACY-OR-ADEQUACY OF-THIS-PROSPECTUS.--ANY-REPRESENTATION-TO-THE-CONTRARY-IS-A CRIMINAL-OFFENSE~~

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES

COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. ;

ANALYSIS: The amendment to this rule substitutes for the current prospectus cover page legend requirement for an offering being registered in Wisconsin that also is the subject of a federal registration under the Securities Act of 1933, a new legend using language developed by the North American Securities Administrators Association, Inc., as amended April 29, 1989 by vote of its member jurisdictions, including Wisconsin, at the NASAA 1989 Spring Conference. As a result of a comment letter/memorandum submitted by an agency staff member, this SECTION is revised from its Public Comment Draft form in the manner particularized in SECTION 7.

SECTION 6. SEC 3.23(2)(i) is renumbered SEC 3.23(2)(j).

ANALYSIS: This amendment renumbers the current rule provision located at the end of the prospectus cover page disclosure section (granting the Commissioner discretion to require any additional information), to make room for a new provision relating to a specific situation.

SECTION 7. SEC 3.23(2)(i) is created to read:

SEC 3.23(2)(i) If the offering is exempt under section 4(2) of the securities act of 1933, the following statements in bold-face type:

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.; and

ANALYSIS: This new rule prescribes a two-paragraph prospectus cover page legend requirement for use in offerings exempted under section 4(2) of the federal Securities Act of 1933, using language developed by the North American Securities Administrators Association, Inc., as amended April 29, 1989 by vote of its member jurisdictions, including Wisconsin, at the NASAA 1989 Spring Conference.

As a result of a comment letter/memorandum submitted by an agency staff member, the second legend that was contained in par. (2)(g) of the Public Comment Draft form of the rule revision is moved to instead be contained as part



of this par. (2)(i) of the proposed revised rules. Such will properly correspond to the NASAA guidelines inasmuch as the legend being switched is to be used only in the offering context where the securities being offered are not subject to a registration filed under the Securities Act of 1933--which is the offering context this par. (2)(i) deals with.

SECTION 8. SEC 3.23(3) is amended to read:

SEC 3.23(3) The prospectus shall contain a full disclosure of all material facts relating to the issuer and the offering and sale of the registered securities. A prospectus meeting the requirements of form S-1 under the Securities Act of 1933 that receives full review by the U.S. securities and exchange commission is deemed to satisfy the requirements of this subsection. If the offering is being made for federal purposes pursuant to use of either Rule 504 of Regulation D under the Securities Act of 1933 or Rule 147 under Section 3(a)(11) of the Securities Act of 1933, a disclosure document in compliance with the North American Securities Administrators Association, Inc. form U-7 is deemed to satisfy the requirements of this subsection.

ANALYSIS: This amendment provides that an offering made on an exempt basis federally under either Rule 504 of Regulation D or Rule 147 under the Securities Act of 1933 that seeks to become registered for sale in Wisconsin can utilize--instead of a federal Form S-1 prospectus--the easier-to-prepare Form U-7 model Small Corporate Offering Registration (and prospectus/disclosure)



Form, as recently developed for use by the North American Securities Administrator's Association, Inc., as adopted by vote of its member jurisdictions, including Wisconsin, at the NASAA 1989 Spring Conference.

SECTION 9. SEC 3.27(2) is amended to read:

SEC 3.27(2) A registration statement relating to redeemable securities issued by an open-end management company or a face amount certificate company as defined in the investment company act of 1940, or securities of a finance company licensed under s. 138.09, Stats., is deemed to include an application for the continuous offering of the securities. The offering period of the registration statement is automatically extended until it is permitted to be withdrawn or the commissioner issues a stop order suspending or revoking its effectiveness pursuant to s. 551.28, Stats., if the issuer ~~files the reports required under s. SEC 3.28(1)~~, and complies with s. 551.52(1)(b), Stats., which may involve the filing of form RS-IC as referred to in s. SEC 9.01, and if the issuer files with the commissioner not less than annually during the offering period, within 120 days of the end of its fiscal year, a prospectus updated in accordance with s. SEC 3.23(5), a balance sheet of the issuer as of the end of the fiscal year, and a statement of income and change in financial position and analysis of surplus of the issuer for the fiscal year meeting the requirements of s. SEC 7.06.

ANALYSIS: The amendments to this rule do the following: (1) Delete the cross-reference in the rule to SEC 3.28(1) which was repealed as part of the agency's 1988 annual rule revision as it related to the filing and other procedures necessary for an investment company to maintain continuous registration status for its securities; (2) Substitute a cross-reference to the statutory provision created in 1987 Wisconsin Act 381 (effective May 5, 1988) relating to investment company registration extension procedures and contained in s. 551.52(1)(b), Wis. Stats.

SECTION 10. SEC 4.03(1)(j) is amended to read:

SEC 4.03(1)(j) A separate file containing all complaints made or submitted by customers to the broker-dealer or its agents relating to securities transactions, and containing evidence, including representative copies, of the responses made by the broker-dealer to the complaint. In this paragraph, "complaint" means any written or oral statements of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the broker-dealer in connection with the solicitation or execution of any securities transaction or the disposition of securities or funds of that customer that would constitute a violation of ch. 551, Stats., or any rule or order thereunder.

ANALYSIS: This amendment provides that the "complaint" file required to be maintained under this paragraph should

contain evidence, including copies, of the responses made to the complaint by the broker-dealer.

Testimony by persons at the public rule-making hearing suggested that clarification language be added to this rule from its Public Comment Draft form regarding the extent to which copies of a broker-dealer firm's responses to customer complaints must be included in the firm's complaint file. As a result, language was added to clarify that copies of a firm's responses to a customer complaint need not include copies of the identical response materials where numerous customers are similarly affected.

SECTION 11. SEC 4.035(1) is amended to read:

SEC 4.035 SECURITIES AGENT RECORDS. (1) Every licensed agent, except an agent who accepts only unsolicited orders for a discount brokerage firm, or an agent for a broker-dealer engaged solely in the offer and sale of either securities issued by open-end investment companies, face amount certificate companies or unit investment trusts registered under the investment company act of 1940, or interests in direct participation programs, shall have and keep current the records in sub. (2) relating to customer securities ~~transaction~~ transactions, unless the commissioner by order exempts an agent from all or part of the requirements of this section. The record requirements may not be satisfied by maintaining a file of confirmations unless permitted by order of the commissioner. The originals of the records are considered records of the broker-dealer.

Every broker- dealer shall within 15 days following receipt of a written request provide photocopies of the agent's customer securities holding records as may be requested by an agent within 30 days from the date of termination of his or her employment with the broker- dealer.

ANALYSIS: This amendment clarifies that it is the customer securities holding records which are the records that are to be made available to an agent upon termination of employment.

SECTION 12. SEC 4.04(3) is repealed and recreated to read:

SEC 4.04(3) Each broker- dealer shall notify the commissioner in writing within 10 days from the first date that the person who is the designated supervisor under s. SEC 4.05(6) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the commissioner in writing a substituted designated supervisor within the 45 day period provided under SEC 4.05(6).

ANALYSIS: This SECTION acts to: (1) Repeal the Form RS-BD report- filing requirement under which licensed broker-dealers were required to file a monthly report listing all of the firm's securities transactions for the month relating to initial distributions, secondary distributions and private placements. The reporting requirement is being repealed because the regulatory purpose of the Report-- to provide a



regulatory check that the firm's sales activities in those areas involved securities that properly qualified for sale in Wisconsin-- has not resulted in identifying sufficient numbers of non-qualifying transactions to warrant the extensive agency time and effort necessary to monitor and enforce compliance with the reporting requirement. The review of a firm's sales activities in those areas will continue to be done by the agency on a periodic basis as part of agency inspections of broker- dealer home offices. (2) Create a new reporting requirement when a broker- dealer's designated supervisor is no longer acting in that capacity-- whether as a result of termination of employment or for any other reason. Under the rule, if the broker- dealer does not have a person available who can immediately become a substituted designated supervisor and be identified as such to the agency, the broker- dealer is required to undertake to notify the agency of the substituted designated supervisor within the same 45 day period the broker-dealer has under SEC 4.05(6) to qualify a substituted designated supervisor.

SECTION 13. SEC 4.05(6) is amended to read: ,

SEC 4.05(6) Every licensed broker- dealer ~~must~~ shall employ at its principal office at least one person designated in writing to the commissioner to act in a supervisory capacity who is licensed as a securities agent in this state and has satisfied the supervisory examination requirement in s. SEC 4.01(5), provided that if a licensed broker- dealer is not in compliance with the requirements of this paragraph, it has ~~90~~ 45 days from the first date of noncompliance to meet the requirements of this paragraph.

ANALYSIS: The amendments to this rule do the following: (1) Expressly provide that a broker-dealer's designated supervisory person be identified in writing to the agency; and (2) Reduce to 45 days the time period a broker-dealer can remain in non-compliance with the designated supervisor requirement before a replacement supervisory person must become qualified and be designated in writing to the agency under SEC 4.04(3).

SECTION 14. SEC 4.11 is created to read:

SEC 4.11 BROKERED CERTIFICATES OF DEPOSIT. A broker-dealer offering and selling to persons in Wisconsin federally insured certificates of deposit issued by and on behalf of financial institutions whose securities are exempt under secs. 551.22(3), (4), or (5), Wis. Stats., or are exempted by Order issued under sec. 551.23(18), Wis. Stats., shall comply with all of the following:

(1) The advertising materials published or circulated in this state relating to the certificate of deposit securities shall comply with all of the following:

(a) The disclosure standards contained in 12 CFR 526.2 relating to, among other things, interest or dividend rates, percentage yields, deposit duration and minimum investment amount requirements.

(b) Disclose any early withdrawal penalty.

- (c) Disclose in conjunction with any reference to a secondary resale market for the certificates of deposit, that the resale price may be less than the face value of the certificate.

- (d) Disclose in conjunction with any reference to specific rates of interest for certificates of deposit, the corresponding duration of the certificate, and the date as of which the advertised interest rate or rates are available.

- (e) Disclose the existence of any supervisory, managing or similar agreement between an issuing financial institution and the Federal Savings and Loan Insurance Corporation, the Federal Deposit Insurance Corporation or other federal or state agency, as well as the existence of any conservatorship, receivership or similar proceeding involving the issuing financial institution, whether under state or federal law.

- (f) Contain the language "May be issued by out- of- state institutions" if the certificates of deposit may be issued by a financial institution whose principal office is not in Wisconsin.

(g) Disclose in any advertisement in which either the highest annual percentage rate stated for a specific duration certificate of deposit, or the only annual percentage rate stated is available for purchase through the broker-dealer from fewer than three institutions, each of which does not have its principal office in Wisconsin, the name and city and state location of each such financial institution.

(2) The broker-dealer shall deliver to each purchaser of a certificate of deposit not later than the date of the confirmation for the transaction, except as otherwise provided in para. (e), all of the following written information, which may be either contained on the confirmation or provided separately:

- (a) The name of the financial institution that is the issuer of the certificate of deposit.
- (b) The city and state location of the issuer of the certificate of deposit.
- (c) The interest rate on, as well as the duration of, the certificate of deposit.

- (d) The identity of the provider of the federal deposit insurance on the certificate of deposit.

- (e) The disclosures required under sub. (1)(e) of this section if any of the circumstances listed therein are applicable to the issuing financial institution. The disclosures shall be provided not later than the settlement date of the transaction, and shall be accompanied by disclosure by the broker-dealer of the address at which the purchaser may obtain the most recently published financial statements for the issuing financial institution.

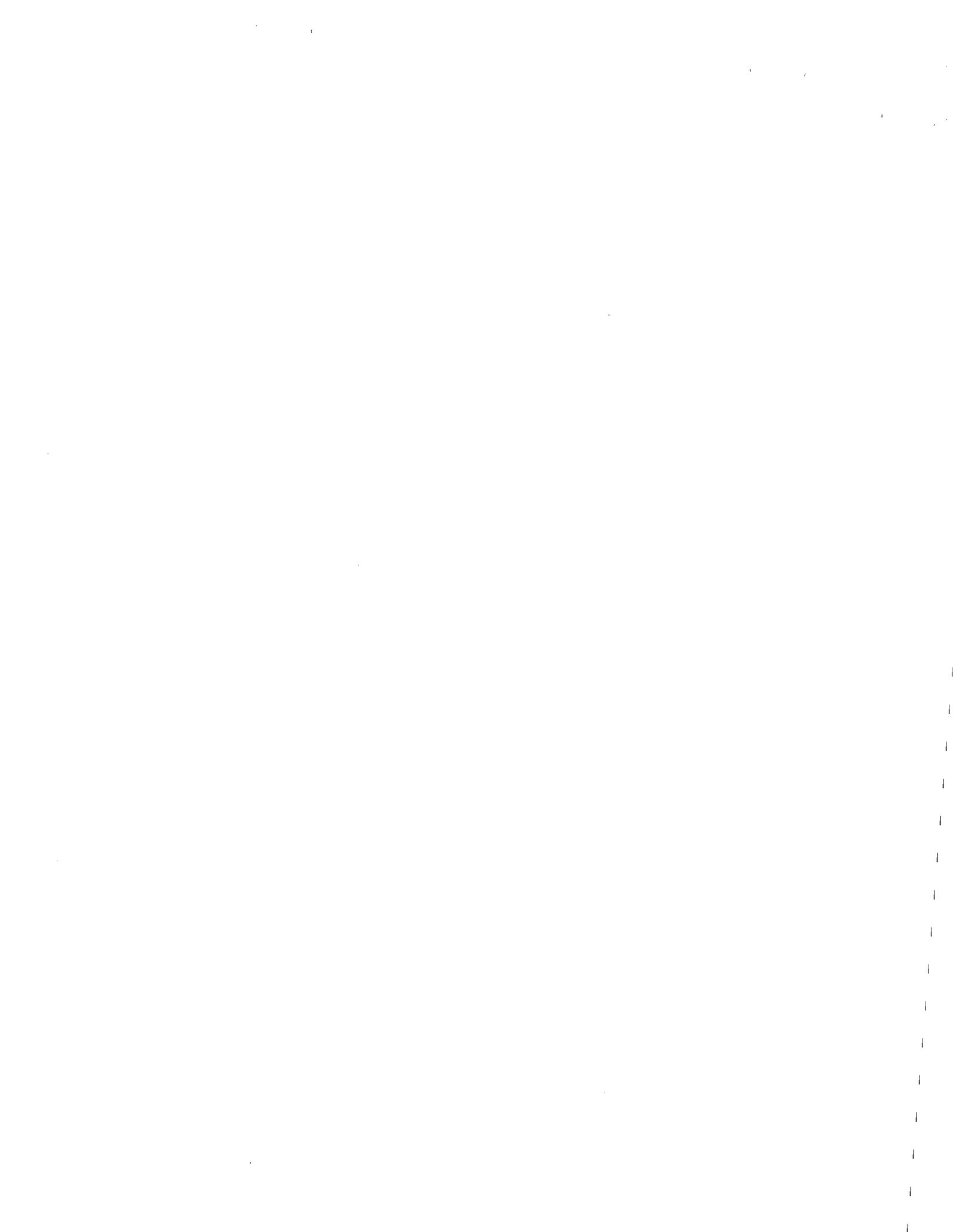
(3) The broker-dealer shall furnish promptly to each purchaser of a certificate of deposit who requests a copy of the most recent annual financial statements for the issuer of the certificate of deposit, a copy of the financial statements or a written summary thereof.

ANALYSIS: This SECTION creates a permanent rule to replace a recently adopted emergency rule (effective beginning August 15, 1989 for a 150 day period) applicable to licensed broker-dealers in their brokered certificate of deposit sales and solicitation activities in Wisconsin. The rule, developed with input by the brokerage industry, establishes requirements in the following three respects: (1) Requiring in subsection (1) of the rule, all advertising materials (newspaper advertisements as well as direct mail)



regarding brokered CDs to include specific disclosures regarding the items listed in the several paragraphs under subsection (1) of the rule. The required disclosures relate not only to standard items such as interest rates, yields, deposit duration and minimum investment amounts, but also relate to: (i) any early withdrawal penalty (in par. (b)), (ii) market resale risks if the ad contains a reference to a secondary resale market for the CD (in para (c)), (iii) deposit duration requirements and availability date for quoted rates (in para. (d)), (iv) any receivership, conservatorship or similar proceeding under federal or state law involving the financial institution to which the ad relates (in para. (e)), (v) whether the issuing financial institution has its principal office in Wisconsin, (in para. (f)), and (vi) city and state location of each issuer of a CD whose principal office is not in Wisconsin that is the subject of the ad in certain situations (in para. (g)). (2) Requiring in subsection (2) of the rule that specific information regarding certain of the informational items in subd. (1) be provided by a broker-dealer to each purchaser of a brokered CD, which information can either be contained on the customer confirmation form, or may be provided separately. (3) Requiring in subsection (3) of the rule that each purchaser of a brokered CD who requests a copy of the most recent annual financial statements for the issuer of the CD shall be furnished by the broker-dealer promptly upon request with a copy of such financial statements or a written summary thereof.

The rule applies uniformly to brokered CDs issued by all types of financial institutions by virtue of the cross-references in the preamble of the rule to specific statutory registration exemptions. The reference to sec. 551.22(3) relates to state and nationally chartered banks, the reference in sec. 551.22(4) relates to federally chartered and certain state chartered savings and loan associations (and federal savings



banks), the reference to sec. 551.22(5) relates to certain credit unions, and the rule also relates to CDs of issuers that are the subject of Orders of Exemption under sec. 551.23(18), Wis. Stats.

The rule by its language in sub. (1) applies only to advertising "published or circulated in this state." The term "published" is defined in SEC 1.02(1)(a), Wis. Adm. Code, to mean printed in newspapers, contained in publications mailed or delivered, or communicated by radio. "Circulate" is defined in SEC 1.02(1)(b) to mean mailed or distributed in substantially similar form to more than 10 persons in Wisconsin. The terminology "in this state" relates to, and is governed by, sec. 551.66(4), Wis. Stats., which provides that a newspaper or other publication--such as Barron's or the New York Times--that is not published in Wisconsin, does not trigger the "in this state" language and thus would not be subject to the advertising requirement in sub. (1) of this rule.

SECTION 15. SEC 5.03(1)(h) is amended to read:

SEC 5.03(1)(h) Copies of all complaints of customers relating to investment activities for customers, and containing evidence, including representative copies, of the responses made by the investment adviser, to the complaint.

In this paragraph, "complaint" means any written or oral statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of persons under the control of the investment adviser in connection with providing investment advice or placing orders on behalf of customers.



ANALYSIS: This amendment parallels a similar amendment to the broker-dealer recordkeeping rule requirement of SEC 4.03(1)(j). The amendment provides that the "complaint" file required to be maintained under this paragraph contain evidence, including copies, of all responses made to the complaint by the investment adviser.

Testimony by persons at the public rule-making hearing suggested that clarification language be added to this rule from its Public Comment Draft form regarding the extent to which copies of an investment advisory firm's responses to customer complaints must be included in the firm's complaint file. As a result, language was added to clarify that copies of a firm's responses to a customer complaint need not include copies of the identical response materials where numerous customers are similarly affected.

SECTION 16. SEC 5.04(5) is created to read:

SEC 5.04(5) Each investment adviser shall notify the commissioner in writing within 10 days from the first date the person who is the designated supervisor under s. SEC 5.05(7) no longer is acting in that capacity. The notification shall either identify a substituted designated supervisor or undertake to identify to the commissioner in writing a substituted designated supervisor within the 45 day period provided under s. SEC 5.05(7).

ANALYSIS: This SECTION creates a new reporting requirement for investment advisers-- paralleling a similar new rule created in SEC 4.04(3) for broker-dealers-- that is triggered when the investment adviser's designated



supervisor is no longer acting in that capacity, whether as a result of termination of employment or for any other reason. Under the rule, if the investment adviser does not have a person available who can immediately become a substituted designated supervisor and be identified as such to the agency, the investment adviser is required to undertake to notify the agency of the substituted designated supervisor within the same 45 day period the investment adviser has under SEC 5.05(7) to qualify a substituted designated supervisor.

SECTION 17. SEC 5.05(2)(a) is amended to read:

SEC 5.05(2)(a) Provides for compensation to the investment adviser on the basis of a share of capital gains upon, or capital appreciation of, the funds or any portion of the funds of ~~the~~ a client other than a person specified in s. 551.23(8) or by rule thereunder;

ANALYSIS: This amendment provides an exclusion from the prohibition on performance-based fees contained in the rule to enable such fees to be payable under advisory contracts with an investment adviser's customer/ clients who are so-called "exempt accounts"-- as being financial institutions or institutional investors specified in s. 551.23(8) and SEC 2.02(4), Wis. Adm. Code, thereunder. Customers/ clients in Wisconsin who are persons specified in s. 551.23(8) or rules thereunder are capable of protecting themselves from the possible abuses of such a compensation arrangement.

SECTION 18. SEC 5.05(7) is amended to read:

SEC 5.05(7) Every licensed investment adviser ~~must~~ shall employ at its principal office at least one person designated in writing to the commissioner to act in a supervisory capacity who is qualified as an investment adviser representative in this state and has satisfied the supervisory examination requirement in s. SEC 5.01(5); provided that if a licensed investment adviser is not in compliance with the requirements of this subsection, it has ~~90~~ 45 days from the first date of noncompliance to meet the requirements of this subsection.

ANALYSIS: The amendments to this rule-- which are identical to amendments to the broker-dealer Rule of Conduct provision of SEC 4.05(6)-- do the following: (1) Expressly provide that an investment adviser's designated supervisory person be identified in writing to the agency; and (2) Reduce to 45 days the time period an investment adviser can remain in non-compliance with the designated supervisor requirement before a replacement supervisory person must become qualified and be designated in writing to the agency under SEC 5.04(5).

SECTION 19. SEC 5.06(11) is created to read:

SEC 5.06(11) Failing accurately to describe or disclose in advertising or other materials used in connection with the promotion or transaction of investment advisory services in this state, the identity of the investment adviser or the nature of the investment advisory services offered or the employment relationship between the investment adviser and



its representatives. For purposes of this subsection, "other materials" include, but are not limited to, business cards, business stationery and display signs.

ANALYSIS: This new rule parallels a broker-dealer Prohibited Business Practices rule created in SEC 4.06(2)(g) as part of the agency's 1988 annual rule revision. The rule makes it a prohibited business practice for an investment adviser to fail accurately to describe and disclose in advertising and other materials used in transacting business in Wisconsin, the identity of the investment adviser, the nature of the investment advisory services offered or the employment relationship between the investment adviser and its representatives. The rule sets forth the disclosure items that are required to be provided, whether in general "advertising" (which is a defined term in s. 551.02(1), Stats.) utilized by the investment adviser, or in "other materials" that are specified in the rule to include, without limitation, such things as business cards, business stationery and display signs.

SECTION 20. SEC 7.01(5)(d) is created to read:

SEC 7.01(5)(d) Copy of small corporate offering registration and prospectus disclosure form on Form U-7-----\$20.

ANALYSIS: This new section establishes the fee payable to obtain a copy of the model registration and prospectus/disclosure form for small corporate offerings, as recently developed by NASAA and adopted for use in Wisconsin as discussed in the amendment to SEC 3.23(3).

SECTION 21. SEC 7.01(7)(a), (b) and (c) are amended to read:

SEC 7.01(7)(a) Delinquent filing of broker-dealer or investment adviser license renewal application . . . \$50 \$100.

(b) Delinquent filing of broker-dealer or investment adviser transfer of control \$50 \$100.

(c) Delinquent filing of broker-dealer or investment adviser annual financial statements \$50 \$100.

ANALYSIS: These amendments increase to \$100 the delinquency filing fees for the broker-dealer and investment adviser situations specified.

SECTION 22. SEC 7.01(7)(d) is repealed and recreated to read:

SEC 7.01(7)(d) Delinquent filing of notice of broker-dealer or investment adviser branch office registration, renewal or closing \$100.

ANALYSIS: This SECTION does the following: (1) Repeals the delinquency fee currently prescribed in SEC 7.01(7)(d) (relating to Form RS-BD)



because the filing requirement for RS-BD currently in SEC 4.04(3) is repealed in an earlier SECTION of this rule revision; and (2) Creates (together with new rules SEC 7.01(7)(f) and (g)) delinquency fees relating to some additional categories of filing delinquencies frequently dealt with by the agency's Licensing and Regulation Division.

SECTION 23. SEC 7.01(7)(e) is amended to read:

SEC 7.01(7)(e) Delinquent filing of agent

termination notice on Form U-5 . .~~\$50~~ \$100.

ANALYSIS: This amendment, in similar fashion to the amendments to SEC 7.01(7)(a), (b) and (c), increases to \$100 the delinquency fee prescribed for the situation specified.

SECTION 24. SEC 7.01(7)(f) is renumbered SEC 7.01(7)(i).

ANALYSIS: This amendment renumbers the current rule provision located at the end of the delinquency fee section (permitting the Commissioner to impose delinquency fees by order), to make room for 3 new delinquency fees dealing with specific situations.

SECTION 25. SEC 7.01(7)(f), (g) and (h) are created to read:

SEC 7.01(7)(f) Delinquent filing of broker-dealer agent or agent for issuer license renewal, or of investment

adviser representative renewal \$100.

(g) Delinquent filing of change of
broker-dealer or investment adviser
designated supervisor \$100.

(h) Delinquent filing of investment
company report of sales on Form RS-IC . . \$100.

ANALYSIS: This SECTION creates delinquency fees relating to 2 additional categories of filing delinquencies frequently dealt with by the agency's Licensing and Regulation Division, as well as a category of filing delinquency frequently dealt with by the agency's Securities Registration Division.

SECTION 26. SEC 7.01(8) is created to read:

SEC 7.01(8)(a) Pamphlet copy of chs. 551, 552, and 553,
Wis. Stats. \$4.

(b) Pamphlet copy of rules of the
commissioner of securities under chs. 551 to 553, Stats. . .
. \$4.

ANALYSIS: These two new subsections specify the cost to obtain a pamphlet copy of either the statutes administered by this Office or the administrative rules thereunder.

SECTION 27. SEC 9.01(1)(a)5 is created to read:

SEC 9.01(1)(a)5. U-7 Small corporate offering registration form.

ANALYSIS: This section adds to the list contained in the Forms chapter of the rules, a reference to the model registration and prospectus/disclosure form to be used in small corporate offerings, as recently developed by NASAA and adopted for use in Wisconsin as discussed in the amendment to SEC 3.23(3).

SECTION 28. SEC 32.06(2) is amended to read:

SEC 32.06(2) In determining whether an applicant has complied with the requirements of the uniform franchise registration application, the commissioner shall follow the Guidelines for Preparation of the Uniform Franchise Offering Circular and Related Documents adopted in October, 1977 by the Midwest Securities Commissioners Association and in April, 1980 by the North American Securities Administrators Association, as amended November 20, 1986, and October 31, 1988. Copies of the Guidelines are available from the commissioner's office for a prepaid fee of ~~\$10~~ \$20.

Note: The Guidelines are published in the CCH NASAA Reports published by the Commerce Clearing House and are on file at the offices of the Wisconsin secretary of state and the revisor of statutes.

ANALYSIS: These amendments do the following: (1) Adopt recent amendments to the NASAA UFOC Guidelines as adopted by NASAA by vote of its member jurisdictions, including Wisconsin, at the NASAA 1988 Fall Conference; and (2) Increase to \$20 the fee to obtain a copy of the Guidelines.

SECTION 29. SEC 32.07(1) is amended to read:

SEC 32.07 RENEWAL OR AMENDMENT OF REGISTRATION

STATEMENTS. (1) A registration renewal statement under s. 553.30, Stats., shall be filed on a form prescribed by the commissioner not less than 15 business days prior to the end of one year from the effective date of the registration statement unless such period is waived by order of the commissioner, and shall be accompanied by the latest form of prospectus or offering circular, meeting the requirements of s. SEC 32.06, used in connection with the sale of the registered franchises together with a balance sheet of the franchisor as of a date within 120 days of the proposed renewal date and an income statement and analysis of surplus of the franchisor for its last fiscal year preceding the date of the balance sheet and for the period between the close of the franchisor's last fiscal year and the date of the balance sheet, all meeting the requirements of s. SEC 32.05. If no stop order or other order under s. 553.28, Stats., is in effect, renewal of the registration statement becomes effective on the day on which the prior registration



statement expires or at an earlier time as the commissioner determines.

ANALYSIS: This clarification amendment adds language contained in s. 553.30, Wis. Stats., which provides that the Commissioner by order may waive the 15 day prior filing requirement for an application to renew a franchise registration.

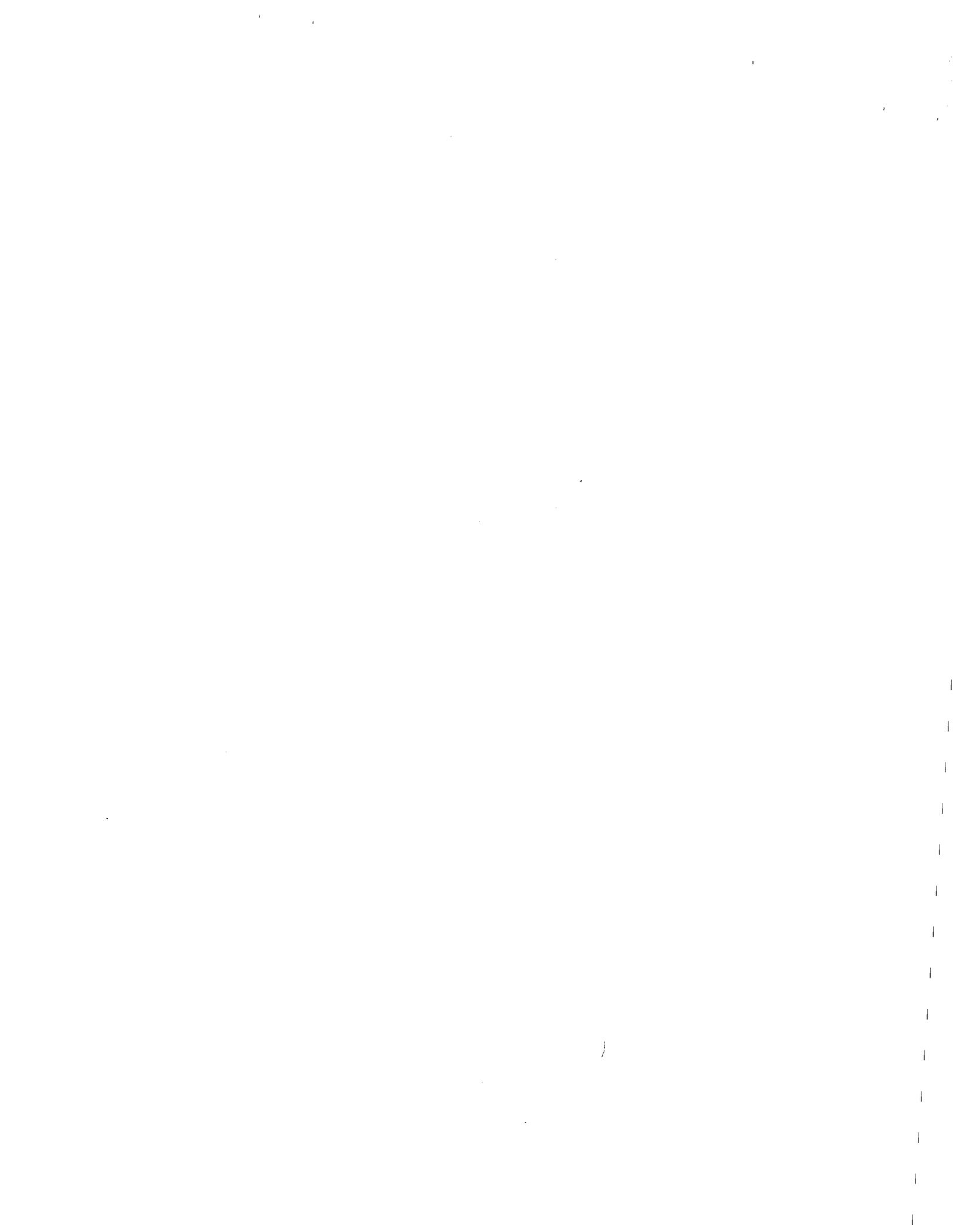
SECTION 30. SEC 35.01(5) is created to read:

SEC 35.01(5) Delinquent or materially deficient filings:

(a) Delinquent filing of annual materials prescribed under s. 553.22(5), Stats., or s. SEC 32.05(1)(c)6 relating to franchise registration exemption . . \$100.

(b) The commissioner may by order require the payment of a fee of not more than \$200 for delinquent or materially deficient filings of information or documents required to be filed in connection with the examination of any matter under ch. SEC 32 or 33.

ANALYSIS: This SECTION creates, pursuant to the authority granted the Commissioner in s. 553.72(2), Wis. Stats., to prescribe delinquent filing fees under the Wisconsin Franchise Investment Law, the following rules which parallel similar provisions under the Securities Law rules



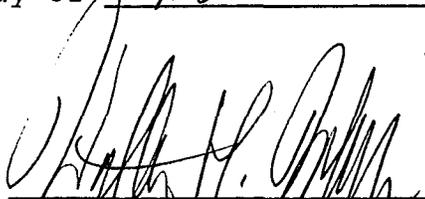
in SEC 7.01(7): (1) A delinquency fee in par. (a) (in the same \$100 amount provided in SEC 7.01(7) for securities law filing delinquencies) that relates to 2 specific categories of filing delinquencies under the Franchise law frequently dealt with by the agency; and (2) General authority permitting the Commissioner to impose by order, a delinquency fee not to exceed \$200 for matters under the franchise rule chapter SEC 32 or 33.

* * * * *

The rules and amendments contained in this Order shall take effect as provided in sec. 227.22(2)(intro.), Stats., on the first day of the month following publication in the Wisconsin Administrative Register.

Dated this 14th day of November, 1989.

(SEAL)



WALTER H. WHITE, JR.
Commissioner of Securities



REPORT PREPARED BY THE
OFFICE OF THE COMMISSIONER OF SECURITIES
RELATING TO FINAL FORM OF AMENDMENTS TO THE
RULES OF THE COMMISSIONER OF SECURITIES

(a) Statement Explaining Need for Proposed Rules

The statutory rule-making procedures under Chapter 227 of the Wisconsin Statutes are being implemented in this matter for the purpose of making the agency's annual revision to the rules of the Commissioner of Securities currently in effect promulgated under Chapter 551, Wis. Stats., the Wisconsin Uniform Securities Law, and Chapter 553, Wis. Stats., the Wisconsin Franchise Investment Law. The annual rule revision is made for the following purposes: making clarifications to existing rule provisions where language is vague or ambiguous; adopting or amending rules necessary to effectively regulate new circumstances or developments which have occurred in the industry and the marketplace that require regulatory treatment; formally adopting and incorporating by reference both new securities or franchise registration guidelines, as well as amendments to existing securities or franchise registration guidelines previously adopted by a national securities administrators association of which Wisconsin is a member. Each SECTION in the proposed rules that adopts, repeals or amends a rule is followed by a separate explanatory ANALYSIS which discusses the nature of the revision as well as the rationale behind and/or the necessity for it.

The principal areas of the rules that were the subject of the October 6th public hearing, and are adopted hereby, are: (1) amendment of certain rules under the Wisconsin non-public offering exemptions; (2) amendment of several securities prospectus form and content provisions; (3) creation and amendment of several broker-dealer and investment adviser licensing provisions dealing with designated supervisory persons; (4) repeal of the broker-dealer report filing requirement for Form RS-BD; (5) creation of permanent broker-dealer rules to replace recently enacted emergency rules relating to advertising disclosures and information-providing procedures for brokered certificates of deposit; (6) creation of an exception from the prohibition against performance-based fees payable to investment advisers; (7) incorporation by reference of recent amendments to the NASAA Uniform Franchise Offering Circular; and (8) revisions to the delinquent filing fee provisions for securities law matters as well as creation of delinquent filing fee provisions for franchise law matters.



(b) Explanation of Modifications Made as a Result of Public Comment Letters and Hearing Testimony

--As a result of a comment letter/memorandum submitted by an agency staff member, sections SEC 3.73(2)(g) and (i) (relating to providing certain uniform legend disclosure language) of the attached Proposed Final Rule-Making Order are revised in the following respect. The second legend that was contained in par. (2)(g) of the Public Comment Draft form of the rule revision is moved to instead be contained as part of par. (2)(i) of the proposed revised rules. Such placement will properly correspond to the NASAA Guidelines inasmuch as the legend being switched is to be used only in an offering context where the securities being offered are not subject to a registration filed under the Securities Act of 1933--which is the offering context par. (2)(i) deals with.

--As a result of testimony by persons at the public rule-making hearing, section SEC 4.03(1)(j) (dealing with a broker-dealer's record-keeping responsibility to maintain a complaint file) is revised in the following respect. The hearing testimony suggested that clarification language be added to this rule from its Public Comment Draft form regarding the extent to which copies of a broker-dealer firm's responses to customer complaints must be included in the firm's complaint file. Accordingly, language was added to clarify that copies of a firm's responses to a customer complaint to be retained in the file need not include copies of identical response materials where numerous customers are similarly affected.

--As a result of testimony by persons at the public rule-making hearing similar to that relating to SEC 4.03(1)(j) as discussed in the preceding paragraph, section SEC 5.03(1)(h) (dealing with an investment adviser's record-keeping responsibility to maintain a complaint file) is revised in the following respect. The hearing testimony suggested that clarification language be added to this rule from its Public Comment Draft form regarding the extent to which copies of an investment advisory firm's responses to customer complaints must be included in the firm's complaint file. Accordingly, language was added to clarify that copies of a firm's responses to a customer complaint to be retained in the file need not include copies of identical response materials where numerous customers are similarly affected.

(c) List of Persons Appearing or Registering at Public Hearing Conducted by Commissioner of Securities Walter H. White, Jr., as Hearing Officer, and Comment Letters Received

- Randall E. Schumann, General Counsel of the Office of the Commissioner of Securities, made an appearance on behalf of the agency's staff to submit documents and information for the record and to both ask questions and respond to questions regarding hearing testimony.
- Ronald J. Burtch, Securities Law Specialist, Quarles & Brady Law Offices, Madison, Wisconsin.
- Terry D. Nelson, Securities Law Specialist, Foley & Lardner Law Offices, Madison, Wisconsin.

Comment Letters Received

- Comment letter/memorandum dated September 26, 1989 from agency staff member James R. Fischer, Administrator, Registration Division.

(d) Response to Legislative Council/Rules Clearinghouse Report
Recommendations

(1) Acceptance of recommendations in whole:

Under 2. Form, Style and Placement in Administrative Code

- Consistent with the Rules Clearinghouse comment in para. a. regarding the "Pursuant to" clause, the language "sections" is changed to "ss," and "Wis. Stats." is changed to "Stats."
- Consistent with the Rules Clearinghouse comments in para. b. concerning the treatment clause in SECTION 1 dealing with SEC 2.02(4)(c), "(Intro.)," is changed to read "(intro.)," "(c)1" is changed to read "1" and "(c)2" is changed to read "2."
- Consistent with the Rules Clearinghouse comments in para. c. concerning SEC 4.11(2), commas are substituted for the parentheses, in sub. (2)(e) the abbreviation for "paragraph" is substituted for the abbreviation for "subsection," and a new sentence is begun after the word "institution."
- Consistent with the Rules Clearinghouse comment in para. d. concerning SEC 5.05(7), the terminology "paragraph" is substituted for the terminology "subsection."
- Consistent with the Rules Clearinghouse comment in para. e. regarding SEC 5.06(11), the terminology "paragraph" is substituted for the terminology "subsection."
- Consistent with the Rules Clearinghouse comments in para. f. concerning SEC 7.01(8), the terminology "Chapters" is changed to an abbreviation, and the recommended replacement language in par.(b) is substituted as recommended.
- Consistent with the Rules Clearinghouse comment in para. g. concerning SEC 32.06(2), the last sentence is placed in a separate Note.
- Consistent with the Rules Clearinghouse comments in para. h. concerning SEC 35.01(5)(b), the language "chs. SEC 32 or 33" is changed to "ch. SEC 32 or 33" and, in the Analysis, the terminology "chapters" is changed to "chapter."
- Consistent with the Rules Clearinghouse comments in para. i. concerning the effective date clause, the language "(Intro.), Wis. Stats.," is changed to read "(2) (intro.), Stats.,"

Under 5. Clarity, Grammar, Punctuation and Plainness

- Consistent with the Rules Clearinghouse comments in para. a. concerning SEC 4.11(1)(intro.), the terminology "each" is changed to "all." In sub. (2)(intro.), the terminology "all of" is added to precede the language "the following." In

sub. (3), the misspelling of the term "broker-dealer" is corrected.

- Consistent with the Rules Clearinghouse comments in para. b. concerning SEC 35.01(5)(a), the language of the rule is changed to read "(a) Delinquent filing of annual materials prescribed under s. 553.22(5), Stats., or s. SEC 32.05(1)(c)6, relating to franchise registration exemption . . \$100." In par. (b), the term "Commissioner" is changed to lower case.

(2) Acceptance of recommendations in part: None

(3) & (4) Rejection of recommendations and reasons therefor: None

- (e) No final regulatory flexibility analysis is included on the basis that the Office of the Wisconsin Commissioner of Securities has determined, after complying with s. 227.016(1) to (5), Wis. Stats., that the proposed rules will not have a significant economic impact on a substantial number of small businesses.

FISCAL ESTIMATE

DOA-2048 (R 10/88)

ORIGINAL CORRECTED UPDATED SUPPLEMENTAL

Subject Proposed amendments to Wis. Adm. Code, Rules of the Commissioner of Securities under Chapters SEC 2, 3, 4, 5, 7, 9, 32 and 35

Fiscal Effect

State: No State Fiscal Effect

Check columns below only if bill makes a direct appropriation or affects a sum sufficient appropriation.

Increase Existing Appropriation Increase Existing Revenues
 Decrease Existing Appropriation Decrease Existing Revenues
 Create New Appropriation

Increase Costs - May be possible to Absorb Within Agency's Budget Yes No

Decrease Costs

Local: No local government costs

1. Increase Costs
 Permissive Mandatory

2. Decrease Costs
 Permissive Mandatory

3. Increase Revenues
 Permissive Mandatory

4. Decrease Revenues
 Permissive Mandatory

5. Types of Local Governmental Units Affected:
 Towns Villages Cities
 Counties Others _____

Fund Sources Affected

GPR FED PRO PRS SEG SEG-S

Affected Ch. 20 Appropriations

Assumptions Used in Arriving at Fiscal Estimate

The fiscal effect to the agency of the proposed rule revisions--stemming principally from changes to the delinquency fee provisions under the Wisconsin Uniform Securities Law and Wisconsin Franchise Investment Law--will be an increase of annual agency revenues estimated at \$16,700.

The particular fiscal effects are as follows:

- (1) Doubling to \$100 the current \$50 delinquency fees prescribed in existing SEC 7.01(7)(a), (b), (c) and (e) relating to various categories of broker-dealer related filing delinquencies is estimated to generate approx. \$2400 in additional fee revenue per year based on agency records that indicate there were 48 instances of broker-dealers paying \$50 delinquency fees during the most recent 12 month period (48 x \$50 = \$2400).
- (2) Creating \$100 delinquency fees for 3 additional categories of broker-dealer filing delinquencies in new proposed rules SEC 7.01(7)(d), (f) and (g) is anticipated to generate approx. \$11,000 in fee revenues per year based on past experience of the Office's Licensing Division regarding such categories. (\$100 x an estimated 110 total instances per year = \$11,000.)
- (3) Creating a \$100 delinquency fee in SEC 7.01(7)(h) for late filings of Investment Company Reports of Sales is estimated to generate approx. \$1200 in fee revenue per year based on agency experience over prior years where the delinquency fee would be imposed. (\$100 x 12 instances per year = \$1200.)
- (4) Creating a \$100 delinquency fee in SEC 35.01(5)(a) for filing delinquencies

(see attached page)

Long-Range Fiscal Implications

None beyond annualized fiscal effects

Agency/Prepared by: (Name & Phone No.)
 Wisconsin/Randall E. Schumann
 Commissioner/General Counsel

Authorized Signature/Telephone No.

 Wesley E. Ringo/266-2432

Date
 3/24/89

Assumptions Used in Arriving at Fiscal Estimate (continued)

under two specified franchise registration exemptions is estimated to generate approx. \$1500 in fee revenue per year based on agency experience (\$100 x 15 instances per year = \$1500.)

- (5) Increasing to \$20 the current \$10 fee charged in SEC 32.06(2) for a copy of the Uniform Franchise Offering Circular would generate approx. \$400 in additional fee revenue based on the agency's past experience in furnishing copies of the UFOC. (\$10 additional fee x 40 requests/yr. = \$400.)
- (6) Establishing a \$20 fee in SEC 7.01(5)(d) to obtain a copy of the newly developed Small Corporate Offering Registration and Prospectus Disclosure Form U-7 is estimated to generate \$400 in additional fee revenue. (\$20 x 10 requests = \$200.)

FISCAL ESTIMATE WORKSHEET

1989 Session

Detailed Estimate of Annual Fiscal Effect ORIGINAL UPDATED
 DOA-2047(R 10/88) CORRECTED SUPPLEMENTAL

LRB or Bill No./Adm. Rule No. Amendment No.

Subject Proposed amendments to Wis. Adm. Code, Rules of the Commissioner of Securities under Chapters SEC 2, 3, 4, 5, 7, 9, 32 and 35

I. One-time Costs or Revenue Fluctuations for State and/or Local Government (do not include in annualized fiscal effect)
 None

II. Annualized Costs:		Annualized Fiscal impact on State funds from:	
Note: Treat fiscal costs like a "checkbook": increased costs reduce available funds (-); decreased costs increase available funds (+).		Increased Costs	Decreased Costs
A. State Costs by Category			
Salaries and Fringes		\$ -	\$ +
Staff Support Costs		-	+
Other State Costs		-	+
Local Assistance		-	+
Aids to Individuals or Organizations		-	+
TOTAL State Costs by Category		\$ - 0	\$ + 0
B. State Costs by Source of Funds			
GPR		\$ -	\$ +
FED		-	+
PRO/PRS		-	+
SEG/SEG-S		-	+
C. FTE Position Changes			
		Increased Pos. + (0)	Decreased Pos. - (0)
III. State Revenues-			
GPR Taxes	Complete this only when proposal will increase or decrease state revenues, such as taxes, license fees, etc.	\$ -	\$ +
GPR Earned		-	+
FED		-	+
PRO/PRS		- 0	+ 16,700
SEG/SEG-S		-	+
TOTAL State Revenues		\$ - 0	\$ + 16,700

Net Annualized Fiscal Impact on State & Local Funds

State	Annual Increases	Annual Decreases	Local	Annual Increases	Annual Decreases
Total Costs	\$ - 0	\$ + 0	Total Costs	\$ - 0	\$ + 0
Total Revenues	+ 16,700	- 0	Total Revenues	+ 0	- 0
NET Impact on State Funds	\$ (+) 16,700		NET Impact on Local Funds	\$ (+) 0	
	or			or	
	(-)			(-)	

Agency/Prepared by (Name & Phone No.)
 Wisconsin Commissioner/Financial E. Schumann
 Securities

Authorized Signature/Telephone No.

Date

JRT
Final copy
rec 1 5/2 1/89

**REGISTRATION FORM FOR SMALL
CORPORATE OFFERINGS (Form U-7)
as adopted by NASAA on April 29, 1989**

Instructions For Use of Form U-7
(Not Part of Disclosure Document)

I. Introduction

Form U-7 has been developed pursuant to the Small Business Investment Incentive Act of 1980 (now contained in Section 19 of the Securities Act of 1933) which prescribes State and Federal cooperation in furtherance of the policies expressed in that Act of a substantial reduction in costs and paperwork to diminish the burden of raising investment capital, particularly by small business, and a minimum interference with the business of capital formation.

Form U-7 is the general registration form for corporations registering under state securities laws securities that are exempt from registration with the Securities and Exchange Commission (the "SEC") under Rule 504 of Regulation D. It is designed to be used by Companies, the attorneys and accountants for which are not necessarily specialists in securities regulation.

Historically, state legislatures have generally followed two approaches to the regulation of public offerings of securities such as those made under Form U-7. Some states deal solely with the disclosure made to investors. In addition to disclosure, other states also apply substantive fairness standards to public offerings in order to assure that the terms and structure of the offering are fair to investors. In particular, those standards are designed to require the promoters of the enterprise to share its potential risks and rewards fairly with the public investors. Those standards vary from state to state and as a general rule must be complied with by a Company in order to register its securities in those states.

You may anticipate receiving comments from examiners in many of the states in which Form U-7 registration is sought. Depending upon the regulatory approach taken by the state, those comments may be limited to requests for disclosure of additional information or may also require that certain terms of the offering be modified to comply with the state's substantive fairness criteria. Failure to resolve outstanding comments can lead to denial of an application for registration.

A Company, prior to using Form U-7, may wish to contact the staff of the securities administrator of each state in which the offering is to be filed to review applicable substantive fairness standards. It may be possible to arrange a pre-filing conference with the administrator's staff. The states that apply such standards may identify those standards in an appendix to these instructions or may use other means to make them available.

II. Qualification for Use of Form

To be eligible to use Form U-7, a Company must comply with each of the following requirements.

A. The Company must be a corporation organized under the laws of one of the states or possessions of the United States which engages in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries. "Blind pool" offerings and other offerings for which the specific business or properties cannot now be described are ineligible to use Form U-7.

B. The securities may be offered and sold only on behalf of the Company, and Form U-7 may not be used by any selling security-holder (including purchasing underwriters in a firm commitment underwriting) to register his securities for resale.

C. The offering price for common stock (and the exercise price, if the securities are options, warrants or rights for, and the conversion price if the securities are convertible into, common stock) must be equal to or greater than \$5.00 per share. By execution of the application and filing of the U-7 in any state, the Company thereby agrees with the Administrator that the Company will not split its common stock, or declare a stock dividend, for two years after effectiveness of the registration; provided, however, that in connection with a subsequent registered public offering, the Company may upon application and consent of the administrator take such action.

D. The Company may engage selling agents to sell the securities. Commissions, fees, or other remuneration for soliciting any prospective purchaser in this state in connection with this offering may only be paid to persons who, if required to be registered, the Company believes, and has reason to believe, are appropriately registered in this state.

E. This form shall not be available for the securities of any Company if the Company or any of its Officers, Directors, 10% stockholders, promoters or any selling agents of the securities to be offered, or any officer, director or partner of such selling agent: (i) has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any state's securities law within five years prior to the filing of the application for registration hereunder; (ii) has been convicted within five years prior to the filing of the application for registration hereunder of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud; (iii) is currently subject to any state administrative enforcement order or judgment entered by that state's securities administrator within five years prior to the filing of the application for registration hereunder or is subject to any state's administrative enforcement order or judgment in which fraud or deceit, including but not limited to making untrue statements of material facts and omitting to state material facts, was found and the order or judgment was entered within five years prior to the filing of the application for registration hereunder; (iv) is subject to any state's administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with this offer, purchase, or sale of securities; (v) is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restricting or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, permanently restraining or enjoining, such party from engaging in or continuing any conduct of practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the application for registration hereunder; (vi) the prohibitions of paragraphs (i) - (iii) and (v) above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed or registered in this state and the Form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed or registered; and (vii) any disqualification caused by this section is automatically waived if the state securities administrator or agency of the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that registration be denied.

If any of the circumstances in clauses (ii), (iii) or (v) of the preceding paragraph has occurred more than five years from the date of the application for registration hereunder, these circumstances should be described in response to Question 45 as a Miscellaneous Factor.

F. Use of the Form is available to any offering of securities by a Company, the aggregate offering price of which within or outside this state shall not exceed \$1,000,000, less the aggregate offering price for all securities sold within the twelve months before the start of, and during the offering of, the securities under SEC Rule 504 in reliance on any exemption under section 3(b) of the Securities Act of 1933 or in violation of section 5(a) of that act. The Form is not available to a Company that

is an investment company (including mutual funds) or is subject to the reporting requirements of § 13 or §15(d) of the Securities Exchange Act of 1934.

G. The Company shall file with the SEC a Form D of Regulation D under the Securities Act of 1933 claiming exemption of the offering from registration under such act pursuant to Rule 504. A copy of the Form D with appropriate state signature pages shall be filed with the administrator at the same time as filed with the SEC.

III. General Requirements For Use of Form

A. The Form U-7 when properly filled in, signed and submitted, together with the exhibits scheduled below and a Form U-1 Uniform Application to Register Securities, constitutes an application for registration for the states listed at the bottom of the cover page of the Form. There should be filed with each state there listed a signed original of the Form, together with an executed Form U-1 and a signed original of the consent to service of process constituting Exhibit 7. Any references in the Form U-1 to SEC registration and effectiveness should be disregarded and Questions 6 and 8(a) of the Form U-1 are inapplicable. The Form U-1 should set forth the amount of securities being registered in that state and the method of calculating the filing fee, and there should be enclosed a check for the amount of the filing fee. Each state must separately declare the registration effective by an order to that effect unless that state has some other procedure applicable to registration on Form U-7. Once registration is effective as to a given state, the effective date should be noted at the bottom of the cover page of the Form. Any changed or revised Disclosure Document must also be signed.

B. Each question in each paragraph of the Form should be responded to. If the question or series of questions is inapplicable, so indicate. Each answer should be clearly and concisely stated and in the space provided; however, notwithstanding the specificity of the questions, responses should not involve nominal, immaterial or insignificant information.

C. If the provided space is insufficient, additional space should be created by cutting and pasting the Form to add more lines or by putting the Form on a word processor and adding more lines in this or a similar manner. Irrespective of which method is used, care should be taken to assure that the Form is accurately and completely reproduced. Smaller type size should not be used, and script or italic type styles should be avoided.

D. There must be submitted to the administrator an opinion of an attorney licensed to practice in a state or territory of the United States that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the Company in accordance with their terms.

E. The Disclosure Document on Form U-7 constitutes the offering circular or prospectus and the Form once filled out, filed and declared effective may be reproduced by the Company by copy machine or otherwise for dissemination to potential investors. (The Company is cautioned to control the copying and distribution to preclude inaccurate or unreadable copies from being used and to prevent other unauthorized uses for which the Company may nevertheless be deemed responsible.) These Instructions are not part of the Disclosure Document and should not be included. Reproduced copies should be on white paper and should be stapled or secured in the left margin without a cover of any type.

F. The Company should expect that the office of the administrator may have comments and questions concerning the answers set forth on the Form and that changes may be required to be made to the answers before the registration is declared effective. Comments and questions may either be included in a letter or made by telephone communication initiated by the office of the administrator in response to the filing.

G. No offers or sales may be made in this state until the registration has been declared effective by the administrator. To make offers or sales before the registration is effective could lead to a stop order or other proceeding which would preclude use of the Form in this or any other state and could give rise to a right of rescission by investors enforceable against management, principal stockholders and the selling agents as well as the Company. When the registration has been declared effective in this state, offers and sales may be made in this state even though registration in other states has not been declared effective. This Disclosure Document must be delivered to each investor before the sale is made, e.g. (a) before any order is entered; (b) any subscription agreement is signed; or (c) any part of the purchase price is received. The registration statement will be effective only for the same time period specified in the order of the administrator, which may be different for different states; however, no registration statement shall remain effective in a particular state for a period greater than one year.

H. After the registration has been declared effective, and while the offering is still in progress, if any portion of the Form should need to be changed or revised because of a material event concerning the Company or the offering to make it accurate and complete, it shall be so changed, revised, or supplemented. If changed, revised or supplemented, (including an addition on the cover page of another state in which the offering has been registered) the Form as so changed, revised or supplemented, clearly marked to show changes from the previously filed version, should be filed and cleared with the administrator of this state before use. If any of the changes or revisions are of such significance that they are material to the making of an investment decision by an investor, and if the minimum proceeds have not been raised, after filing with and clearance by the administrator, the Disclosure Document on this Form as so changed, revised or supplemented should be recirculated to persons in this state that have previously subscribed, and they should be given the opportunity to rescind or reconfirm their investment.

I. Options, warrants and similar rights to purchase securities constitute a continuous offering of the underlying securities during the exercise period and require the securities to be registered and the Disclosure Document to be kept continuously current throughout the exercise period through the use of the above amendment procedure or by means of a supplement, as appropriate. Upon any change, revision or supplement to the Disclosure Document, a copy must be promptly furnished to the holders of options, warrants and similar rights.

J. Any and all supplemental selling literature or advertisements announcing the offering should be filed by the Company and cleared with the securities administrator of each state prior to publication or circulation within that state. An announcement should not be a sales motivation device and should normally contain no more than the following: (1) the name of the Company, (2) characterization of the Company as indicated on the Cover Page of the Disclosure Document, (3) address and telephone number of the Company, (4) a brief indication in ten words or less of the Company's business or proposed business, (5) the number and type of securities offered and the offering price per security, (6) the name, address and telephone number of any selling agent authorized to sell the securities, (7) a statement that the announcement does not constitute an offer to sell or solicitation of an offer to purchase and that any such offer must be made by official Disclosure Document, (8) how a copy of the Disclosure Document may be obtained, and (9) the Company's corporate logo. Clip and return coupons requesting a copy of the Disclosure Document are permitted in printed announcements. (For example, an announcement in "tombstone" format with a black-lined border and using the following language would ordinarily be acceptable: "50,000 shares, common stock; \$5 per share; (Logo) XYZ Corporation, a development stage database computer software company now conducting operations; Middtown, Ohio; Selling agent: ABC Securities, 1234 Main Street, Middtown, Ohio, (321) 123-4567; This announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official Disclosure Document; A copy of the Disclosure Document may be obtained by contacting the selling agent at the above address and telephone number." Similarly, a classified advertisement using the following language would ordinarily be acceptable: "Common stock of XYZ Corporation, a development stage database computer software company now conducting operations, Middtown, Ohio. Price \$5 per share. Total offering 50,000 shares. This

announcement does not constitute an offer to sell or the solicitation of an offer to buy the securities, which offer may be made only by means of an official Disclosure Document. A copy of the Disclosure Document may be obtained by contacting the Company, Industrial Park, Suite 12B, 456 Mill Road, Middtown, Ohio, (321) 321-4321.")

The issuance of any but routine press releases or the granting of interviews to news media during, or at about the same time of, an offering could constitute indirect advertising, which if not precleared with the securities administrator would be prohibited. Any unusual news article or news program featuring the Company during this period, particularly if present or future earnings, or the pending offering, are mentioned, could delay or cause suspension of the effectiveness of the registration and disrupt the offering. Consequently any such news article or news program, no matter by whom it may be initiated, should generally be discouraged during this period.

IV. Instructions as to Specific Captions and Questions

BE VERY CAREFUL AND PRECISE IN ANSWERING ALL QUESTIONS. GIVE FULL AND COMPLETE ANSWERS SO THAT THEY ARE NOT MISLEADING UNDER THE CIRCUMSTANCES INVOLVED. DO NOT DISCUSS ANY FUTURE PERFORMANCE OR OTHER ANTICIPATED EVENT UNLESS YOU HAVE A REASONABLE BASIS TO BELIEVE THAT IT WILL ACTUALLY OCCUR WITHIN THE FORSEEABLE FUTURE. IF ANY ANSWER REQUIRING SIGNIFICANT INFORMATION IS MATERIALLY INACCURATE, INCOMPLETE OR MISLEADING, THE COMPANY, ITS MANAGEMENT AND PRINCIPAL STOCKHOLDERS MAY HAVE LIABILITY TO INVESTORS. THE SELLING AGENTS SHOULD EXERCISE APPROPRIATE DILIGENCE TO DETERMINE THAT NO SUCH INACCURACY OR INCOMPLETENESS HAS OCCURRED, OR THEY ALSO MAY BE LIABLE.

A. Cover Page. The Cover Page of the Disclosure Document is a summary of certain essential information and should be kept on one page if at all possible. For purposes of characterizing the Company on the cover page, the term "development stage" has the same meaning as that set forth in Statement of Financial Accounting Standards No. 7 (June 1, 1975).

B. Risk Factors. The Company should avoid generalized statements and include only those factors which are unique to the Company. No specific number of risk factors is required to be identified. If more than 16 significant risk factors exist, add additional lines and number as appropriate. Risk factors may be due to such matters as cash flow and liquidity problems, inexperience of management in managing a business in the particular industry, dependence of the Company on an unproven product, absence of an existing market for the product (even though management may believe a need exists), absence of an operating history of the Company, absence of profitable operations in recent periods, an erratic financial history, the financial position, of the Company, the nature of the business in which the Company is engaged or proposes to engage, conflicts of interest with management, arbitrary establishment of offering price, reliance on the efforts of a single individual, or absence of a trading market if a trading market is not expected to develop. Cross references should be made to the Questions where details of the risks are described.

C. Business and Properties. The inquiries under Business and Properties elicit information concerning the nature of the business of the Company and its properties. Make clear what aspects of the business are presently in operation and what aspects are planned to be in operation in the future. The description of principal properties should provide information which will reasonably inform investors as to the suitability, adequacy, productive capacity and extent of utilization of the facilities used in the enterprise. Detailed descriptions of the physical characteristics of the individual properties or legal descriptions by metes and bounds are not required and should not be given.

As to Question 4, if more than five events or milestones exist, add additional lines as necessary. A "milestone" is a significant point in the Company's development or an obstacle which the company must overcome in order to become profitable.

D. Offering Price Factors. Financial information in response to Questions 5, 6 and 7 should be consistent with the Financial Statements. Earnings per share for purposes of Question 5 should be calculated by dividing earnings for the last fiscal year by the weighted average of outstanding shares during that year. No calculations should be shown for periods of less than one year or if earnings are negative or nominal. For purposes of Question 8, the "offering price" of any options, warrants or rights or convertible securities in the offering is the respective exercise or conversion price.

E. Use of Proceeds. Use of net proceeds should be stated with a high degree of specificity. Suggested (but not mandatory) categories are: leases, rent, utilities, payroll (by position or type), purchase or lease of specific items of equipment or inventory, payment of notes, accounts payable, etc., marketing or advertising costs, taxes, consulting fees, permits, professional fees, insurance and supplies. Categories will vary depending on the Company's plans. Use of footnotes or other explanation is recommended where appropriate. Footnotes should be used to indicate those items of offering expenses that are estimates. Set forth in separate categories all payments which will be made immediately to the Company's executive officers, directors and promoters, indicating by footnote that these payments will be so made to such persons. If a substantial amount is allocated to working capital, set forth separate sub-categories for use of the funds in the Company's business.

If any substantial portion of the proceeds has not been allocated for particular purposes, a statement to that effect as one of the Use of Net Proceeds categories should be included together with a statement of the amount of proceeds not so allocated and a footnote explaining how the Company expects to employ such funds not so allocated.

F. Plan of Distribution. In Question 26 if the proposed business of the Company requires a minimum amount of proceeds to commence, or to proceed with, the business in the manner proposed, there shall be established an escrow with a bank or savings and loan association or other similar depository institution acting as independent escrow agent with which shall be immediately deposited all proceeds received from investors until the minimum amount of proceeds has been raised. Any failure to deposit funds promptly into the escrow shall be grounds for enforcement proceedings against the persons involved. The date at which the funds will be returned by the escrow agent if the minimum proceeds are not raised shall not be later than one year from the date of effectiveness of the registration in this state.

G. Capitalization. Capitalization should be shown as of a date no earlier than that of the most recent Financial Statements provided pursuant to Question 46. If the Company has mandatory redeemable preferred stock, include the amount thereof in "long term debt" and so indicate by footnote to that category in the capitalization table.

H. Officers and Key Personnel of the Company. "The term "Chief Executive Officer" means the officer of the Company who has been delegated final authority by the board of directors to direct all aspects of the Company's affairs. The term "Chief Operating Officer" means the officer in charge of the actual day-to-day operations of the Company's business. The term "Chief Financial Officer" means the officer having accounting skills who is primarily in charge of assuring that the Company's financial books and records are properly kept and maintained and financial statements prepared.

The term "key personnel" means persons such as vice presidents, production managers, sales managers, or research scientists and similar persons, who are not included above, but who make or are expected to make significant contributions to the business of the Company, whether as employees, independent contractors, consultants or otherwise.

I. Principal Stockholders. If shares are held by family members, through corporations or partnerships, or otherwise in a manner that would allow a person to direct or control the voting of the shares (or share in such direction or control - as, for example, a co-trustee) they should be included

as being "beneficially owned." An explanation of these circumstances should be set forth in a footnote to the "Number of Shares Now Held."

J. Management Relationships, Transactions and Remuneration. For purposes of Question 39(b), a person directly or indirectly controls an entity if he is part of the group that directs or is able to direct the entity's activities or affairs. A person is presumptively a member of a control group if he is an officer, director, general partner, trustee or beneficial owner of a 10% or greater interest in the entity. In Question 40, the term "Cash" should indicate salary, bonus, consulting fees, non-accountable expense accounts and the like. The column captioned "Other" should include the value of any options or securities given, any annuity, pension or retirement benefits, bonus or profit-sharing plans, and personal benefits (club memberships, company cars, insurance benefits not generally available to employees, etc.). The nature of these benefits should be explained in a footnote to this column.

K. Financial Statements. Attach to the Disclosure Document for the Company and its consolidated subsidiaries, a balance sheet as of the end of the most recent fiscal year. If the Company has been in existence for less than one fiscal year, attach a balance sheet as of the date within 135 days of the date of filing the registration statement. If the first effective date of state registration, as set forth on the Cover Page of this Disclosure Document, is within 45 days after the end of the Company's fiscal year and financial statements for the most recent fiscal year are not available, the balance sheet may be as of the end of the preceding fiscal year and there shall be included an additional balance sheet as of an interim date at least as current as the end of the Company's third fiscal quarter of the most recently completed fiscal year. Also attach, for the Company and its consolidated subsidiaries and for its predecessors, statements of income and cash flows and statements of changes in stockholders' equity for the last fiscal year preceding the date of the most recent balance sheet being attached, or such shorter period as the Company (including predecessors) has been in existence. In addition, for any interim period between the latest reviewed or audited balance sheet and the date of the most recent interim balance sheet being attached, provide statements of income and cash flows. Financial statements shall be prepared in accordance with generally accepted accounting principles. If the Company has not conducted significant operations, statements of receipts and disbursements shall be included in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants; provided, however, that if each of the following four conditions are met, such financial statements in lieu of being audited may be reviewed by independent certified public accountants in accordance with the Accounting and Review Service Standards promulgated by the American Institute of Certified Public Accountants: (a) the Company shall not have previously sold securities by means of an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, "cold call" telephone solicitation or any other method directed toward the public, (b) the Company has not been previously required under federal or state securities laws to provide audited financial statements in connection with any sale of its securities, (c) the aggregate amount of all previous sales of securities by the Company (exclusive of debt financings with banks and similar commercial lenders) shall not exceed \$1,000,000, and (d) the amount of the present offering does not exceed \$500,000.

If since the beginning of its last fiscal year the Company has acquired another business, provide a pro forma combined balance sheet as of the end of the fiscal year, and a pro forma combined statement of income as if the acquisition had occurred at the beginning of the Company's last fiscal year, if any of the following exists: (a) the investments in and advances to the acquired business by the Company and its subsidiaries' (other than the acquired business) exceeds 20% of the Company's assets on its consolidated balance sheet at the end of the Company's last fiscal year, (b) the Company's and its subsidiaries' (other than the acquired business') proportionate share of the total assets (after intercompany eliminations) of the acquired business exceeds 20% of the assets on the consolidated balance sheet, or (c) the Company's and its subsidiaries' (other than the acquired business') equity in income from continuing operations before income taxes, extraordinary items and cumulative effect of a change in accounting principle, of the acquired business exceeds 20% of such income of the Company and its consolidated subsidiaries for the Company's last fiscal year.

The financial statements should reflect all stock splits (including reverse stock splits), stock dividends and recapitalizations even if they have occurred since the date of the financial statements.

V. Exhibits

There shall be filed with the Administrator at the same time as the filing of the Form U-7 copies of each of the following documents to the extent applicable as exhibits to which the Administrator may refer in reviewing the Form U-7 and which will be available for public inspection by any person upon request.

1. Form of Selling Agency Agreement.
2. Company's Articles of Incorporation or other Charter documents and all amendments thereto.
3. Company's By-Laws, as amended to date.
4. Copy of any resolutions by directors setting forth terms and provisions of capital stock to be issued.
5. Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants or rights to be offered.
6. Specimen of security to be offered (including any legend restricting resale).
7. Consent to service of process (Form U-2) accompanied by appropriate corporate resolution (Form U-2A).
8. Copy of all advertising or other materials directed to or to be furnished investors in the offering.
9. Form of escrow agreement for escrow of proceeds.
10. Consent to inclusion in Disclosure Document of Accountant's report.
11. Consent to inclusion in Disclosure Document of Tax Advisor's opinion or description of tax consequences.
12. Consent to inclusion in Disclosure Document of any evaluation of litigation or administrative action by counsel.
13. Form of any Subscription Agreement for the purchase of securities in this offering.
14. Opinion of Counsel required in paragraph III. D. of these Instructions.
15. Schedule of residence street addresses of Officers, Directors and principal stockholders.
16. Work Sheets showing computations of responses to Questions 6, 7(a), 8(a), 8(b) and 17(b), using forms attached to these Instructions.

FORM U-7
DISCLOSURE DOCUMENT

(Exact name of Company as set forth in Articles of Incorporation or Charter)

Type of securities offered: _____

Maximum number of securities offered: _____

Minimum number of securities offered: _____

Price per security: \$ _____

Total proceeds: If maximum sold: \$ _____

If minimum sold: \$ _____

(For use of proceeds and offering expenses, see Question Nos. 9 and 10)

Is a commissioned selling agent selling the securities in this offering? Yes No

If yes, what percent is commission of price to public? _____%. Is there other compensation to selling agent(s)? Yes No Is there a finder's fee or similar payment to any person?

Yes No (See Question No. 22)

Is there an escrow of proceeds until minimum is obtained? Yes No (See Question No. 26)

Is this offering limited to members of a special group, such as employees of the Company or individuals?

Yes No (See Question No. 25)

Is transfer of the securities restricted? Yes No (See Question No. 25)

INVESTMENT IN SMALL BUSINESSES INVOLVES A HIGH DEGREE OF RISK, AND INVESTORS SHOULD NOT INVEST ANY FUNDS IN THIS OFFERING UNLESS THEY CAN AFFORD TO LOSE THEIR INVESTMENT IN ITS ENTIRETY. SEE QUESTION NO. 2 FOR THE RISK FACTORS THAT MANAGEMENT BELIEVES PRESENT THE MOST SUBSTANTIAL RISKS TO AN INVESTOR IN THIS OFFERING.

IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

This Company:

- Has never conducted operations.
- Is in the development stage.
- Is currently conducting operations.
- Has shown a profit in the last fiscal year.
- Other (Specify): _____
(Check at least one, as appropriate)

This offering has been registered for offer and sale in the following states:

<u>State</u>	<u>State File No.</u>	<u>Effective Date</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

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THIS DISCLOSURE DOCUMENT CONTAINS ALL OF THE REPRESENTATIONS BY THE COMPANY CONCERNING THIS OFFERING, AND NO PERSON SHALL MAKE DIFFERENT OR BROADER STATEMENTS THAN THOSE CONTAINED HEREIN. INVESTORS ARE CAUTIONED NOT TO RELY UPON ANY INFORMATION NOT EXPRESSLY SET FORTH IN THIS DISCLOSURE DOCUMENT.

This Disclosure Document, together with Financial Statements and other Attachments, consists of a total of ____ pages.

THE COMPANY

1. Exact corporate name: _____

- State and date of incorporation: _____

- Street address of principal office: _____

- Company Telephone Number: (____) _____
- Fiscal year: _____ (month) _____ (day)
- Person(s) to contact at Company with respect to offering: _____
- Telephone Number (if different from above): (____) _____

RISK FACTORS

2. List in the order of importance the factors which the Company considers to be the most substantial risks to an investor in this offering in view of all facts and circumstances or which otherwise make the offering one of high risk or speculative (i.e., those factors which constitute the greatest threat that the investment will be lost in whole or in part, or not provide an adequate return).

- (1) _____

- (2) _____

- (3) _____

- (4) _____

- (5) _____

- (6) _____

- (7) _____

- (8) _____

- (9) _____

- (10) _____

- (11) _____

- (12) _____

- (13) _____

- (14) _____

- (15) _____

- (16) _____

Note: In addition to the above risks, businesses are often subject to risks not foreseen or fully appreciated by management. In reviewing this Disclosure Document potential investors should keep in mind other possible risks that could be important.

which the Company is or will be operating. State why the Company believes that it can effectively compete with these and other companies in its area of competition.

Note: Because this Disclosure Document focuses primarily on details concerning the Company rather than the industry in which the Company operates or will operate, potential investors may wish to conduct their own separate investigation of the Company's industry to obtain broader insight in assessing the Company's prospects.

- (d) Describe specifically the marketing strategies the Company is employing or will employ in penetrating its market or in developing a new market. Set forth in response to Question 4 below the timing and size of the results of this effort which will be necessary in order for the Company to be profitable. Indicate how and by whom its products or services are or will be marketed (such as by advertising, personal contact by sales representatives, etc.), how its marketing structure operates or will operate and the basis of its marketing approach, including any market studies. Name any customers that account for, or based upon existing orders will account for, a major portion (20% or more) of the Company's sales. Describe any major existing sales contracts.

- (e) State the backlog of written firm orders for products and/or services as of a recent date (within the last 90 days) and compare it with the backlog of a year ago from that date.

As of: ____/____/____ \$ _____
(a recent date)

As of: ____/____/____ \$ _____
(one year earlier)

Explain the reason for significant variations between the two figures, if any. Indicate what types and amounts of orders are included in the backlog figures. State the size of typical orders. If the Company's sales are seasonal or cyclical, explain.

- (f) State the number of the Company's present employees and the number of employees it anticipates it will have within the next 12 months. Also, indicate the number by type of employee (i.e., clerical, operations, administrative, etc.) the Company will use, whether or not any of them are subject to collective bargaining agreements, and the expiration date(s) of any collective bargaining agreement(s). If the Company's employees are on strike, or have been in the past three years, or are threatening to strike, describe the dispute. Indicate any supplemental benefits or incentive arrangements the Company has or will have with its employees.

- (g) Describe generally the principal properties (such as real estate, plant and equipment, patents, etc.) that the Company owns, indicating also what properties it leases and a summary of the terms under those leases, including the amount of payments, expiration dates and the terms of any renewal options. Indicate what properties the Company intends to acquire in the immediate future, the cost of such acquisitions and the sources of financing it expects to use in obtaining these properties, whether by purchase, lease or otherwise.

- (h) Indicate the extent to which the Company's operations depend or are expected to depend upon patents, copyrights, trade secrets, know-how or other proprietary information and the steps undertaken to secure and protect this intellectual property, including any use of confidentiality agreements, covenants-not-to-compete and the like. Summarize the principal terms and expiration dates of any significant license agreements. Indicate the amounts expended by the Company for research and development during the last fiscal year, the amount expected to be spent this year and what percentage of revenues research and development expenditures were for the last fiscal year.

- (i) If the Company's business, products, or properties are subject to material regulation (including environmental regulation) by federal, state, or local governmental agencies, indicate the nature and extent of regulation and its effects or potential effects upon the Company.

- (j) State the names of any subsidiaries of the Company, their business purposes and ownership, and indicate which are included in the Financial Statements attached hereto. If not included, or if included but not consolidated, please explain.

- (k) Summarize the material events in the development of the Company (including any material mergers or acquisitions) during the past five years, or for whatever lesser period the Company has been in existence. Discuss any pending or anticipated mergers, acquisitions, spin-offs or recapitalizations. If the Company has recently undergone a stock split, stock dividend or recapitalization in anticipation of this offering, describe (and adjust historical per share figures elsewhere in this Disclosure Document accordingly).

4. (a) If the Company was not profitable during its last fiscal year, list below in chronological order the events which in management's opinion must or should occur or the milestones which in management's opinion the Company must or should reach in order for the Company to become profitable, and indicate the expected manner of occurrence or the expected method by which the Company will achieve the milestones.

	<u>Event or Milestone</u>	<u>Expected manner of occurrence or method of achievement</u>	<u>Date, or number of months after receipt of proceeds, when should be accomplished</u>
(1)	_____	_____	_____
	_____	_____	
	_____	_____	
	_____	_____	
(2)	_____	_____	_____
	_____	_____	
	_____	_____	
	_____	_____	
(3)	_____	_____	_____
	_____	_____	
	_____	_____	
	_____	_____	
(4)	_____	_____	_____
	_____	_____	
	_____	_____	
	_____	_____	
(5)	_____	_____	_____
	_____	_____	
	_____	_____	
	_____	_____	

- (b) State the probable consequences to the Company of delays in achieving each of the events or milestones within the above time schedule, and particularly the effect of any delays upon the Company's liquidity in view of the Company's then anticipated level of operating costs. (See Question Nos. 11 and 12)

Note: After reviewing the nature and timing of each event or milestone, potential investors should reflect upon whether achievement of each within the estimated time frame is realistic and should assess the consequences of delays or failure of achievement in making an investment decision.

OFFERING PRICE FACTORS

If the securities offered are common stock, or are exercisable for or convertible into common stock, the following factors may be relevant to the price at which the securities are being offered.

5. What were net, after-tax earnings for the last fiscal year? (If losses, show in parenthesis.)

Total \$ _____ (\$ _____ per share)

6. If the Company had profits, show offering price as a multiple of earnings. Adjust to reflect for any stock splits or recapitalizations, and use conversion or exercise price in lieu of offering price, if applicable.

$$\frac{\text{Offering Price Per Share}}{\text{Net After-Tax Earnings Last Year Per Share}} = \text{_____ (price/earnings multiple)}$$

7. (a) What is the net tangible book value of the Company? (If deficit, show in parenthesis.) For this purpose, net tangible book value means total assets (exclusive of copyrights, patents, goodwill, research and development costs and similar intangible items) minus total liabilities.

\$ _____ (\$ _____ per share)

If the net tangible book value per share is substantially less than this offering (or exercise or conversion) price per share, explain the reasons for the variation.

- (b) State the dates on which the Company sold or otherwise issued securities during the last 12 months, the amount of such securities sold, the number of persons to whom they were sold, any relationship of such persons to the Company at the time of sale, the price at which they were sold and, if not sold for cash, a concise description of the consideration. (Exclude bank debt.)

8. (a) What percentage of the outstanding shares of the Company will the investors in this offering have? (Assume exercise of outstanding options, warrants or rights and conversion of convertible securities, if the respective exercise or conversion prices are at or less than the offering price. Also assume exercise of any options, warrants or rights and conversions of any convertible securities offered in this offering.)

If the maximum is sold: _____%

If the minimum is sold: _____%

- (b) What post-offering value is management implicitly attributing to the entire Company by establishing the price per security set forth on the cover page (or exercise or conversion price if common stock is not offered)? (Total outstanding shares after offering times offering price, or exercise or conversion price if common stock is not offered.)

If maximum is sold: \$ _____ *

If minimum is sold: \$ _____ *

(For above purposes, assume outstanding options are exercised in determining "shares" if the exercise prices are at or less than the offering price. All convertible securities, including outstanding convertible securities, shall be assumed converted and any options, warrants or rights in this offering shall be assumed exercised.)

* These values assume that the Company's capital structure would be changed to reflect any conversions of outstanding convertible securities and any use of outstanding securities as payment in the exercise of outstanding options, warrants or rights included in the calculation. The type and amount of convertible or other securities thus eliminated would be: _____ . These values also assume an increase in cash in the Company by the amount of any cash payments that would be made upon cash exercise of options, warrants or rights included in the calculations. The amount of such cash would be: \$ _____ .

Note: After reviewing the above, potential investors should consider whether or not the offering price (or exercise or conversion price, if applicable) for the securities is appropriate at the present stage of the Company's development.

USE OF PROCEEDS

9. (a) The following table sets forth the use of the proceeds from this offering:

	If Minimum Sold		If Maximum Sold	
	<u>Amount</u>	<u>%</u>	<u>Amount</u>	<u>%</u>
Total Proceeds	\$ _____	100%	\$ _____	100%
Less: Offering Expenses				
Commissions and Finders Fees	_____	_____	_____	_____
Legal & Accounting	_____	_____	_____	_____
Copying & Advertising	_____	_____	_____	_____
Other (Specify): _____	_____	_____	_____	_____
Net Proceeds from Offering	<u>\$ _____</u>	<u>_____</u>	<u>\$ _____</u>	<u>_____</u>
Use of Net Proceeds				
_____	\$ _____	_____ %	\$ _____	_____ %
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Total Use of Net Proceeds	<u>\$ _____</u>	<u>100%</u>	<u>\$ _____</u>	<u>100%</u>

(b) If there is no minimum amount of proceeds that must be raised before the Company may use the proceeds of the offering, describe the order of priority in which the proceeds set forth above in the column "If Maximum Sold" will be used.

Note: After reviewing the portion of the offering allocated to the payment of offering expenses, and to the immediate payment to management and promoters of any fees, reimbursements, past salaries or similar payments, a potential investor should consider whether the remaining portion of his investment, which would be that part available for future development of the Company's business and operations, would be adequate.

10. (a) If material amounts of funds from sources other than this offering are to be used in conjunction with the proceeds from this offering, state the amounts and sources of such other funds, and whether funds are firm or contingent. If contingent, explain.

(b) If any material part of the proceeds is to be used to discharge indebtedness, describe the terms of such indebtedness, including interest rates. If the indebtedness to be discharged was incurred within the current or previous fiscal year, describe the use of the proceeds of such indebtedness.

(c) If any material amount of the proceeds is to be used to acquire assets, other than in the ordinary course of business, briefly describe and state the cost of the assets and other material terms of the acquisitions. If the assets are to be acquired from officers, directors, employees or principal stockholders of the Company or their associates, give the names of the persons from whom the assets are to be acquired and set forth the cost to the Company, the method followed in determining the cost, and any profit to such persons.

(d) If any amount of the proceeds is to be used to reimburse any officer, director, employee or stockholder for services already rendered, assets previously transferred, or monies loaned or advanced, or otherwise, explain:

11. Indicate whether the Company is having or anticipates having within the next 12 months any cash flow or liquidity problems and whether or not it is in default or in breach of any note, loan, lease or other indebtedness or financing arrangement requiring the Company to make payments. Indicate if a significant amount of the Company's trade payables have not been paid within the stated trade term. State whether the Company is subject to any unsatisfied judgments, liens or settlement obligations and the amounts thereof. Indicate the Company's plans to resolve any such problems.

12. Indicate whether proceeds from this offering will satisfy the Company's cash requirements for the next 12 months, and whether it will be necessary to raise additional funds. State the source of additional funds, if known.

CAPITALIZATION

13. Indicate the capitalization of the Company as of the most recent balance sheet date (adjusted to reflect any subsequent stock splits, stock dividends, recapitalizations or refinancings) and as adjusted to reflect the sale of the minimum and maximum amount of securities in this offering and the use of the net proceeds therefrom:

	<u>Amount Outstanding</u>		
	<u>As of:</u> <u> / / (date)</u>	<u>As Adjusted</u>	
		<u>Minimum</u>	<u>Maximum</u>
Debt:			
Short-term debt (average interest rate _____%)	\$ _____	\$ _____	\$ _____
Long-term debt (average interest rate _____%)	\$ _____	\$ _____	\$ _____
Total debt	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>
Stockholders equity (deficit):			
Preferred stock - par or stated value (by class of preferred in order of preferences)			
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
_____	\$ _____	\$ _____	\$ _____
Common stock--par or stated value	\$ _____	\$ _____	\$ _____
Additional paid in capital	\$ _____	\$ _____	\$ _____
Retained earnings (deficit)	\$ _____	\$ _____	\$ _____
Total stockholders equity (deficit)	\$ _____	\$ _____	\$ _____
Total Capitalization	<u>\$ _____</u>	<u>\$ _____</u>	<u>\$ _____</u>

Number of preferred shares authorized to be outstanding:

<u>Number of</u> <u>Class of Preferred</u>	<u>Par Value</u> <u>Shares Authorized</u>	<u>Per Share</u>
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Number of common shares authorized: _____ shares. Par or stated value per share, if any: \$ _____

Number of common shares reserved to meet conversion requirements or for the issuance upon exercise of options, warrants or rights: _____ shares.

DESCRIPTION OF SECURITIES

14. The securities being offered hereby are:

- Common Stock
- Preferred or Preference Stock
- Notes or Debentures
- Units of two or more types of securities, composed of:
- Other: _____
- _____
- _____

15. These securities have:

- | Yes | No | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Cumulative voting rights |
| <input type="checkbox"/> | <input type="checkbox"/> | Other special voting rights |
| <input type="checkbox"/> | <input type="checkbox"/> | Preemptive rights to purchase in new issues of shares |
| <input type="checkbox"/> | <input type="checkbox"/> | Preference as to dividends or interest |
| <input type="checkbox"/> | <input type="checkbox"/> | Preference upon liquidation |
| <input type="checkbox"/> | <input type="checkbox"/> | Other special rights or preferences (specify): _____ |

Explain: _____

16. Are the securities convertible? Yes No

If so, state conversion price or formula. _____

Date when conversion becomes effective: ___/___/___

Date when conversion expires: ___/___/___

17. (a) If securities are notes or other types of debt securities:

(1) What is the interest rate? _____%

If interest rate is variable or multiple rates, describe: _____

(2) What is the maturity date? ___/___/___

If serial maturity dates, describe: _____

(3) Is there a mandatory sinking fund? Yes No Describe: _____

(4) Is there a trust indenture? Yes No

Name, address and telephone number of Trustee _____

(5) Are the securities callable or subject to redemption?

Yes No Describe, including redemption prices: _____

(6) Are the securities collateralized by real or personal property?

Yes No Describe: _____

(7) If these securities are subordinated in right of payment of interest or principal, explain the terms of such subordination. _____

How much currently outstanding indebtedness of the Company is senior to the securities in right of payment of interest or principal? \$ _____
 How much indebtedness shares in right of payment on an equivalent (pari passu) basis? \$ _____
 How much indebtedness is junior (subordinated) to the securities? \$ _____

(b) If notes or other types of debt securities are being offered and the Company had earnings during its last fiscal year, show the ratio of earnings to fixed charges on an actual and pro forma basis for that fiscal year. "Earnings" means pretax income from continuing operations plus fixed charges and capitalized interest. "Fixed charges" means interest (including capitalized interest), amortization of debt discount, premium and expense, preferred stock dividend requirements of majority owned subsidiary, and such portion of rental expense as can be demonstrated to be representative of the interest factor in the particular case. The pro forma ratio of earnings to fixed charges should include incremental interest expense as a result of the offering of the notes or other debt securities.

		<u>Last Fiscal Year</u>		
		<u>Actual</u>	<u>Pro Forma</u>	
			<u>Minimum</u>	<u>Maximum</u>
"Earnings"	=	_____	_____	_____
"Fixed Charges"		_____	_____	_____
If no earnings, show "Fixed Charges" only		_____	_____	_____

Note: Care should be exercised in interpreting the significance of the ratio of earnings to fixed charges as a measure of the "coverage" of debt service, as the existence of earnings does not necessarily mean that the Company's liquidity at any given time will permit payment of debt service requirements to be timely made. See Question Nos. 11 and 12. See also the Financial Statements and especially the Statement of Cash Flows.

18. If securities are Preference or Preferred stock:
 Are unpaid dividends cumulative? Yes No
 Are securities callable? Yes No Explain: _____

Note: Attach to this Disclosure Document copies or a summary of the charter, bylaw or contractual provision or document that gives rise to the rights of holders of Preferred or Preference Stock, notes or other securities being offered.

19. If securities are capital stock of any type, indicate restrictions on dividends under loan or other financing arrangements or otherwise:

20. Current amount of assets available for payment of dividends (if deficit must be first made up, show deficit in parenthesis): \$ _____

PLAN OF DISTRIBUTION

21. The selling agents (that is, the persons selling the securities as agent for the Company for a commission or other compensation) in this offering are:

Name: _____ Name: _____

Address: _____ Address: _____

Telephone No. () _____ Telephone No. () _____

22. Describe any compensation to selling agents or finders, including cash, securities, contracts or other consideration, in addition to the cash commission set forth as a percent of the offering price on the cover page of this Disclosure Document. Also indicate whether the Company will indemnify the selling agents or finders against liabilities under the securities laws. ("Finders" are persons who for compensation act as intermediaries in obtaining selling agents or otherwise making introductions in furtherance of this offering.)

23. Describe any material relationships between any of the selling agents or finders and the Company or its management.

Note: After reviewing the amount of compensation to the selling agents or finders for selling the securities, and the nature of any relationship between the selling agents or finders and the Company, a potential investor should assess the extent to which it may be inappropriate to rely upon any recommendation by the selling agents or finders to buy the securities.

24. If this offering is not being made through selling agents, the names of persons at the Company through which this offering is being made:

Name: _____ Name: _____

Address: _____ Address: _____

Telephone No. () _____ Telephone No. () _____

25. If this offering is limited to a special group, such as employees of the Company, or is limited to a certain number of individuals (as required to qualify under Subchapter S of the Internal Revenue Code) or is subject to any other limitations, describe the limitations and any restrictions on resale that apply:

Will the certificates bear a legend notifying holders of such restrictions?

Yes No

26. (a) Name, address and telephone number of independent bank or savings and loan association or other similar depository institution acting as escrow agent if proceeds are escrowed until minimum proceeds are raised:

- (b) Date at which funds will be returned by escrow agent if minimum proceeds are not raised:

Will interest on proceeds during escrow period be paid to investors?

Yes No

27. Explain the nature of any resale restrictions on presently outstanding shares, and when those restrictions will terminate, if this can be determined:

Note: Equity investors should be aware that unless the Company is able to complete a further public offering or the Company is able to be sold for cash or merged with a public company that their investment in the Company may be illiquid indefinitely.

DIVIDENDS, DISTRIBUTIONS AND REDEMPTIONS

28. If the Company has within the last five years paid dividends, made distributions upon its stock or redeemed any securities, explain how much and when:

OFFICERS AND KEY PERSONNEL OF THE COMPANY

29. Chief Executive Officer: _____ Title: _____

Name: _____ Age: _____

Office Street Address: _____

Telephone No.: () _____

Name of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company [] Yes [] No

Indicate amount of time to be spent on Company matters if less than full time:

30. Chief Operating Officer: _____ Title: _____

Name: _____ Age: _____

Office Street Address: _____

Telephone No.: () _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? [] Yes [] No

Indicate amount of time to be spent on Company matters if less than full time:

31. Chief Financial Officer: Title: _____
Name: _____ Age: _____

Office Street Address: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? Yes No

Indicate amount of time to be spent on Company matters if less than full time:

32. Other Key Personnel:

(A) Name: _____ Age: _____

Title: _____

Office Street Address: _____

Telephone No.: (____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? Yes No

Indicate amount of time to be spent on Company matters if less than full time:

(B) Name: _____ Age: _____

Title: _____

Office Street Address: _____

Telephone No.: (_____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

Also a Director of the Company? Yes No

Indicate amount of time to be spent on Company matters if less than full time:

DIRECTORS OF THE COMPANY

33. Number of Directors: _____ If Directors are not elected annually, or are elected under a voting trust or other arrangement, explain:

34. Information concerning outside or other Directors (i.e. those not described above):

(A) Name: _____ Age: _____

Office Street Address: _____

Telephone No.: (_____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(B) Name: _____ Age: _____

Office Street Address: _____

Telephone No.: (_____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

(C) Name: _____ Age: _____

Office Street Address: _____

Telephone No.: (_____) _____

Names of employers, titles and dates of positions held during past five years with an indication of job responsibilities.

Education (degrees, schools, and dates): _____

35. (a) Have any of the Officers or Directors ever worked for or managed a company (including a separate subsidiary or division of a larger enterprise) in the same business as the Company? Yes No

Explain: _____

- (b) If any of the Officers, Directors or other key personnel have ever worked for or managed a company in the same business or industry as the Company or in a related business or industry, describe what precautions, if any, (including the obtaining of releases or consents from prior employers) have been taken to preclude claims by prior employers for conversion or theft of trade secrets, know-how or other proprietary information.

- (c) If the Company has never conducted operations or is otherwise in the development stage, indicate whether any of the Officers or Directors has ever managed any other company in the start-up or development stage and describe the circumstances, including relevant dates.

- (d) If any of the Company's key personnel are not employees but are consultants or other independent contractors, state the details of their engagement by the Company.

- (e) If the Company has key man life insurance policies on any of its Officers, Directors or key personnel, explain, including the names of the persons insured, the amount of insurance, whether the insurance proceeds are payable to the Company and whether there are arrangements that require the proceeds to be used to redeem securities or pay benefits to the estate of the insured person or to a surviving spouse.

36. If a petition under the Bankruptcy Act or any State insolvency law was filed by or against the Company or its Officers, Directors or other key personnel, or a receiver, fiscal agent or similar officer was appointed by a court for the business or property of any such persons, or any partnership in which any of such persons was general partner at or within the past five years, or any corporation or business association of which any such person was an executive officer at or within the past five years, set forth below the name of such persons, and the nature and date of such actions.

Note: After reviewing the information concerning the background of the Company's Officers, Directors and other key personnel, potential investors should consider whether or not these persons have adequate background and experience to develop and operate this Company and to make it successful. In this regard, the experience and ability of management are often considered the most significant factors in the success of a business.

PRINCIPAL STOCKHOLDERS

37. Principal owners of the Company (those who beneficially own directly or indirectly 10% or more of the common and preferred stock presently outstanding) starting with the largest common stockholder. Include separately all common stock issuable upon conversion of convertible securities (identifying them by asterisk) and show average price per share as if conversion has occurred. Indicate by footnote if the price paid was for a consideration other than cash and the nature of any such consideration.

	<u>Class of Shares</u>	<u>Average Price Per Share</u>	<u>No. of Shares Now Held</u>	<u>% of Total</u>	<u>No. of Shares Held After Offering if All Securities Sold</u>	<u>% of Total</u>
Name:	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____

Office Street Address:

Telephone No.
 () _____

Principal occupation:

Name:	_____	_____	_____	_____	_____	_____
	_____	_____	_____	_____	_____	_____

Office Street Address:

Telephone No.
 () _____

Principal occupation:

Name:	<u>Class of Shares</u>	<u>Average Price Per Share</u>	<u>No. of Shares Now Held</u>	<u>% of Total</u>	<u>No. of Shares Held After Offering if All Securities Sold</u>	<u>% of Total</u>
_____	_____	_____	_____	_____	_____	_____

Office Street Address:

Telephone No.

() _____

Principal occupation:

Name:

_____	_____	_____	_____	_____	_____	_____
-------	-------	-------	-------	-------	-------	-------

Office Street Address:

Telephone No.

() _____

Principal occupation:

38. Number of shares beneficially owned by Officers and Directors as a group:

Before offering: _____ shares (_____ % of total outstanding)

After offering: a) Assuming minimum securities sold: _____ shares
 (_____ % of total outstanding)

b) Assuming maximum securities sold: _____ shares
 (_____ % of total outstanding)

(Assume all options exercised and all convertible securities converted.)

MANAGEMENT RELATIONSHIPS, TRANSACTIONS AND REMUNERATION

39. (a) If any of the Officers, Directors, key personnel or principal stockholders are related by blood or marriage, please describe.

(c) If any employment agreements exist or are contemplated, describe:

41. (a) Number of shares subject to issuance under presently outstanding stock purchase agreements, stock options, warrants or rights: _____ shares (____% of total shares to be outstanding after the completion of the offering if all securities sold, assuming exercise of options and conversion of convertible securities). Indicate which have been approved by shareholders. State the expiration dates, exercise prices and other basic terms for these securities:

(b) Number of common shares subject to issuance under existing stock purchase or option plans but not yet covered by outstanding purchase agreements, options or warrants: _____ shares.

(c) Describe the extent to which future stock purchase agreements, stock options, warrants or rights must be approved by shareholders.

42. If the business is highly dependent on the services of certain key personnel, describe any arrangements to assure that these persons will remain with the Company and not compete upon any termination:

Note: After reviewing the above, potential investors should consider whether or not the compensation to management and other key personnel directly or indirectly, is reasonable in view of the present stage of the Company's development.

LITIGATION

43. Describe any past, pending or threatened litigation or administrative action which has had or may have a material effect upon the Company's business, financial condition, or operations, including any litigation or action involving the Company's Officers, Directors or other key personnel. State the names of the principal parties, the nature and current status of the matters, and amounts involved. Give an evaluation by management or counsel, to the extent feasible, of the merits of the proceedings or litigation and the potential impact on the Company's business, financial condition, or operations.

FEDERAL TAX ASPECTS

44. If the Company is an S corporation under the Internal Revenue Code of 1986, and it is anticipated that any significant tax benefits will be available to investors in this offering, indicate the nature and amount of such anticipated tax benefits and the material risks of their disallowance. Also, state the name, address and telephone number of any tax advisor that has passed upon these tax benefits. Attach any opinion or any description of the tax consequences of an investment in the securities by the tax advisor.

Name of Tax Advisor: _____
Address: _____
Telephone No. (____) _____

Note: Potential investors are encouraged to have their own personal tax consultant contact the tax advisor to review details of the tax benefits and the extent that the benefits would be available and advantageous to the particular investor.

MISCELLANEOUS FACTORS

45. Describe any other material factors, either adverse or favorable, that will or could affect the Company or its business (for example, discuss any defaults under major contracts, any breach of bylaw provisions, etc.) or which are necessary to make any other information in this Disclosure Document not misleading or incomplete.

FINANCIAL STATEMENTS

46. Attach reviewed or audited financial statements for the last fiscal year and unaudited financial statements for any interim periods thereafter. If since the beginning of the last fiscal year the Company has acquired another business the assets or net income of which were in excess of 20% of those for the Company, show pro forma combined financial statements as if the acquisition had occurred at the beginning of the Company's last fiscal year.

The Company does hereby agree to provide to investors in this offering for five years (or such longer period as required by law) hereafter annual financial reports containing a balance sheet as of the end of the Company's fiscal year and a statement of income for said fiscal year, all prepared in accordance with generally accepted accounting principles and accompanied by an independent accountant's report. If the Company has more than 100 security holders at the end of the fiscal year, the financial statements shall be audited.

MANAGEMENT'S DISCUSSION AND ANALYSIS OF CERTAIN RELEVANT FACTORS

47. If the Company's financial statements show losses from operations, explain the causes underlying these losses and what steps the Company has taken or is taking to address these causes.

48. Describe any trends in the Company's historical operating results. Indicate any changes now occurring in the underlying economics of the industry or the Company's business which, in the opinion of Management, will have a significant impact (either favorable or adverse) upon the Company's results of operations within the next 12 months, and give a rough estimate of the probable extent of the impact, if possible.

49. If the Company sells a product or products and has had significant sales during its last fiscal year, state the existing gross margin (net sales less cost of such sales as presented in accordance with generally accepted accounting principles) as a percentage of sales for the last fiscal year: _____%.

What is the anticipated gross margin for next year of operations? Approximately _____%. If this is expected to change, explain. Also, if reasonably current gross margin figures are available for the industry, indicate these figures and the source or sources from which they are obtained.

50. Foreign sales as a percent of total sales for last fiscal year: _____%. Domestic government sales as a percent of total domestic sales for last fiscal year: _____%. Explain the nature of these sales, including any anticipated changes:

SIGNATURES:

A majority of the Directors and the Chief Executive and Financial Officers of the Company shall sign this Disclosure Document on behalf of the Company and by so doing thereby certify that each has made diligent efforts to verify the material accuracy and completeness of the information herein contained. By signing this Disclosure Document, the Chief Executive and Chief Financial Officers agree to make themselves, the Company's books and records, copies of any contract, lease or other document referred to in the Disclosure Document, or any other material contract or lease (including stock options and employee benefit plans), except any proprietary or confidential portions thereof, and a set of the exhibits to this Disclosure Document, available to each investor prior to the time of investment, and to respond to questions and otherwise confirm the information contained herein prior to the making of any investment by such investor.

The Chief Financial Officer signing this form is hereby certifying that the financial statements submitted fairly state the Company's financial position and results of operations, or receipts and disbursements, as of the dates and period(s) indicated, all in accordance with generally accepted accounting principles consistently applied (except as stated in the notes thereto) and (with respect to year-end figures) including all adjustments necessary for fair presentation under the circumstances.

Chief Executive Officer:

Directors:

Title: _____

Chief Financial Officer:

Title: _____

**GUIDELINES FOR PREPARATION OF
UNIFORM FRANCHISE REGISTRATION APPLICATION
AND
OFFERING CIRCULAR**

as adopted by the North American
Securities Administrators Association
(NASAA) in April, 1980, as last
amended October, 1988

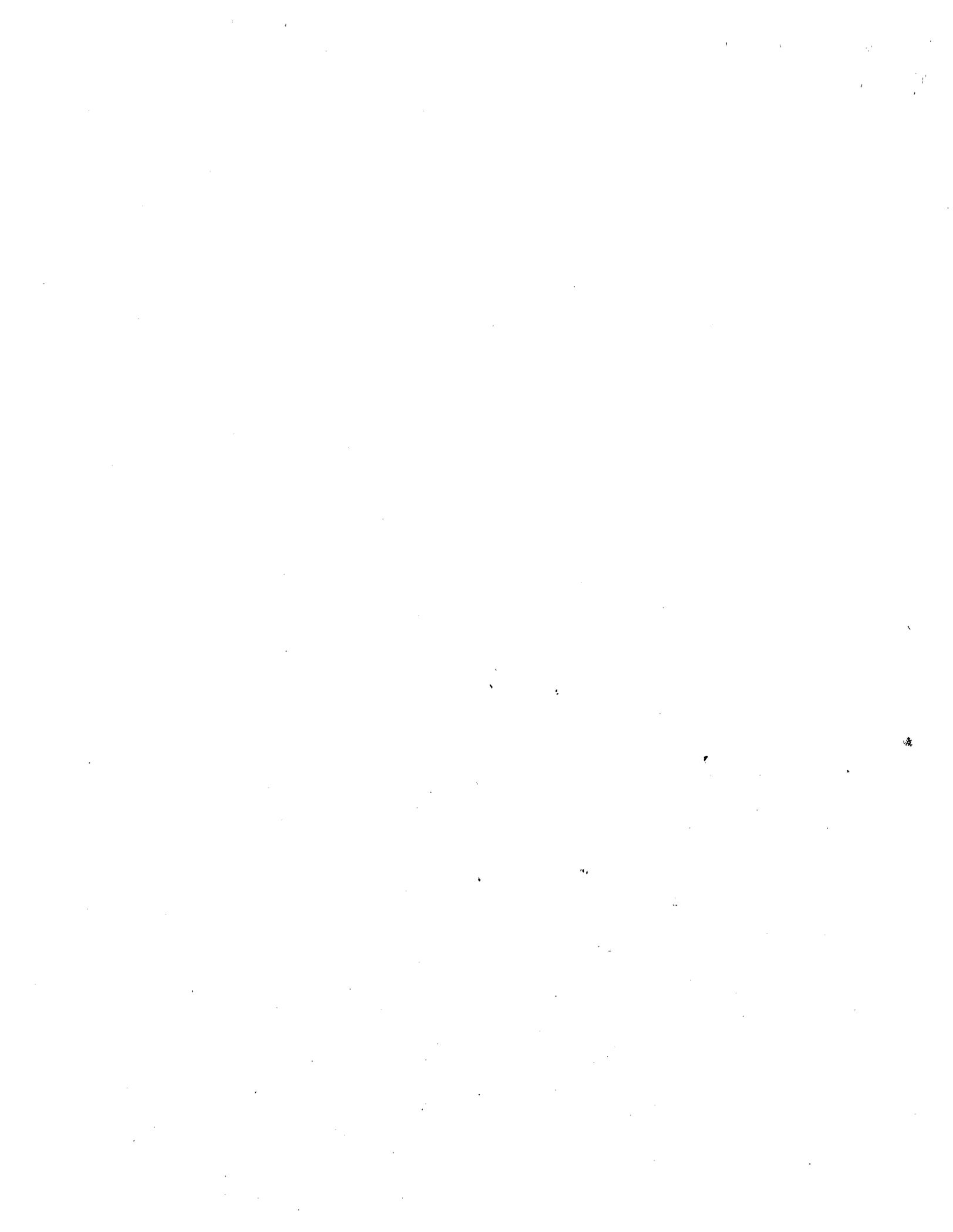
INTRODUCTION TO GUIDELINES. The Requirements for Preparation of the Uniform Franchise Offering Circular and Related Documents (hereinafter "Requirements") were first adopted by Midwest Securities Commissioner's Association on September 2, 1975. NASAA adopted such guidelines to facilitate the process of complying with the franchise investment laws enacted by a number of states. In particular, the Requirements are intended to ease the burden of constructing a franchise offering circular for each state requiring prior disclosure through the use of an offering circular. The Requirements, however, do not replace the franchise investment laws of the individual states. The Requirements deal only with the disclosure requirements under the state franchise investment laws.

Likewise, the Guidelines serve only as an interpretive guide to the Requirements. The Guidelines neither amend nor modify the Requirements. Further, the Guidelines create no substantive disclosure requirements in and of themselves.

In all possible cases, the NASAA has developed uniform disclosure requirements. The members of the NASAA, however, can neither create new statutes nor amend existing statutes. Such functions, of course, are the constitutional province of the legislative branch of government. Thus, in those few instances where material differences in state statute exist, uniformity could not be achieved. Such material differences are set forth in separate addendums to these Guidelines labeled "State Information Form", one for each state. Special attention should be paid to the separate state requirements both before filing an application in a state and in complying with state laws while offering franchises in each state.

Applicants will be required to make certain changes in applications filed in each state. These changes are due to the information required for each state, as described in the Requirements. Further, changes are dictated by substantive differences in the statute(s) of each state, such as practices prohibited by the franchise investment laws of some states, or other related trade practice statutes bearing on the franchise relationship. Again, as an assist to the applicant, these differences also are set forth in the "State Information Form". Furthermore, each state will continue to review the application for deficient disclosure necessitated by special problems or risks inherent in the proposed offering. The Requirements are a guide for franchise administrators, as well as applicants. Diligent preparation of the application according to the Requirements and supplementary Guidelines, therefore, should minimize the changes requested by each state.

GENERAL PROVISIONS. Most state laws provide that no person may offer or sell a franchise by means of any written or oral communication which includes an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. A violation of any such provision may result in administrative, civil and/or criminal sanctions.



Occasionally an applicant will request a pre-filing review of an offering circular, but such a review may be refused since it would delay the examination of material which has already been filed and would favor certain applicants at the expense of others. Applicants or their representatives also occasionally request a franchise examiner to draft a paragraph or other statement which will comply with a particular requirement or request for disclosure. A franchise examiner cannot undertake to prepare material for filing and will only state the kind of disclosure required, leaving the actual drafting to the applicant or its representative.

Applications should be current as of the date of filing. The pendency of an application for less than 90 days will eliminate the necessity of a comprehensive updating of the offering circular prior to the time the offer of franchises is registered.

Applicants should be most careful to make certain that the application, as filed, is complete. First, pay particular attention to the "State Information Form" to determine the number of copies to be filed as well as any additional information to be filed, such as copies of articles of incorporation. Secondly, make certain that the documents are in the order prescribed by the Requirements. See the Instructions to the Requirements for the correct order. Applications with missing pages or exhibits, partial pages (such as those created by photocopying mistakes), pages which are out of order or pages which are relevant only to another state, may be rejected summarily by the administrator as incomplete for filing. It is not the function of an administrator to prepare, in effect, an applicant's application. Moreover, it is most unfair to those who diligently prepare and pursue their applications for the state administrator to consider grossly deficient applications, since such diligent applicants' applications must remain pending while the administrator reviews the lesser product and prepares the resultant letter of deficiency or comment.

STATE INFORMATION FORM presents the differences in the various state statutes which could not be reconciled by the Requirements. Please review the differences for the state in which you intend to make application prior to the time you prepare the application and again after preparation, but prior to filing, in order that the application may be complete and correct.

INSTRUCTIONS. The following instructions must be adhered to with respect to all applications for registration, registration renewal or annual report and amendment.

1. *Contents of the Application:* An application for registration of the offer or sale of franchises shall include the following, all of which shall be verified by means of the prescribed signature page:

- A. Uniform Franchise Registration Application Cover Page.
- B. Supplemental Information Page(s).
- C. Consent to Service of Process.
- D. Corporate Acknowledgment.
- E. Salesmen Disclosure Form. In this regard, consult the State Information Form for state requirements which necessitate the use of a form other than the salesmen disclosure form (e.g., see Michigan and Washington). Delete the word "criminal" from Item 2.A. for registrations filed with the State of California. California will not accept for filing an application containing any reference to any pending criminal action.
- F. A copy of the proposed offering circular.
- G. Manually Signed Consent of Accountants.
- H. Cross Reference Sheet.
- I. Signature Page.

The following shall be attached to the application:

Two copies of any advertising to be used in connection with the offer or sale of franchises.
(one copy in WI.)

2. Definitions:

A. "Franchise broker," for the purposes of the disclosure required by the cover page and Item 2 in the body of the offering circular, is defined as follows:

A "franchise broker" is any person engaged in the business of representing a franchisor or subfranchisor in offering for sale or selling a franchise.

B. The term "person" means an individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization.

C. The phrases "person affiliated with the franchisor" and "affiliated person" mean any person controlling, controlled by or under common control with the franchisor.

D. "Predecessor," for the purposes of the disclosure required by Item 1 in the body of the offering circular, is defined as follows:

A "predecessor" of a franchisor is (i) a person the major portion of whose assets have been acquired directly or indirectly by the franchisor, or (ii) a person from whom the franchisor acquired directly or indirectly the major portion of its assets.

3. *Disclosure:* The disclosure in the offering circular should be clearly and concisely stated in NARRATIVE form.

Also, each disclosure item should be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item. The disclosure Requirement may *not* be set forth in the offering circular.

The text of the offering circular should be divided into distinct items (sections), and subitems as may be appropriate, corresponding to the items of the Requirements. The item headings should be substantially similar to the item headings of the Requirements. The items in the applicant's offering circular must be in the order prescribed by the Requirements. Item numbers, such as "Item I, Item II, etc." may be used but are not required. Subitem letters and numbers as set forth in the Requirements, such as "Item i. F. (i), Item 17. N., etc." may *not* be used. Appropriately descriptive headings for subitems, however, may be created in order to subdivide the major items of the offering circular. For instance, Item 17, "Renewal, Termination, Repurchase, Modification and Assignment of the Franchise Agreement and Related Information" may have subitem headings such as, "Termination by Franchisee," "Termination by (Franchisor)," etc.

In order to make an offering circular more readable and understandable, and therefore more useful, applicants should limit the length and complexity of their disclosure through careful organization of the material, appropriate arrangement and subordination of the information in the disclosure, use of schedules where possible and the avoidance of prolix or technical language and unnecessary detail.

4. *Subfranchisors:* The offer of area franchises by the franchisor typically constitutes an offer separate from the offer of franchises by the franchisor and/or subfranchisor, and accordingly, requires separate registration or exemption.

Where the offering circular relates to area franchises to be offered by the franchisor, all references in the Requirements and these Guidelines to "franchisee" include "subfranchisor," unless the context of the reference otherwise requires.

Where the offering circular relates to franchises to be offered by a subfranchisor, all references in the Requirements and these Guidelines to the franchisor should be treated as referring to both the franchisor and the subfranchisor, to the extent applicable.

5. *Signing of Application:* The application shall be signed by an officer or general partner of the applicant; however, it may be signed by another person holding a power of attorney for such purposes from the applicant. If signed on behalf of the applicant pursuant to such power of attorney, the application shall include as an additional exhibit a copy of said power of attorney or a copy of the corporate resolution authorizing the attorney to act.

6. *Manually Signed Consent of Accountant:* All applications shall be accompanied by a manually signed consent of the independent certified public accountant for the use of their audited financial statements as such statements appear in the offering circular.

7. *Application to Amend the Registration:* An amendment to an application filed either before or after the effective date of registration shall include only the pages containing the information being amended. The information being amended should be identified by item and should be underscored in red or identified in some other appropriate manner and also should be verified by means of the prescribed signature page. Each amendment shall be accompanied by a facing page in the form prescribed on which the applicant shall indicate that the filing is an amendment and the number of the amendment.

REGISTRATION FORMS AND RELATED DOCUMENTS.

1. **FACING PAGE:** Under Number 2 requiring as a second disclosure the "Name and Address of Franchisor's Agent in the State of (Name of State) Authorized to Receive Process" list the duly appointed registered agent in such state, or, if no such agent exists, list the title and address of the administrator to whom the registration application is being submitted.

2. **SUPPLEMENTAL INFORMATION:** Section 2 of the Supplemental Information should include disclosure of the following:

With respect to all franchises sought to be registered; set forth, in budget form, the total projected financing required by franchisor to fulfill the franchisor's obligations to provide real estate, improvements, equipment, inventory, training and all other items included in the offering. Show separately the sources of all of the required funds including any proposed loans or contributions to capital.

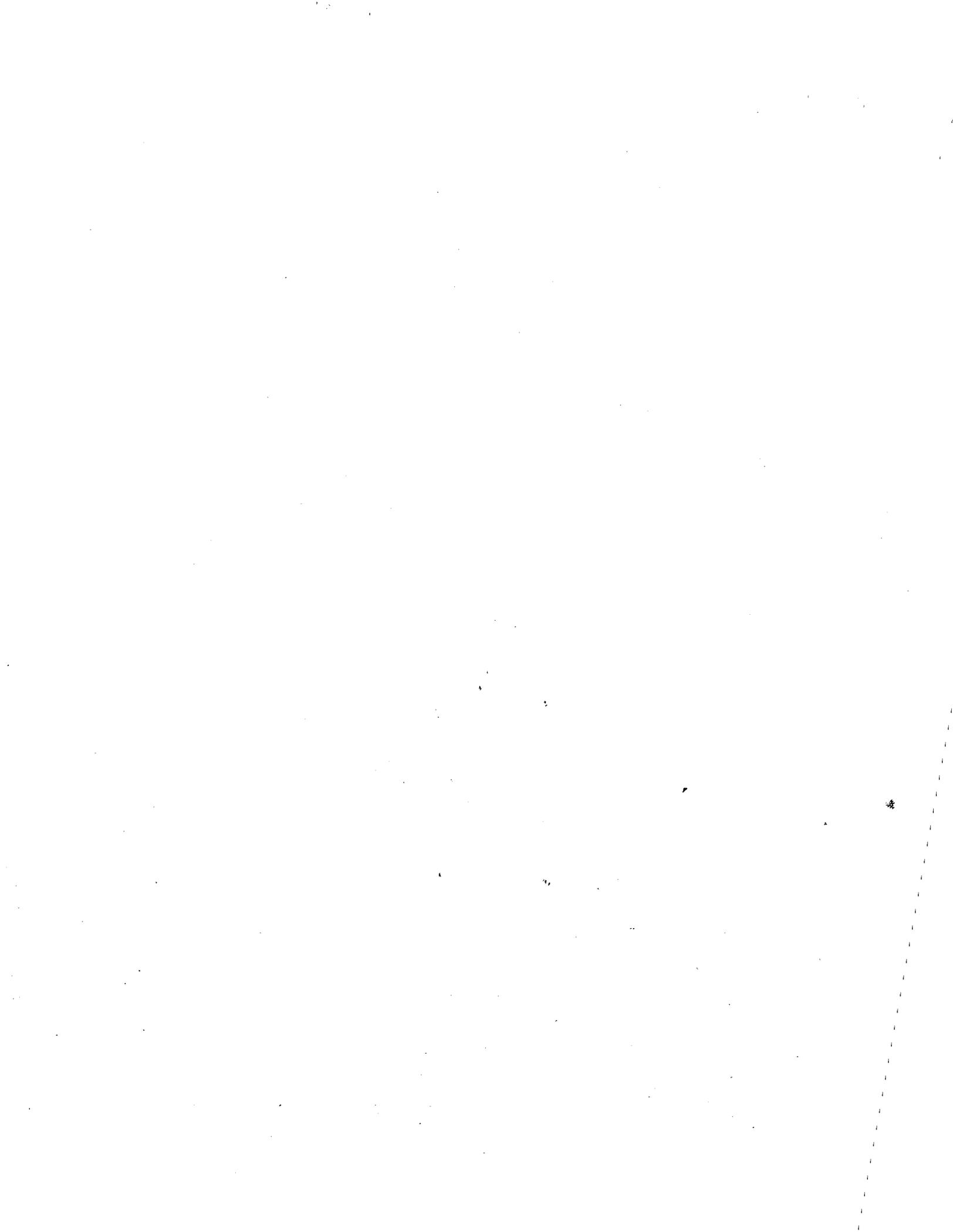
3. **SALESMEN DISCLOSURE FORM:** Item 1 may be completed by attachment to the Registration Forms, as opposed to the Offering Circular, with respect to each salesman. Delete the word "criminal" from Item 2. A. for registrations filed with the State of California. California will not accept for filing an application containing any reference to any pending criminal action.

4. **CROSS REFERENCE SHEET:** The cross reference sheet should bear the heading "Cross Reference Sheet" and consist of two columns. The left column should list the main item numbers of the Franchisor's Offering Circular and the page for each such item. The right column should list the paragraph or section number and the page of the franchise agreement or other applicable agreement. If any item, calling for information, is inapplicable or the answer thereto is in the negative and therefore is omitted, a statement to that effect shall be made in the cross reference sheet. Example:

Cross Reference Sheet

Section and Page
Number in
Offering Circular

Paragraph and
Page Number in
Franchise Agreement
or Other Agreement



UNIFORM FRANCHISE OFFERING CIRCULAR

AND

SAMPLE DISCLOSURES

COVER PAGE GENERAL INSTRUCTIONS:

(1) i. The cover page should be presented in the order prescribed by pages 1 and 2 of the Requirements.

ii. Material on the cover page should be as brief as possible with, if necessary, an appropriate cross reference to more complete information elsewhere in the offering circular. Such a cross reference also should be used in lieu of explanatory notes on the cover page.

Requirement:

COVER PAGE: The outside front cover of the offering circular shall contain the following information:

1. The title in boldface type: **FRANCHISE OFFERING CIRCULAR FOR PROSPECTIVE FRANCHISEES REQUIRED BY THE STATE OF** (*name of state*).

2. The name, type of business organization, principal business address and telephone number of the franchisor.

3. If different than 2. above, the names, principal business address and telephone number of the subfranchisor or franchise broker offering in this state the herein described franchise.

4. A sample of the primary business trademark, logotype, trade name, or commercial label or symbol used by the franchisor for marketing its products or services and under which the franchisee will conduct its business. (Place in upper left-hand corner of the cover page.)

5. A brief description of the franchise to be offered.

6. A summary of items 5 and 7 of the offering circular, to wit: Franchisee's Initial Franchise Fee or Other Payment and Franchisee's Initial Investment, respectively.

Instruction:

Item 6 on the cover page requires disclosure of the initial franchise fee and the estimated initial cash investment. There also should be a statement that the cash investment does not represent franchisee's total investment and that franchisee should refer to disclosure items 5-7, inclusive, in the offering circular for further information regarding the investment.

7. Effective Date: (Leave blank until notified of effectiveness by state regulatory authority.)

Instruction:

Item 7 of the Requirements (Effective Date) should not be completed until instructed to do so by the franchise examiner.

8. The following statement in boldface type:

THIS OFFERING CIRCULAR IS PROVIDED FOR YOUR OWN PROTECTION AND CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THIS OFFERING CIRCULAR AND ALL CONTRACTS AND AGREEMENTS SHOULD BE READ CAREFULLY IN THEIR ENTIRETY FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

A FEDERAL TRADE COMMISSION RULE MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE WITHOUT FIRST PROVIDING THIS OFFERING CIRCULAR TO THE PROSPECTIVE FRANCHISEE AT THE EARLIER OF (1) THE FIRST PERSONAL MEETING, OR; (2) TEN BUSINESS DAYS BEFORE THE SIGNING OF ANY FRANCHISE OR RELATED AGREEMENT; OR (3) TEN BUSINESS DAYS BEFORE ANY PAYMENT. THE PROSPECTIVE FRANCHISEE MUST ALSO RECEIVE A FRANCHISE AGREEMENT CONTAINING ALL MATERIAL TERMS AT LEAST FIVE BUSINESS DAYS PRIOR TO THE SIGNING OF THE FRANCHISE AGREEMENT.

ALTHOUGH THESE FRANCHISES HAVE BEEN REGISTERED UNDER (name of the state's franchise act or statute), REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE (name of state regulatory agency) OR A FINDING BY THE (state regulatory authority) THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE, ACCURATE OR NOT MISLEADING.

IF THIS OFFERING CIRCULAR IS NOT DELIVERED ON TIME, OR IF IT CONTAINS A FALSE, INCOMPLETE, INACCURATE OR MISLEADING STATEMENT, A VIOLATION OF FEDERAL AND STATE LAW MAY HAVE OCCURRED AND SHOULD BE REPORTED TO THE FEDERAL TRADE COMMISSION, WASHINGTON, D.C. 20580 AND (State Agency). (Any additional state disclosure time or required statutory language.)

9. The name and address of the franchisor's registered agent in this state authorized to receive service of process.

10. The name and address of the subfranchisor's or franchise broker's registered agent in this state authorized to receive service of process.

TABLE OF CONTENTS TO THE CIRCULAR. Requirement: Include a table of contents based on the requirements of this offering circular.

Instruction: and the pages on which said disclosures appear. It also should refer to the attached exhibits by letter. The form should be as follows:
 The table of contents should include exact reference to the disclosures in the offering circular

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Item Heading Page

Sample Table of Contents

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THE DISCLOSURES

THE FRANCHISOR AND ANY PREDECESSOR (Item D). Requirement (Item 1): Set forth in summary form: (The disclosure regarding predecessors need only cover the 15-year period immediately preceding the close of franchisor's most recent fiscal year.)

A. The name of the franchisor and any predecessors thereto.

Instruction: organization name(s) of the franchisor and any predecessors thereto.
State the correct and complete corporate, partnership, proprietorship or other business

B. The name under which the franchisor is currently doing or intends to do business.

Instruction: forth in the preceding subitem. If not, state that the franchisor does not do business under any other name than that under which it currently does business.
State the name under which the franchisor does business, if that name is different than the name set

C. The franchisor's principal business address and the business address or addresses of any predecessors thereto.

Instruction: franchisor, within the United States or foreign countries (not the principal business address(es) within the state for which the offering circular is being prepared).
Disclose the current principal business address of the franchisor, and the most recent principal business address of the predecessor(s), if any, of the

D. The business form of the franchisor whether corporate, partnership or otherwise.

Instructions: (2) State the state of incorporation, organization of partnership or other business organization.
(1) State that the franchisor is a corporation, general partnership, limited partnership, proprietorship or other form of business organization, as applicable.

Sample Disclosures, I-A through I-D

The Franchisor: XYZ, Inc. ("Franchisor") is a Minnesota Corporation, incorporated September 3, 1963, doing business under the name ABX Muffler Shops and maintains its principal business address at 111 First Street, Jackson, Minnesota 55555.

Predecessors: Franchisor was originally incorporated under the laws of the State of Minnesota on August 2, 1960, under the name 321, Inc. with a principal business address at 777 Seventh Street, Adams, Minnesota 54444, and did business under the name ABX Muffler Shops. 321, Inc. was 100% owned by John P. Jones of Adams, Minnesota. On September 5, 1966, XYZ, Inc. purchased from Jones his 100% interest in 321, Inc. and 321, Inc. was merged into XYZ, Inc. on the same date.

E. A description of the franchisor's business and franchises to be offered in this state.

Instructions:

(1) This item should be slightly more detailed than its counterpart on the cover page and should disclose the following about the franchisor's business.

(a) That the franchisor offers and sells or grants franchises;

(b) That the franchisor operates businesses of the type being franchised;

(c) Other business activities in which the franchisor is engaged.

(2) This item should disclose the following about the franchises to be offered:

(a) A general description of the business to [be] conducted by the franchisee.

(b) The market for the goods and/or services to be sold by the franchisee. (e.g., Is the market developed or developing? Will the goods be sold primarily to a certain group or submarket, such as teenagers, business people, students, etc.?)

(c) A general description of the businesses with which the franchisee will have to compete. For example, if the franchisee will be in the dry cleaning business, the franchisor should disclose that the franchisee will have to compete with national and local businesses offering the same services and with self-service dry cleaning establishments. If the franchised business will be located in a regional shopping mall, the franchisor should disclose that the franchisee typically will have to compete with other businesses offering competitive goods or services within the same mall.

Sample Disclosure, I-E

XYZ's Business: XYZ is a franchising company which sells franchises for the operation of retail establishments known as ABX Muffler Shops. XYZ operates one ABX Muffler Shop. XYZ also sells pipebending machines and supplies mufflers to others than those purchasing the ABX Muffler Shop franchise. Over the past three years the separate sale of pipebending machines and mufflers accounted for approximately 30% of XYZ's total sales and approximately 10% of XYZ's gross profit.

The ABX Muffler Shop Franchise: The ABX Muffler Shop is a retail establishment devoted primarily to the sale and installation of mufflers, known as ABX mufflers and exhaust pipes. The mufflers and exhaust pipes carry a lifetime guarantee from XYZ and XYZ guarantees that the ABX muffler or exhaust pipe will be replaced in the event the muffler or exhaust pipe wears out during the period of time the owner who purchased the muffler and/or exhaust system owns the vehicle upon which the muffler or exhaust pipe is installed.

The ABX Muffler Shop is often operated in conjunction with the franchisee's service station, tire center, auto dealership or other business related to the sale or service of motor vehicles.

The service and products of the ABX Muffler Shop are used primarily by the general public for the repair of automobile exhaust systems.

The ABX Muffler Shop franchisee will have to compete with other businesses performing similar services including about 24 franchise programs similar to ABX Muffler Shops, service departments of national and regional department stores, service stations, motor vehicle dealerships and automobile tire and repair centers.

F. The prior business experience of the franchisor and any predecessors thereto including:

1. The length of time the franchisor has conducted a business of the type to be operated by the franchisee;

2. The length of time each predecessor conducted a business of the type to be operated by the franchisee;

3. The length of time the franchisor has offered franchises for such business;

4. The length of time each predecessor offered franchises for such business;

5. Whether the franchisor has offered franchises in other lines of business, including:

a. A description of such other lines of business;

b. The number of franchises sold in each other line of business;

c. The length of time the franchisor has offered each such franchise; and

6. Whether each predecessor offered franchises in other lines of business, including:

a. A description of such other lines of business;

b. The number of franchises sold in each other line of business; and

c. The length of time each predecessor offered each such franchise.

Instructions:

(1) The disclosure regarding predecessors is limited to that period of time prior to the acquisition by franchisor of the major portion of the predecessor's assets or, as the case may be, the acquisition by franchisor of the major portion of its assets from the predecessor. Thus, in view of the overall 15 year disclosure limitation, if franchisor acquired the major portion of its assets from

predecessor 8 years ago, the disclosure required regarding such predecessor would cover only the 7 year period preceding the date of acquisition.

(2) Express lengths of time by beginning and ending dates. Express lengths of time for current activities as beginning date to present. Items F. 1., 3. and 5. should be answered together, as should Items F.2., 4. and 6.

Sample Disclosure, I-F

Prior Business Experience: XYZ, Inc. has operated an ABX Muffler Shop since October 1, 1964. This shop is located at XYZ's headquarters at 111 First Street, Jackson, Minnesota, and is substantially similar to the ABX Muffler Shop franchises currently being offered by XYZ, Inc. XYZ, Inc. has offered ABX Muffler Shop franchises since January 2, 1965.

From August 1, 1968, to approximately December 4, 1973, XYZ, Inc. offered franchises for Repair-All Transmission Shops. Repair-All Transmission Shop franchisees were granted the right to operate Repair-All Transmission Shops for the repair and replacement of motor vehicle transmissions according to a marketing system substantially similar to ABX Muffler Shops. XYZ sold forty (40) such franchises, primarily in the states of Minnesota, Michigan, Wisconsin, and Illinois before selling on December 4, 1973, all rights in the trademark and trade name Repair-All Transmission Shops to CTF, Inc. In connection with this sale XYZ agreed not to engage in the transmission repair business for twenty (20) years from the date of the sale.

(The disclosure for each predecessor should follow substantially the same form as set forth above.)

IDENTITY AND BUSINESS EXPERIENCE OF PERSONS AFFILIATED WITH THE FRANCHISOR; FRANCHISE BROKERS (Item II). Requirement (Item 2): List by name and position held the directors, trustees and/or general partners, as the case may be, the principal officers (including the chief executive and chief operating officer, financial, franchise marketing, training and service officers) and other executives or subfranchisors who will have management responsibility in connection with the operation of the franchisor's business relating to the franchises offered by this offering circular and all franchise brokers. With regard to each person listed, state his principal occupations and employers during the past five years.

Instructions:

(1) State the names and the positions or titles of all directors, trustees and/or general partners of franchisor, as applicable.

(2) State the names and the positions or titles of the principal officers of the franchisor including, as applicable, chief executive, chief operating, financial, franchise marketing, franchise training and franchise service officers.

(3) State the names and the positions or titles of other executives of the franchisor and/or subfranchisors who will have management responsibility in connection with the marketing and servicing of franchises.

(4) State the name of any franchise brokers (refer to the definition of "franchise broker" in the Instructions at page [8453] *supra*).

(5) Regarding each person identified above, disclose such person's principal occupations, title and employers during the five years preceding the date of this offering circular. Where the five year period falls in the middle of present or prior employment, also state when such present or prior employment began.

(6) The addresses, telephone numbers, social security numbers and birth dates concerning such affiliated persons should *not* be given in this disclosure item.

(7) Sample disclosures follow. The same format and chronological order should be followed throughout this disclosure item.

Sample Disclosure, II

Business Experience of Persons Affiliated with the Franchisor; Franchise Brokers:

John J. Jones,
Director and President

From June 1968 to April 1973, Mr. Jones was Vice-President of Atlas, Inc., a Houston, Texas, based manufacturer of motor vehicle wheels. He joined XYZ, Inc. in April, 1973, as a Director and Vice-President and in June, 1975, was named President of XYZ.

or

1. John J. Jones
2. (Other affiliated persons and franchise brokers)

Director and President (See Note A)

(Positions)

Notes

A. Mr. Jones has been President of XYZ since June 1975. From April 1973, to June 1975, he was a Director and Vice-President of XYZ, Inc. He came to XYZ from Atlas, Inc., a Houston, Texas, based manufacturer of motor vehicle wheels, a company that he joined as a Vice-President in June, 1968, and left in April, 1973, to join XYZ.

B. (Biographies of the other affiliated persons and franchise brokers)

LITIGATION

(ITEM III)

General Instructions:

(1) The word "criminal" appearing in Item 3.A. should be deleted in any offering circular filed in the State of California. California will not accept for filing an offering circular containing any reference to any pending criminal action.

(2) Items 3.A. and 3.B. of the Requirements pertain to administrative, criminal and civil actions alleging or involving violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. Administrative, criminal or civil actions not alleging or involving such violations need not be disclosed. Similarly, Item 3.C. of the Requirements pertains to currently effective injunctive or restrictive orders or decrees relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law. Injunctions or decrees not relating to such laws need not be disclosed.

(3) An action, complaint or judgment is material if there is a substantial likelihood that:

(a) A reasonable prospective franchisee would consider it important in the making of a decision relating to the named franchised business; or

(b) It would have or has had any significant financial impact on the franchisor. An action, complaint or judgment shall be presumed to have a significant financial impact if the claim for damages or judgment, exclusive of interest and costs, equals 15% or more of the current assets of the franchisor and its subsidiaries on a consolidated basis. Further, if any proceeding presents or presented in a large degree the same issues as other proceedings pending or known to be contemplated, the amount involved

in such other proceedings shall be included in computing such percentage.

(4) In determining whether a civil action, complaint or judgment is material, factors such as the ultimate disposition of the action and the grounds for such disposition may be considered, e.g., dismissal with prejudice for failure to state a claim upon which relief can be granted, summary judgment for the defendant or a similar disposition are indicative of the nonmateriality of the complaint or action. A judgment or conviction that is reversed on appeal need not be disclosed except as a pending matter, if such is the case.

(5) Whether a significant number of civil actions (irrespective of materiality of the individual actions) are pending against a franchisor should be determined in the context of the number of franchisees and company owned outlets of the franchisor, the size, scope and nature of its franchising and other business operations.

(6) All references in Items 3. A. and 3. B. of the Requirements to civil actions and to complaints include actions and complaints in arbitration. The reference in Item 3. C. of the Requirements to injunctive or restrictive orders or decrees includes any similar orders or decrees issued in an arbitration proceeding, whether or not judicially enforced.

(7) With respect to any litigation required to be disclosed pursuant to Item 3 of the Requirements, the franchisor may disclose by what procedure claims were brought against the franchisor or any person identified in Item 2 of the offering circular (e.g., complaint, counterclaim, crossclaim, third party complaint, etc.) and any claims asserted by or judgments awarded to the franchisor or any such person in reaching disposition of any proceeding.

Requirement (Item 3): State whether the franchisor, any person or franchise broker identified in 2, above:

A. Has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against him alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person, the court or other forum, nature, and current status of any such pending action. Franchisor may include an opinion of counsel as to any such action, but only if a consent to use of such opinion is included as part of this offering circular.

Instructions (if there is any such pending litigation):

(1) State the title of each action and the name of any person(s) identified in the disclosure under Item 2 against whom such action is pending.

(2) Identify the court or other forum in which each action is pending and disclose the docket number, case number or similar designation of such action.

(3) Describe the general nature of each of the claims asserted, e.g., improper termination of franchise, illegal tying arrangement under antitrust laws, etc.

(4) Describe the relationship between the person(s) against whom the action is pending and person(s) maintaining the action, e.g., franchisee, competitor, former franchisee, class action on behalf of present and/or former franchisees, etc.

(5) Describe the relief sought, e.g., amount of compensatory, punitive and/or treble damages; modification of franchise, lease or other agreement(s); injunctive or other relief.

(6) Describe the status of the action, e.g., pretrial stage, on appeal, etc.

(7) The inclusion of a copy of an opinion of counsel as to the merits of claims asserted and/or any defenses thereto is optional. If included, the opinion should be in the form of a letter or memorandum from such counsel to either the franchisor or the person against whom such action is pending and must include a statement by such counsel consenting to publication of such opinion in the offering circular. If desired, the opinion may be summarized as part of the description of the litigation in the text of Item 3 of the offering circular, provided that a copy of such opinion must also be included in or attached to the offering circular.

(8) Following the disclosure of the above items, a statement should be made to the effect that neither the franchisor nor any person identified in Item 2 of the offering circular has any other action of the type described in Item 3. A. of the Requirements pending against them.

Sample Disclosure, III-A

Litigation: XYZ, Inc. has been named as a defendant in a lawsuit pending in the United States District Court for the District of Minnesota, Fourth Division, being Civil Action No. 75 C. 135, entitled, *Samuel S. Smith v. XYZ, Inc.* Plaintiff Smith, a franchisee of ABX Muffler Shops, alleges that XYZ engaged in various illegal tying arrangements mainly in violation of Section 1 of the Sherman Act. Plaintiff Smith seeks injunctive relief plus treble damages, which if awarded in full would amount to Two Hundred Ten Thousand Dollars (\$210,000.00). XYZ, Inc., by its Counsel, Doe and Roe of St. Paul, Minnesota, has denied the allegations and is presently defending the action. Trial has been set for December 15, 1975.

Neither XYZ, Inc. nor any person identified in Item 2 above has any other administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Instructions (in the absence of any such pending litigation):

A statement should be made to the effect that neither the franchisor nor any person identified in

Item 2 of the offering circular has any action of the type described in Item 3. A. of the Requirements pending against them.

Sample Disclosure, III-A

Litigation: Neither XYZ, Inc. nor any person identified in Item 2 above has any administrative, criminal or material civil action (or a significant number of civil actions irrespective of materiality) pending against them alleging a violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

B. Has during the 10 year period immediately preceding the date of the offering circular been convicted of a felony or pleaded *nolo contendere* to a felony charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceedings if such felony, civil action, complaint or other legal proceeding involved violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations. If so, set forth the name of the person convicted, the court and date of conviction or person against whom judgment was entered, penalty or damages assessed in connection therewith and/or terms of settlement.

Instructions (if there has been any such felony conviction, plea of *nolo contendere* to a felony charge, final judgment in a civil action, material complaint or other legal proceeding):

(1) Concerning felony convictions and pleas of *nolo contendere* to felony charges within the 10 year period immediately preceding the date of the offering circular, disclose the following:

(a) Name the person(s) convicted or who pleaded *nolo contendere*;

(b) Identify the court, docket number, case number or similar designation and state the date of conviction;

(c) State the crime(s) or violation(s) of which such person(s) was convicted;

(d) Disclose the sentence or penalty imposed.

Sample Disclosure, III-B

Litigation—Criminal: On June 3, 1975, XYZ, Inc. pled no contest in Dane County, Wisconsin Circuit Court, Branch II to one count of offering an unregistered franchise. The case is entitled, *State of Wisconsin v. XYZ, Inc.* (Dane County 75 Cr. 1413). In connection with this plea XYZ, Inc. was fined Five Thousand Dollars (\$5,000.00).

(2) Concerning material final judgments in civil actions (or a significant number of final judgments which, in the aggregate, are material), disclose the following:

(a) Name the person(s) against whom judgment was entered;

(b) Identify the court or other forum in which judgment was entered and disclose the docket number, case number or similar designation of each action and the date of entry of judgment;

(c) Describe the relationship between the person(s) against whom judgment was entered, and

the person(s) to whom judgment was awarded, e.g., franchisee, former franchisee, class action on behalf of present and/or former franchisees, etc.;

(d) Describe the general nature of each of the claims with respect to which judgment was entered, e.g., improper termination of franchise, illegal tying arrangement under antitrust laws, etc.;

(e) Disclose the terms of judgment, e.g., damages assessed, contract provisions declared invalid or unenforceable, injunctions entered or other relief granted.

Sample Disclosure, III-B

Litigation—Civil: On February 3, 1975, a final judgment was entered in Dane County, Wisconsin Circuit Court, Branch III, in a civil action entitled *Robert R. Roe v. XYZ, Inc.* (Dane County 74 C. 1312). This action was brought by Roe to rescind his franchise agreement with XYZ, Inc. and for compensatory damages of \$20,000 and punitive damages of \$100,000 on the grounds that (1) the offer of the franchise was not registered under the Wisconsin Franchise Investment Law, (2) he was not provided the statutorily required advance disclosure and (3) the income representations used as part of the franchise offering were false and misleading. The jury found in favor of Roe as to all allegations. Roe was awarded \$15,000 compensatory damages and \$10,000 punitive damages and his franchise agreement was rescinded.

(3) Concerning material complaints or other legal proceedings which have been settled, dismissed or disposed of other than by final judgment, disclose the following:

(a) Name the person(s) against whom such complaint was made or such legal proceeding was conducted;

(b) Identify the court or other forum in which such complaint was filed or such legal proceeding was conducted and disclose the docket number, case number or similar designation of each such action or proceeding;

(c) Describe the relationship between the person(s) against whom the claims were made and

the person(s) making the claims, e.g., franchisee, competitor, former franchisee, class action on behalf of present and/or former franchisees;

(d) Describe the nature of each of the claims asserted;

(e) Describe the disposition of the action in which the complaint was filed or the disposition of the legal proceeding and/or the terms of settlement thereof:

(i) Where the terms of settlement were approved by a court and are a matter of public record, the precise terms of settlement, including amount of damages awarded, should be disclosed.

Sample Disclosure, III-B

Litigation—Civil Dismissal: On February 5, 1975, a complaint was filed in Dane County, Wisconsin Circuit Court Branch III by Robert R. Roe, an ABX Muffler Shop Franchisee, seeking to rescind his franchise agreement with XYZ, Inc. and asking compensatory damages of \$20,000 and punitive damages of \$100,000. The requested relief in this case, *Robert R. Roe v. XYZ, Inc.* (Dane County 75 C. 112), was based on allegations that XYZ (1) had failed to register the offer of its franchises with the Office of the Commissioner of Securities, (2) failed to provide Roe with the statutorily required prior disclosure and (3) used false and misleading income representations in connection with the offer and sale of the franchise. On August 6, 1975, a stipulated settlement between Roe and XYZ was filed with the court wherein Roe requested the court to dismiss the action and waived any additional causes of action against XYZ, and XYZ rescinded Roe's franchise and paid to Roe \$40,000 in settlement of all claims.

(ii) Where the settlement did not become a matter of public record, the general terms of settlement, as opposed to the precise terms of settlement, should be disclosed. In particular, the

exact amount paid in settlement need not be disclosed unless currently material, although the disclosure should disclose, if such is the case, that a sum of money was paid to the plaintiff.

Sample Disclosure, III-B

Litigation—Civil Settlement: On March 1, 1975, a complaint was filed in Dane County, Wisconsin Circuit Court, by Donald R. Doe, an XYZ, Inc., franchisee seeking to enjoin, under the *Wisconsin Fair Dealership Law*, his termination by XYZ as an ABX Muffler Shop franchisee. The case, *Doe v. XYZ, Inc.* (Dane County 75 C. 988) was dismissed by the Court on April 2, 1975, at the request of Doe. Pursuant to an agreement between Doe and XYZ, which agreement was not filed with the Court, XYZ repurchased Doe's ABX Muffler Shop franchise and agreed not to enforce any noncompete clauses. Doe agreed to request the court to dismiss his action and Doe paid all the court costs in connection therewith.

or

On March 1, 1975, a complaint was filed in Dane County, Wisconsin Circuit Court, by Donald R. Doe, an XYZ, Inc., franchisee seeking to enjoin, under the *Wisconsin Fair Dealership Law*, his termination by XYZ as an ABX Muffler Shop franchisee. The case, *Doe v. XYZ, Inc.* (Dane County 75 C. 988) was dismissed by the Court April 2, 1975, at the request of Doe. Pursuant to an agreement between Doe and XYZ, which agreement was not filed with the Court, XYZ repurchased Doe's ABX Muffler Shop franchise for \$90,000 and agreed not to enforce any noncompete clauses. Doe agreed to request the court to dismiss his action and Doe paid all the court costs in connection therewith.

(4) Following disclosure of the above items, a statement should be made to the effect that neither the franchisor nor any other person identified in Item 2 of the offering circular has been the subject

of any other conviction, judgment, complaint or proceeding of the type described in Item 3. B. of the Requirements.

Sample Disclosure, III-B

Litigation: Neither XYZ, Inc. nor any person identified in Item 2 above has during the 10 year period immediately preceding the date of this offering circular been convicted of a felony or pleaded *nolo contendere* to any other felony charge or been held liable in any other civil action by final judgment or been the subject of any other material complaint or other legal proceeding where such felony, civil action, complaint or other legal proceeding involved violation of any franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

Instruction (in absence of any such felony conviction, plea of *nolo contendere* to felony charge, final judgment in civil action, material complaint or other legal proceeding):

identified in Item 2 of the offering circular has been the subject of any conviction, judgment, complaint or proceeding of the type described in Item 3. B. of the Requirements.

A statement should be made to the effect that neither the franchisor nor any other person

Sample Disclosure, III-B

Litigation: Neither XYZ, Inc. nor any person identified in Item 2 above has during the 10 year period immediately preceding the date of this offering circular been convicted of a felony or pleaded *nolo contendere* to a felony charge or been held liable in a civil action by final judgment or been the subject of a material complaint or other legal proceeding where such felony, civil action, complaint or other legal proceeding involved violation of any

franchise law, fraud, embezzlement, fraudulent conversion, restraint of trade, unfair or deceptive practices, misappropriation of property or comparable allegations.

C. Is subject to any currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency. If so, set forth the name of the person so subject, the public agency and court, a summary of the allegations or facts found by the agency or court and the date, nature, terms and conditions of the order or decree.

Instructions (if any such injunctive or restrictive order or decree is currently effective):

(1) An injunctive or restrictive order or decree is "currently effective" unless the order or decree has been vacated or otherwise rescinded subsequent to the time of issuance by the issuing public agency or court or, through registration of the offer of franchises the named party has complied with the order, or the order has otherwise expired by its terms.

(2) Name any person(s) identified in the disclosure under Item 2 subject to such injunctive or restrictive order or decree.

(3) Identify the public agency which brought the action or issued the order or decree and the law or regulations on which such action, order or decree is based.

(4) Identify the court or other forum in which the action or proceeding is pending or in which the

adjudication was made, and disclose the docket number, case number or similar designation of the action or proceeding.

(5) State whether the action or proceeding is pending or concluded, and if pending, describe the status of such action or proceeding, i.e., pre-trial, on administrative or judicial appeal, etc.

(6) Summarize the allegations, facts and/or conclusions of law found or made by such public agency, court or other forum.

(7) Following disclosure of the above items, a statement should be made to the effect that neither the franchisor nor any other person identified in Item 2 of the offering circular is subject to any other currently effective injunctive or restrictive order or decree of the type described in Item 3. C. of the Requirements.

Sample Disclosure, III-C

Litigation—Civil: On April 4, 1975, a complaint was filed in Dane County, Wisconsin Circuit Court, Branch III, by the Wisconsin Department of Justice on behalf of the State of Wisconsin against XYZ, Inc., seeking to enjoin XYZ, Inc. from offering unregistered franchises and in connection therewith using false income representations. The case, *State of Wisconsin v. XYZ, Inc.* (Dane County, 75 C. 1122), was tried to the court on December 3, 1975, after which the court found that XYZ had, in fact, offered franchises in Wisconsin, that the offers were not registered and that in connection with such offers, XYZ was using false and misleading income representations. The court granted the injunction on December 3, 1975.

Neither XYZ, Inc. nor any person identified in Item 2 above is subject to any other currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency.

Instructions (in absence of injunctive or restrictive order or decree):

A statement should be made to the effect that neither the franchisor nor any person identified in

Item 2 of the offering circular is subject to any currently effective injunctive or restrictive order or decree of the type described in Item 3. C. of the Requirements.

Sample Disclosure, III-C

Litigation: Neither XYZ, Inc. nor any person identified in Item 2 above is subject to any currently effective injunctive or restrictive order or decree relating to the franchise or under any federal, state or Canadian franchise, securities, antitrust, trade regulation or trade practice law as a result of a concluded or pending action or proceeding brought by a public agency.

BANKRUPTCY (Item IV). Requirement (Item 4): State whether the franchisor or any predecessor, officer or general partner of the franchisor has during the 15 year period immediately preceding the date of the offering circular been adjudged bankrupt or reorganized due to insolvency or was a principal officer of any company or general partner in any partnership that was adjudged bankrupt or reorganized due to insolvency during or within 1 year after the period that such officer or general partner of the franchisor held such position in such company or partnership, or whether any such bankruptcy or reorganization proceeding has been commenced. If so, set forth the name of the person or company adjudged bankrupt or reorganized and the date thereof and any other material facts or circumstances.

Instructions (if any such bankruptcy or reorganization has occurred):

If during the 15 year period immediately preceding the date of the offering circular the franchisor or any predecessor, current officer or general partner of the franchisor (1) was adjudged bankrupt or reorganized due to insolvency or (2) was a principal officer of a company or a general partner of a partnership at a time when or within one year of the time that such company or partnership was adjudged bankrupt or reorganized due to insolvency disclose the following:

(a) Name the person, company or partnership adjudged bankrupt or reorganized due to insolvency. If other than the franchisor, identify such person or company as either a predecessor, current officer or general partner of the franchisor, if applicable. If such person or company is neither the franchisor nor a predecessor, current officer or general partner of the franchisor, name the person or company that was a principal officer or general partner of the company or partnership adjudged bankrupt or reorganized due to insolvency;

(b) State that such person, company or partnership was either adjudged bankrupt or was reorganized due to insolvency;

(c) Identify the court in which the bankruptcy or reorganization proceedings occurred and disclose the docket number, case number or similar designation of the proceeding;

(d) State the date of adjudication of bankruptcy or confirmation of a plan or reorganization and the date of discharge;

(e) State other material facts or circumstances, if any;

(f) Following disclosure of the above items, a statement should be made to the effect that, except as stated above, during the 15 year period immediately preceding the date of the offering circular neither the franchisor nor any predecessor, current officer or general partner of the franchisor has otherwise been adjudged bankrupt or reorganized due to insolvency or been a principal officer of a company or general partner of a partnership at or within one year of the time that such company or partnership was adjudged bankrupt or reorganized due to insolvency or is otherwise subject to any such pending bankruptcy or reorganization proceeding.

Sample Disclosure, IV

Bankruptcy: On March 2, 1974, XYZ, Inc. filed a petition for an arrangement under Chapter XI of the Federal Bankruptcy Act and was ordered by the Bankruptcy Court (United States District Court for the District of Minnesota, Case No. B74-301) to continue operations as a debtor-in-possession. The plan of arrangement was approved by the creditors and under Chapter XI of the Federal Bankruptcy Act, was confirmed by order of

the District Court on October 2, 1974. At that time control of the assets and of the business returned to the Company.

None of the officers or general partners named under the caption "Persons Affiliated with the Franchisor" has been adjudged personally bankrupt during the past fifteen years. Roger R. Rowe, however, was President and Director of Acme, Inc., a Houston, Texas, based manufacturer of exhaust systems, which corporation was adjudged bankrupt on July 14, 1973, in the United States District Court for the Southern District of Texas, Houston Division, Case No. B. 73-734.

During the 15 year period immediately preceding the date of the offering circular neither the franchisor nor any predecessor, current officer or general partner of the franchisor has otherwise been adjudged bankrupt or reorganized due to insolvency or been a principal officer of a company or general partner of a partnership at or within one year of the time that such company or partnership was adjudged bankrupt or reorganized due to insolvency or is otherwise subject to any such pending bankruptcy or reorganization proceeding.

Instruction (in absence of bankruptcy or reorganization):

A statement should be made to the effect that during the 15 year period immediately preceding the date of the offering circular neither the franchisor nor any predecessor, current officer or general partner of the franchisor has been adjudged

bankrupt or reorganized due to insolvency or been a principal officer of a company or a general partner of a partnership at or within one year of the time that such company or partnership was adjudged bankrupt or reorganized due to insolvency or is subject to any such pending bankruptcy or reorganization proceeding.

Sample Disclosure, IV

Bankruptcy: During the 15 year period immediately preceding the date of the offering circular neither the franchisor nor any predecessor, current officer or general partner of the franchisor has been adjudged bankrupt or reorganized due to insolvency or been a principal officer of a company or a general partner of a partnership at or within one year of the time that such company or partnership was adjudged bankrupt or reorganized due to insolvency or is subject to any such pending bankruptcy or reorganization proceeding.

FRANCHISEE'S INITIAL FRANCHISE FEE OR OTHER INITIAL PAYMENT (Item V). Requirement (Item 5): Describe in detail the following:

A. The initial franchise fee or other initial payment for the franchise, if any, charged upon the signing of the franchise agreement, and whether payable in lump sum or installments. Set forth the manner in which the Franchisor will use or apply such franchise fee or initial payment. State whether such fee or payment is refundable, and if so, under what conditions.

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

Instructions:

(1) Describe any initial franchise fees or other initial payment(s) and whether any such fee(s) is charged to the franchisee upon signing an application for a franchise, any preliminary agreement (such as an option) and/or the franchise agreement.

(2) State whether the amount of each such fee or payment is identical or uniform as to each franchisee and, if so, the amount of each such fee or payment.

(3) If any such fee or payment is not identical or uniform as to each franchisee, disclose the range of amounts for such fee or payment and the method or formula by which such fee or payment is determined. This disclosure deals only with offerings currently contemplated. It is unnecessary to state, if such is the case, that franchisor has previously offered or sold franchises at a higher or lower franchise fee.

(4) State the terms of payment, i.e., whether payable in lump sum or installments, the effective annual percentage interest rate charged on any deferred installments and the time or times when payment is due.

(5) Set forth the manner in which the franchisor will use or apply such fee or payment. As an example, this disclosure may be answered by stating that such fee(s) or payment(s) is applied to defray the franchisor's costs of: obtaining and screening franchisees; screening, selecting and negotiating for sites for franchised businesses; site development; providing training and supervision to franchisees; or is used to increase working capital funds of the franchisor. If the fee goes into a general fund it is acceptable to state that the fee goes into such fund.

(6) State whether any such fee or payment is refundable, in whole or in part, and if so, under what circumstances.

Sample Disclosure, V

Franchisee's Initial Franchise Fee and/or Other Initial Payment: An initial franchise fee of \$10,000 is due and payable by the franchisee as follows:

1. \$5,000 upon signing of the Franchise Agreement.
2. \$5,000 upon delivery of the equipment listed at paragraph XXI of the Franchise Agreement. The equipment is usually delivered 45 days prior to the opening of the ABX Muffler Shop.

The \$10,000 franchise fee is uniform in all cases.

Proceeds from the initial franchise fee are, in part, profit to the Franchisor and are, in part, used to pay some of the following expenses and costs of the Franchisor: (1) assistance and supervision provided by XYZ for the opening of the Franchisee's ABX Muffler Shop; (2) supervision and assistance for the Franchisee's ABX Muffler Shop; (3) legal fees, accounting fees, and compliance with federal, state and other laws; (4) employee salaries and fringe benefits; (5) enforcement and protection of all XYZ trademarks, trade names and commercial symbols; (6) research and development relating to products and methods used by ABX Muffler Shops; (7) selling, general and administration expenses; and (8) equipment plans and specifications.

The initial franchise fee will be refunded if for any reason the Franchisee has not opened his ABX Muffler Shop within one (1) year after the date of the Franchise Agreement and the Franchisee elects to terminate the Franchise Agreement pursuant to Paragraph XXXI thereof. The initial franchise fee is not refundable in whole or in part under any other circumstances.



OTHER FEES (Item VI). *Requirement (Item 6):* Describe in detail other recurring or isolated fees or payments, including but not limited to royalties, service fees, training fees, lease payments and advertising fees and charges that the Franchisee is required to pay to the franchisor or persons affiliated with the franchisor or which the Franchisor or such affiliated person imposes or collects in whole or in part

on behalf of a third party. Include, if applicable, the formula used to compute such other fees and payments. State whether any such fee or payment is refundable, and if so, under what conditions.

Instructions:

(1) Describe in detail other recurring or isolated fees or payments that the franchisee is required to pay to the franchisor or persons affiliated with the franchisor or which the franchisor or such affiliated person imposes or collects on behalf of a third party, such as:

(a) Periodic royalties or service fees and how such royalties or fees are calculated, e.g., based on a percentage of the franchisee's gross sales or revenues or on the number of units sold by the franchisee;

(b) Fees for negotiation of a lease for the site of franchisee's business;

(c) Fees or payments for the construction, remodeling, decorating or equipping of the premises of the franchisee's business;

(d) Fees for training of the franchisee or his employees;

(e) Rent and other lease payments for the premises and/or equipment and fixtures of the franchisee's business leased or subleased from the franchisor or any person affiliated with the franchisor;

(f) Fees or charges to be expended solely for advertising and promotion of the franchisee's business;

(g) Fees or charges to be expended for advertising and promotion of the franchisee's business or the product or service of the franchisee's business together or on a cooperative basis with other franchisees;

(h) Fees for operating assistance or supervision furnished to the franchisee;

(i) Fees for inspections or audits of the franchisee;

(j) Payments for insurance premiums;

(k) Payments for goods or supplies if and to the extent that such payments exceed bona fide wholesale prices for such goods or supplies or otherwise constitute a franchisee fee under the law of the applicable state (see disclosure required under Items 8 and 9);

(l) Fees or payments for bookkeeping, accounting, or inventory services;

(m) Fees or payments in conjunction with the assignment of the franchise, the franchise agreement or the ownership of the franchise; and

(n) Any other fees or payments.

(2) With respect to each such fee or payment, state that such fee or payment is payable to either the franchisor or a person affiliated with the franchisor, as applicable.

(3) State whether any such fee or payment is imposed or collected in whole or in part on behalf of a third party.

(4) State the date (such as the 10th, 15th, or 20th of each month) upon which any recurring payment is to be made.

(5) State the formula used to compute such fee or payment, if applicable.

(6) State whether any such fee or payment is refundable, in whole or in part, and if so, under what conditions or circumstances.

Sample Disclosure, VI

Royalty: The Franchisee pays to XYZ a royalty of 4 percent on total gross sales. The royalty is payable on or before the 10th day of each month for the preceding calendar month. Gross sales include all cash and charge sales of every kind and nature made at or from franchisee's ABX Muffler Shop. The royalty is uniform as to all persons currently acquiring a franchise; non-refundable; and not collected on behalf of nor paid to any third party.

Advertising Fee: The Franchisee also pays to XYZ an advertising fee of 2 percent on total gross sales. This advertising fee also is payable on or before the 10th day of each month for the preceding calendar month. Gross sales include all cash and charge sales of every kind and nature made at or from franchisee's ABX Muffler Shop. The advertising fee is uniform as to all persons currently acquiring a franchise and non-refundable. The fee is used

to defray the cost of national and local advertising and is collected on behalf of and subsequently paid to Adco, Inc., a wholly owned subsidiary of XYZ, Inc. Adco, Inc., an advertising agency, may do the advertising itself or purchase the advertising and promotional materials from non-affiliated third parties.

ABX Muffler Shop Sign: The Franchisee leases the standard ABX Muffler Shop sign from Signco, Inc., a wholly owned subsidiary of XYZ, Inc., at a rental of \$150.00 per month plus sales tax, if applicable. The Franchisee also pays the cost for (1) complying with applicable law and obtaining all permits and licenses; (2) all installation, repairs and maintenance; (3) all real estate and other taxes; and (4) insurance coverage, relative to the sign.

Training Fee: The Franchisee is required to pay XYZ a fee for Franchisee's initial training and for services related to site selection and lease negotiation and for services related to the ABX Muffler Shops grand opening programs in the amount of five thousand dollars (\$5,000.00) payable sixty (60) days before the scheduled opening of the Center.

The training fee is uniform as to all persons presently acquiring a franchise; refundable only under the circumstances described in Item XVII below; and not collected on behalf of nor paid to any third party.

Audits: The Franchisee is required by the Franchise Agreement to periodically submit to XYZ certain sales reports, financial statements and tax returns. XYZ will have the right to audit or cause to be audited such sales reports, financial statements and tax returns. In the event any such audit discloses an understatement of the gross sales of the Franchisee's ABX Muffler Shop for any period or periods, the Franchisee is obligated to pay to XYZ, within fifteen (15) days after receipt of the audit report, the royalty of four percent (4%) and the advertising fee of two percent (2%) of the amount of such understatement plus interest of 5½ percent (5½%) from the date such payments were originally due.

Such audits will be conducted at the expense of XYZ, provided that if an audit discloses an understatement of two percent (2%) or more of the gross sales of the Franchisee for any period or periods, the Franchisee is required to reimburse XYZ for the cost of such audit including, without limitation, the charges of any independent accountant and the travel expenses, room and board and compensation of XYZ's employees.

(Other disclosure under Item 6 also should be in a format similar to the above.)

FRANCHISEE'S INITIAL INVESTMENT (Item VII). *Requirement (Item 7):* Describe in detail the following expenditures (which may be estimated or described by a low-high range, if not known exactly), stating for each to whom the payments are to be made, when such payments are to be made, how such payments are to be determined, whether any payment is refundable, and if so, under what conditions and, if any part of the franchisee's initial investment in the franchise will or may be financed, an estimate of the loan repayments, including interest:

A. Real property, whether or not financed by contract, installment, purchase or lease. If neither estimable nor describable by a low-high range, describe the variable requirements, such as property, location and building size which make the real property expenditure neither estimable nor describable by a low-high range.

B. Equipment, fixtures, other fixed assets, construction, remodeling, leasehold improvements and decorating costs, whether or not financed by contract, installment purchase, lease or otherwise.

C. Inventory required to commence operation.

D. Security deposits, other prepaid expenses and working capital required to commence operation.

E. Any other payments which the franchisee will be required to make in order to commence operations.

Note: The following statement shall be inserted in the offering circular at this point:
THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE.

Instructions: prior to or in conjunction with the commencement of the franchisee's business.

(1) The disclosure required by Item 7 pertains to the franchisee's initial franchise fee and estimated initial cash investment. This disclosure may be made either as to specific amounts or in a low-high range based on franchisor's current practice or experience if a specific amount is not ascertainable.

(2) With respect to each expenditure, state to whom and when such payments are to be made.

(3) Disclose whether or not each such expenditure is refundable, in whole or in part, and if so, under what conditions or circumstances. Refundable for purposes hereof shall only have reference to payments made by the franchisee to the franchisor or any affiliate thereof or imposed by the franchisor and collected on behalf of a third party.

(4) It is recommended that expenditures be disclosed in tabular form. Footnotes to any such table may be used to disclose other information required to be disclosed by Item 7 of the Requirements with respect to such expenditures or to otherwise elaborate or comment upon the expected total financial obligations incurred in connection with commencing the franchise operation.

(5) The franchisor may wish to include more than one table of expenditures to indicate variations in expenditures required due to variations in site locations or size of the premises of the franchisee's business or to distinguish between the expenditures required if the franchisee purchases the real estate and if the franchisee leases the real estate for the franchised business.

(6) Where the franchisee will lease the premises for his business, it is recommended that the rent and other periodic lease payments be disclosed apart from the other expenditures which will be made

(7) As to real property, it is possible that the amount could not be estimated or described in a low-high range. If so, the property should be described by indicating the approximate size of the property and building involved and the probable location of the building such as shopping center, downtown, suburban, rural or highway.

(8) This disclosure is not limited to payments which the franchisee is required to make. Disclosure should include all payments which the franchisee will make out of necessity considering the business into which he is proposing to enter.

(9) If any part of the franchisee's initial investment will or may be financed by the franchisor or a person affiliated with the franchisor, state the expenditures that may or will be financed, the down-payment required (if any), the estimated effective annual interest rate, or range of interest rates, stated in terms of annual simple interest rate and the estimated loan repayments required, including interest.

(10) If the franchisor or a person affiliated with the franchisor does not offer any financing to franchisees in connection with their initial investment, a statement should be made to that effect and also to the effect that the availability and terms of financing will depend on factors such as the availability of financing generally, the credit worthiness of the franchisee, other security that the franchisee may have, policies of lending institutions concerning the type of business to be operated by the franchisee, etc. The recent representative experience of other franchisees may be disclosed provided that all material facts relevant to financing secured by such franchisees are also disclosed.

Sample Disclosure, VII

FRANCHISEE'S ESTIMATED INITIAL INVESTMENT AND OTHER FINANCIAL OBLIGATIONS

	Amount	Method of Payment	When Due	To Whom Payment Is To Be Made
Initial Franchise Fee	\$10,000	Lump Sum	\$5,000 at signing \$5,000 45 days prior to opening	XYZ, Inc.
Equipment	\$20,000	Lump Sum	Prior to Opening	XYZ, Inc.
Opening Inventory	\$ 3,000	Lump Sum	Prior to Opening	XYZ, Inc.
Initial Advertising Fee	\$ 1,000	Lump Sum	Prior to Opening	Adco, Inc.

Signs	\$ 150	Lump Sum	Monthly	Signco, Inc.
Training	\$ 5,000	Lump Sum	60 days Prior to Opening	XYZ, Inc.
Real Estate and Improvements	(Note 1)	(Note 1)	(Note 1)	(Note 1)
Working Capital	\$ 3,000	As Incurred	As Incurred	Employees
Miscellaneous Costs	\$ 2,000	As Incurred	As Incurred	Suppliers, Utilities and Tradesmen

Notes:

(1) If the franchisee does not own adequate shop space, he will need to lease the land and building for the ABX Muffler Shop. Typical locations for an ABX Muffler Shop are light industrial and commercial areas. The typical ABX Muffler Shop has 5,000—8,000 square feet. Former three or four bay gasoline service stations have been converted with relative ease into ABX Muffler Shops. Rent is estimated to be between \$12,000—\$20,000 per year depending on factors such as size, condition and location of the leased premises. XYZ does not offer, either directly or indirectly, financing to franchisees for any items.

THERE ARE NO OTHER DIRECT OR INDIRECT PAYMENTS IN CONJUNCTION WITH THE PURCHASE OF THE FRANCHISE.

OBLIGATIONS OF FRANCHISEE TO PURCHASE OR LEASE FROM DESIGNATED SOURCES (Item VIII). *Requirement (Item 8):* State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease from the franchisor or his designees, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

General Instructions:

This Item refers to purchases or leases of goods or services which are obligatory on the part of the franchisee or subfranchisor as a condition of obtaining and/or retaining the franchise, either pursuant to the franchise agreement or as a result of any other device or practice. A requirement that the franchisee purchase or lease goods or services meeting specifications or standards prescribed by the franchisor, or from suppliers approved by the franchisor as supplying goods or services which meet its specifications and standards, does not constitute a requirement that the franchisee purchase or lease goods or services from designated suppliers for purposes of this Item. Required information relative to requirements that the franchisee purchase or lease goods or services meeting specifications and standards or from approved suppliers should be disclosed under Item 9 of the Requirements.

The disclosure should indicate and list those items that the franchisee is obligated to purchase from designated sources. The disclosure, however, does not have to indicate the goods in specific detail. It is sufficient that the general category be disclosed.

If the franchisee or subfranchisor is required to purchase or lease any goods or services from the franchisor or its designated suppliers, the franchisor may include in its disclosure the reason for imposing such requirements.

It is not necessary to include certain goods and services that the franchisor provides as part of the franchise and for which no separate charge is made. For example, if business cards, forms, site selection, lease negotiation, site development, training, operating assistance, inspections, bookkeeping, accounting, advertising and/or other goods and services are included as part of the franchise and the franchisee pays a single initial and/or continuing fee or charge for the franchise, it is not necessary to describe these goods and services in this Item. Disclosure relative to such goods and services is required under Item 5 or 6 of the Requirements, as applicable.

Disclosure is required, however, respecting material items of tangible property (e.g., signs, equipment or inventory) or real estate even though included in a single initial and/or continuing fee or charge for the franchise. The fact that a franchise is granted for a specific location need not be disclosed as a required purchase or lease.

Disclosure need not be made under this Item of the obligation of franchisees or subfranchisors to contribute to the cost of national or regional advertising, or to a fund maintained or administered

by the franchisor and/or its franchisees for that purpose, as such disclosure is required under Item 6 of the Requirements.

A. The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased from the franchisor or his designees.

Instructions:

(1) Identify the categories of products and services which the franchisee or subfranchisor is required to purchase or lease from:

- (a) The franchisor; or
- (b) Suppliers designated by the franchisor.

(2) With respect to each such category of product or service, identify whether it must be purchased or leased from:

- (a) The franchisor; or

(b) Its designated supplier.

If such category of product or service is purchased or leased from a designated supplier, state whether such supplier is an affiliate of the franchisor.

(3) If the franchisee or subfranchisor is not obligated to purchase or lease any goods or services from the franchisor or from a supplier designated by the franchisor, the offering circular should include a statement to that effect.

Sample Disclosure, VIII-A

Obligations of Franchisee to Purchase or Lease from Designated Sources:
The goods, services, supplies, fixtures, equipment or inventory listed below must be purchased by the franchisee from XYZ, Inc., or other sources designated or approved by XYZ, Inc.

Currently XYZ, Inc. sells the following items and presently there are no known alternate sources:

1. ABX Super Silent Mufflers.
2. ABX Super Strength Exhaust Pipes.
3. ABX Invoice/Guarantee Forms.

B. Whether, and if so, the precise basis by which the franchisor, its parent or persons affiliated with the franchisor will or may derive income based on or as a result of any such required purchases or leases.

Instructions:

(1) State whether the franchisor or its parent or persons affiliated with the franchisor will or may derive income as a result of any of the purchases or leases described under Item 8.A.

(2) "Income" means revenues, as opposed to gross or net profit or any other concept of profit.

(3) If revenues will or may be derived as a result of such required purchases or leases, describe the exact manner in which such revenues will or may be derived. For example, state that the franchisor (or its parent or persons affiliated with it) will derive revenues from the sale of goods to its franchisees or subfranchisors; or that the franchisor (or its parent or persons affiliated with it) will derive revenues from property leased by the franchisor (or its parent or persons affiliated with it) and subleased to the franchisee at a rental in excess of that paid by the

franchisor (or its parent or persons affiliated with it) to the primary lessor; or that designated suppliers will make payments to the franchisor (or its parent or persons affiliated with it) based on sales or rentals to its franchisees. It is not necessary to disclose estimated amounts of such sales revenues or rental revenues or revenues derived from designated suppliers.

(4) If designated suppliers sell goods or services to both businesses owned by the franchisor (or its parent or persons affiliated with it) and franchisees, the prices paid by the businesses owned by the franchisor (or its parent or persons affiliated with it) may reflect quantity or other discounts based on purchases by both the businesses owned by the franchisor (or its parent or persons affiliated with it) and franchisees.

Such favorable prices need not be disclosed as income derived by the franchisor (or its parent or

persons affiliated with the franchisor) unless the businesses owned by the franchisor (or its parent or persons affiliated with it) may purchase such goods or services at lower prices than those available to franchisees for similar purchases.

(5) If neither the franchisor nor its parent or persons affiliated with the franchisor will or may

derive revenue as a result of required purchases or leases by franchisees or subfranchisors from the franchisor (or its parent or persons affiliated with it) or its designated suppliers, the offering circular should include a statement to that effect.

Sample Disclosure, VIII-B

XYZ, Inc. will derive revenue from the sale of the required purchases listed in the paragraph above.

or

Neither XYZ, Inc. nor any person affiliated with XYZ, Inc. will or may derive revenue as a result of required purchases or leases by franchisees from XYZ, Inc. or its designated suppliers.

C. To the extent known or estimable by the franchisor, the magnitude of such required purchases and leases in relation to all purchases and leases by the franchisee of goods and services which the franchisee will make or enter into (1) in the establishment and (2) in the operation of the franchise business.

Instructions:

(1) With respect to the establishment of the franchised business, state or estimate the approximate percentage that the goods and services, which the franchisee is required to purchase or lease from the franchisor or suppliers designated by the franchisor, are of the total goods and services that the franchisee is expected to purchase or lease. For example, if the total investment required by the franchisee to establish the franchised business is approximately \$50,000, and the franchisee must purchase from the franchisor a sign, certain equipment and the opening inventory of the franchised business in the aggregate amount of \$10,000, required purchases and leases would constitute 20% of total purchases and leases.

(2) With respect to the continuing operation of the franchised business, state or estimate the approximate percentage that the goods and services, which the franchisee is required to purchase or lease

from the franchisor or suppliers designated by the franchisor, are of the total goods and services that the franchisee is expected to purchase or lease. For example, if the total operating costs for goods and services is estimated to be \$100,000 at a given volume for the franchised business, and the franchisee must purchase certain supplies from the franchisor estimated at \$15,000 for the same sales volume, required purchases and leases would constitute 15% of total purchases and leases.

(3) If with respect to the establishment or operation of the franchised business the aggregate of the required purchases and leases is an insignificant percentage of total purchases and leases, the offering circular should so state and no estimate of the actual percentage need be given. If the franchisor is unable to formulate a meaningful estimate of the dollar amount of the required and/or total purchases and leases by franchisees or subfranchisors, the offering circular also should so state.

Sample Disclosure, VIII-C

It is estimated that required purchases are 25% to 50% of the cost to establish a franchise and approximately 65% of total operating expenses thereafter at an annual volume of \$300,000 per year.

OBLIGATIONS OF FRANCHISEE TO PURCHASE OR LEASE IN ACCORDANCE WITH SPECIFICATIONS OR FROM APPROVED SUPPLIERS (Item IX). *Requirement (Item 9):* State any obligations of the franchisee or subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease in accordance with specifications issued by the franchisor, or from suppliers approved by the franchisor, goods, services,

supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business. Regarding such obligations, state the following:

A. The goods, services, supplies, fixtures, equipment, inventory or real estate required to be purchased or leased in accordance with specifications or from suppliers approved by the franchisor.

Instructions:

(1) Identify the categories of products and services which the franchisee or subfranchisor is required to purchase or lease:

(a) In accordance with specifications prescribed by the franchisor; and/or

(b) From suppliers approved by the franchisor.

(2) The franchisor may include in its disclosure the reason for imposing such requirements.

(3) If the franchisee or subfranchisor is not obligated to purchase or lease any goods or services in accordance with specifications prescribed by the franchisor or from suppliers approved by the franchisor, the offering circular should include a statement to that effect.

Sample Disclosure, IX-A

Obligations of Franchisee to Purchase or Lease in Accordance with Specifications or from Approved Suppliers: The franchisee is obligated to purchase in accordance with specifications for the pipebending machine, hoist, cutting torch and supplies required for the ABX Muffler Shop and XYZ will provide the franchisee with such specifications.

or

The franchisee has no obligations, whether arising by terms of the franchise agreement or other device or practice, to purchase or lease in accordance with specifications issued by XYZ or from suppliers approved by XYZ, goods, services, supplies, fixtures, equipment, inventory or real estate relating to the establishment or operation of the franchise business, except that XYZ may in the future approve suppliers for the mufflers and exhaust pipes described in Item 8.

B. The manner in which the franchisor issues and modifies specifications or grants and revokes approval to suppliers.

Instructions:

(1) Describe the manner in which the franchisor formulates and modifies specifications and standards.

(2) Indicate whether, and if so, the manner by which, specifications and standards are:

(a) Issued to franchisees and subfranchisors;

(b) Issued only to approved suppliers; or

(c) Not disclosed to franchisees or subfranchisors and not used solely by the franchisor in connection with the approval or disapproval of goods and services and/or suppliers.

(3) State whether the franchisor maintains criteria for approving suppliers and, if so, the manner by which such criteria are issued.

(a) To franchisees and subfranchisors;

(b) To any suppliers proposed by a franchisee or subfranchisor; or

(c) Only to a limited number of suppliers selected by the franchisor in each market area.

(4) Describe the manner in which suppliers are evaluated and approved or disapproved, the manner in which approval is revoked and the procedure to be followed by a franchisee or subfranchisor in attempting to secure approval of a product, service or proposed supplier. For example, state that if the franchisee proposes to purchase or lease an item of equipment which has not been approved by the franchisor, or proposes to purchase supplies from a supplier who has not been approved by the franchisor, the franchisee may be required to submit specifications, drawings, photographs and other information relative to such item of equipment, or such supplies, for examination and/or testing by the franchisor, or information relative to the proposed supplier, for evaluation by the franchisor. If approval of proposed goods or services and/or

proposed suppliers may not be unreasonably withheld and approval or disapproval must be communicated to the franchisee or subfranchisor within a specified period of time (or within a reasonable time), the offering circular should so state.

(5) Describe the manner in which franchisees and subfranchisors are notified of the approval or disapproval and of the revocation of approval of suppliers.

Sample Disclosure, IX-B

Specifications may include minimum standards for delivery, performance, warranties, design, appearance, local zoning and other restrictions. Franchisee may purchase or lease original and replacement equipment and supplies meeting such specifications from any source. Such specifications are part of the ABX Muffler Shop Operations Manual and are issued to the franchisee upon signing of the ABX Muffler Shop Franchise Agreement and payment of \$5,000, constituting one-half of the initial franchise fee.

If franchisee proposes to purchase or lease any equipment or supplies not theretofore approved by XYZ as meeting its specifications, the Franchisee shall first notify XYZ and XYZ may require submission of sufficient specifications, photographs, drawings and/or other information and samples to determine whether such equipment or supplies meet its specifications. XYZ will advise the Franchisee within a reasonable time whether such equipment or supplies meet its specifications.

XYZ currently neither maintains a list of approved suppliers nor does it currently maintain criteria for approving suppliers. Any supplier, however, who is able to provide equipment and/or supplies meeting XYZ's specifications is, in effect, an approved supplier.

C. Whether, and for what categories of goods and services, the franchisor or persons affiliated with the franchisor are approved suppliers or the only approved suppliers.

Instructions:

(1) Identify the categories of products and services for which:

(a) The franchisor is an approved supplier; and/or

(b) Persons affiliated with the franchisor are approved suppliers.

(2) Identify the categories of products and services for which:

(a) The franchisor is the only approved supplier; and/or

(b) Persons affiliated with the franchisor are the only approved suppliers.

(3) If the franchisor and/or persons affiliated with the franchisor are the only approved suppliers for a category of products or services, the reasons therefor may be included as part of the disclosure.

Sample Disclosure, IX-C

The Franchisee may purchase any or all of the equipment and supplies from XYZ for the ABX Muffler Shop by executing XYZ's Equipment and Supply Agreement. XYZ will install or arrange for the installation of all equipment and will provide all instruction in the use of such equipment.

Additionally Signco, Inc., a wholly owned subsidiary of XYZ, is the only manufacturer currently meeting the specifications for the ABX Muffler Shop sign required to be leased or purchased by the franchisee.

D. Whether, and if so, the precise basis by which, the franchisor, its parent or persons affiliated with the franchisor may derive income from purchases made from it or from other approved suppliers, if this is the case.

Instructions:

(1) State whether the franchisor or its parent or persons affiliated with the franchisor may derive income as a result of any of the purchases or leases described under Item 9. A.

(2) "Income," means revenues, as opposed to gross or net profit or any other concept of profit.

(3) If revenues will or may be derived as a result of such purchases or leases, describe the exact manner in which such revenues will or may be derived. For example, state that the franchisor (or its parent or persons affiliated with it) will derive revenues from the sale of goods to its franchisees or subfranchisors; or that the franchisor (or its parent or persons affiliated with it) will derive revenues from property leased by the franchisor (or its parent or persons affiliated with it) and subleased to the franchisee at a rental in excess of that paid by the franchisor (or its parent or persons affiliated with it) to the primary lessor; or that approved suppliers will make payments to the franchisor (or its parent or persons affiliated with it) based on sales or rentals to its franchisees. It is not necessary to disclose estimated amounts of such sales revenues or rental revenues or revenues derived from approved suppliers.

(4) If approved suppliers sell goods or services to both businesses owned by the franchisor (or its parent or persons affiliated with it) and franchisees, the prices paid by the businesses owned by the franchisor (or its parent or persons affiliated with it) may reflect quantity or other discounts based on purchases by both the businesses owned by the franchisor (or its parent or persons affiliated with it) and franchisees.

Such favorable prices need not be disclosed as income derived by the franchisor (or its parent or persons affiliated with the franchisor) unless the businesses owned by the franchisor (or its parent or persons affiliated with it) may purchase such goods or services at lower prices than those available to franchisees for similar purchases.

(5) If neither the franchisor nor its parent or persons affiliated with the franchisor will or may derive revenue as a result of purchases or leases by franchisees or subfranchisors in accordance with specifications or standards prescribed by the franchisor or from suppliers approved by the franchisor, the offering circular should so state.

Sample Disclosure, IX-D

Signco, Inc., a wholly owned subsidiary of XYZ, Inc., derives revenue from the lease or sale of signs to ABX franchisees.

or

Neither the franchisor nor its parent nor persons affiliated with the franchisor will or may derive revenue as a result of required purchases or leases by franchisees in accordance with specifications or standards prescribed by the franchisor, or from suppliers approved by the franchisor.

FINANCING ARRANGEMENTS (Item X). Requirement (Item 10): State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor, its agent or affiliated company including:

Instructions:

(1) The exact terms of any lease arrangements also should be disclosed under this Item. If such terms are disclosed adequately under Item 7, a cross-reference to such disclosure at Item 7 will be sufficient. Normally, however, the disclosure called for under Item 7 will not suffice for the purposes of this Item inasmuch as more comprehensive disclosure is called for here.

(2) State whether the franchisor or any affiliate directly or indirectly offers financing to the franchisee. If an affiliate offers financing, identify the affiliate and its relationship to the franchisor. If neither the franchisor nor any affiliate of the

franchisor directly or indirectly offers financing to the franchisee, the offering circular should include a statement to that effect.

(3) If the franchisor or an affiliate of the franchisor offers financing, state whether such financing relates to the establishment of the franchise and/or the operation of the franchise business.

(4) If such financing relates to the establishment of the franchise business, describe whether such assistance may be extended to the franchisee to cover either in part or in whole:

(a) The initial franchise fee;

(b) The purchase of land and/or the construction or remodeling of a premises for the franchised business; or

(c) The purchase of equipment, fixtures, opening inventory and/or supplies;

(5) If such financing assistance relates to the operation of the franchised business, describe whether such assistance may be extended to the franchisee to cover either in part or in whole:

(a) Purchases of inventory and supplies;

(b) Replacement equipment or fixtures; or

(c) Any other continuing expense incurred by the franchisee.

(6) State whether the terms of any financing offered by the franchisor or its affiliate are contained in the franchise agreement, lease or separate note, document or agreement.

(7) State the terms of any such financing offered, including:

(a) The identity of the lender(s);

(b) The annual interest rate charged, stated in terms of simple interest rate or the approximate range of annual interest rates stated in terms of simple interest;

(c) The term for which the financing is available;

(d) The nature of any security interest which must be given to the franchisor, its affiliate or other lender;

(e) Whether any note, contract, lease or other financing agreement must be personally guaranteed by any shareholder or partner of the franchisee, if a corporation or partnership, or any other person;

(f) Whether the indebtedness can be prepaid and whether there is a prepayment penalty;

(g) Whether the note or other document contains a clause which accelerates payment of principal upon default; or

(h) Any other material financing terms.

(8) If the franchisor will guarantee any note, lease, or other agreement or document executed by the franchisee, the offering circular should include a statement to that effect.

(9) An agreement between the franchisor, or its affiliate, and a lender, pursuant to which the lender will offer financing to the franchisee, constitutes an indirect offer of financing by the franchisor or its affiliate and therefore must be disclosed under this Item.

(10) Payments due within 90 days or less on open account financing need not be disclosed under this Item.

Sample Disclosure, X

FINANCING ARRANGEMENTS: XYZ, through its subsidiary, XYZ Commercial Leasing Corporation, offers financing to franchisees for the purchase of equipment necessary to establish the franchise. Financing also may be offered to assist the franchisee with the purchase of replacement equipment, mainly pipebending machines, hoists and other equipment whose retail price exceeds \$5,000. Financing is not offered for any other purpose either in connection with the establishment or operation of the ABX Muffler Shop.

The equipment, primarily the pipebending machine and hoist, are financed through a lease agreement with XYZ Commercial Leasing Corporation. The interest rate is 12% per annum on the principal over a 5-year (60-month) period. At the end of the 60-month period the franchisee may purchase the equipment outright and obtain title to the same by making one additional monthly payment to XYZ Commercial Leasing Corporation. XYZ Commercial Leasing Corporation usually requires that one or more of franchisee's principals co-sign the lease when the primary lessee (franchisee) is a corporation. Franchisee may purchase the equipment at any time during the lease period by notifying XYZ Commercial Leasing Corporation of its intentions to purchase the machine and forwarding the remainder of the principal plus a \$500 prepayment penalty to XYZ Commercial Leasing Corporation. Should franchisee default under the terms of the lease, franchisee shall be liable to XYZ Commercial Leasing Corporation for all

back rental payments and any other payments for which the franchisee is in arrears, plus the expense of retaking possession of and removing the equipment, court costs and reasonable attorneys fees and, in addition, a sum equal to the balance of the rent and other payments called for under the lease for the remainder of the original or extended term of the lease, as the case may be, as liquidated damages.

or

A franchisee may (at his option) buy equipment, primarily the pipebending machine and hoist, from XYZ. He may buy for cash or on time. The typical installment sales agreement for the pipebending machine and hoist provides for 12% interest on the outstanding principal, 25% down payment, in monthly payments scheduled anywhere from 24 to 84 months. Payments on the 24-month schedule are about \$821.58 per month, and on the 84 month schedule, payments are about \$228.11 per month.

or

XYZ does not offer, either directly or indirectly, any financing arrangements to the franchisee. Furthermore, XYZ is unable to estimate whether a franchisee will be able to obtain financing for any part or all of the franchisee's investment and, if so, the terms of such financing.

XYZ does not have any past or present practice or intent to sell, assign or discount to a third party, in whole or in part, any note, contract or other instrument executed by the franchisee.

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

Instructions:

(1) State the terms of any confession of judgment clause or similar waiver of notice of suit in any note, contract, lease or other instrument to be executed by the franchisee pursuant to a financing arrangement.

(2) Describe any provision of the note, contract, lease or other instrument which bars the franchisee from asserting any defenses or from asserting specific defenses against the franchisor, an affiliate of the franchisor or any other person to whom the instrument is negotiated.

(3) If no such provisions are contained in any note, contract or other instrument to be executed by

franchisees in connection with financing offered by the franchisor, the offering circular should include a statement to that effect.

(4) This disclosure relates only to provisions actually contained in a note, lease, contract or other instrument to be executed by the franchisee in connection with a financing arrangement. This disclosure does not relate to defenses which may be barred by operation of law as a result of any third party attaining holder in due course status through the negotiation of any instrument.

Sample Disclosure, X-A

The installment sale and security agreement form provides that the franchisee will not assert any defenses he may have against XYZ or against any assignee of the agreement. XYZ does assign these agreements to a wholly owned subsidiary, XYZ National Company.

or

The leases contain no waiver of defenses or similar provisions.

B. A statement of any past or present practice or of any intent of the franchisor to sell, assign or discount to a third party, in whole or in part, any note, contract or other instrument executed by the franchisee or subfranchisor.

Instructions:

(1) State whether the franchisor, its agent or any affiliate company currently sells, assigns or discounts, or has in the past sold, assigned or discounted, any note, contract, lease or other instrument executed by franchisees or has any intent to do so in the future.

(2) Describe the terms of the assignment including whether the franchisor will remain

primarily liable to provide all services, if any, due to the franchisee under the note, contract, lease or other instrument.

(3) The franchisor may wish to include a statement to the effect that it may in future decide to assign notes, contracts, leases or other instruments executed by the franchisee, if such decision is probable. Such decision may constitute a material change necessitating a post effective amendment.

Sample Disclosure, X-B

XYZ Commercial Leasing Corporation currently assign all leases, including all rights and obligations thereunder, to banks and other lending institutions as collateral for loans received from such banks or lending institutions. XYZ Commercial Leasing Corporation intends to continue this practice in the future.

or

XYZ Management Company does not discount this paper to outside sources and there is no present intention to do so in the future.

or

XYZ Commercial Leasing Corporation does not assign any leases, or any rights or obligations thereunder, to any third party, nor has XYZ Commercial Leasing Corporation done so in the past, nor does it have any intention to do so in the future.

C. A description of any payments received by the franchisor from any person for the placement of financing with such person.

Instructions:

(1) Describe any such payments.

(2) Identify the person making such payments for the placement of financing and such person's relationship to the franchisor.

(3) State the amount or method by which the payments are determined.

Sample Disclosure, X-C

XYZ does not receive any payments, either directly or indirectly, from XYZ Commercial Leasing Corporation or any other person for placing financing with XYZ Commercial Leasing Corporation.

or

XYZ does not place financing with anyone other than its wholly owned subsidiary, and, therefore, it does not receive any payment for placing of financing.

OBLIGATIONS OF THE FRANCHISOR; OTHER SUPERVISION, ASSISTANCE OR SERVICES (Item XI). Requirement (Item 11): Where applicable, describe the following:

A. The obligations to be met by the franchisor prior to the opening of the franchise business, citing by section and page the provisions of the franchise or related agreement requiring performance.

Instructions:

(1) Describe all obligations of the franchisor prescribed by the franchise or other agreement to provide assistance to the franchisee prior to the opening of the franchised business. Cite the page and section number of the franchise or other agreement imposing the obligation. Such obligations may include, but are not limited to, the following:

(a) The premises for the franchise business. State whether the franchisor presently owns or will purchase the premises for lease by the franchisee or has leased or will lease and sublease the premises to the franchisee, or will locate and/or negotiate the purchase or lease of the premises on behalf of the franchisee or assist the franchisee in locating and/or negotiating the purchase or lease of the premises;

(b) Conform to the development of the premises to local ordinances and building codes and obtain all required health, sanitation, building, driveway, utility and sign permits and any other required permits;

(c) Construction, remodelling and/or decorating of the premises for the franchised business;

(d) Purchase and/or leasing equipment and installing equipment at the premises of the franchised business. Disclose whether the franchisor provides the equipment directly or whether it provides the names of approved suppliers or

specifications to the franchisee for the purchase of equipment;

(e) Signs and fixtures and their installation at the premises of the franchised business. Disclose whether the franchisor provides signs and fixtures directly or whether it provides the names of approved suppliers or specifications;

(f) Opening inventory, supplies and related materials. Disclose whether the franchisor provides these items directly or whether it provides the names of approved suppliers or specifications for such items;

(g) Hiring and training employees prior to opening; and

(h) Advertising in franchisee's marketing area.

(2) State whether the franchisor will provide the items or perform services noted above at the option of the franchisor or franchisee.

(3) State when the items or services noted above will be provided or performed by the franchisor.

(4) If the franchisor is not obligated by the franchise or other agreement to provide or assist the franchisee in obtaining any of these items or services with respect to the opening of the franchised business, the offering circular should include a statement to that effect.

Sample Disclosure, XI-A

The obligations to be performed by XYZ prior to the opening of the franchised business are:

1. Pursuant to Paragraph 2, page 4, of the Franchise Agreement, designate an exclusive territory for the ABX Muffler Shop franchisee.
2. Pursuant to Paragraph 4, page 8, of the Franchise Agreement, if requested by the Franchisee, assist him in finding and negotiating the lease or sale of a location for operation of an ABX Muffler Shop. This assistance occurs within 30 days of the execution of the Franchise Agreement.
3. Pursuant to Paragraph 6, page 12, of the Franchise Agreement, provide the franchisee with specifications for all initial and replacement equipment, inventory and supplies required for the ABX Muffler Shop. The specifications are provided within 60 days of the signing of the Franchise Agreement.
4. Pursuant to Paragraph 8, page 16, of the Franchise Agreement, train the franchisee and/or franchisee's employees in the operation of the equipment used in the ABX Muffler Shop. This training is for three days and usually is held at Franchisee's ABX Muffler Shop prior to opening of the Franchisee's ABX Muffler Shop.

5. Pursuant to Paragraph 10, page 20, of the Franchise Agreement, train franchisee and/or franchisee's employees in basic management and bookkeeping systems used by ABX Muffler Shops: This training occurs approximately 30 days prior to the expected grand opening of franchisee's ABX Muffler Shop. The training is held at XYZ's headquarters in Jackson, Minnesota, and all room, board and travel expenses are borne by XYZ.

B. Other supervision, assistance or services to be provided by the franchisor prior to the opening of the franchise business although franchisor is not bound by the franchise agreement or related agreement to provide the same (refer to list of possible services under Item 11. A.). As part of this disclosure franchisor must disclose that he is not so bound by the franchise agreement or related agreement.

Instruction:

Describe any supervision, assistance or services which the franchisor is not obligated to provide under the franchise or other agreement but intends

to provide to its franchisees. This disclosure must include a statement that the franchisor is not obligated by the franchise or other agreement to provide such supervision, assistance or services.

Sample Disclosure, XI-B

XYZ, although not obligated to do so by the Franchise Agreement or any other agreement, assists the franchisee, mainly by providing advice in remodelling an existing location for operation as an ABX Muffler Shop.

C. The obligations to be met by the franchisor during the operation of the franchise business, including, without limitation, the assistance to the franchisee in the operation of his business. Cite by section and page the provision of the franchise or related agreement requiring performance.

Instructions:

(1) Describe all obligations to be met by the franchisor during the operation of the franchised business pursuant to the franchise or related agreement, including but not limited to, assistance and guidance with respect to:

(a) Products or services which are to be offered by the franchisee to its customers;

(b) Hiring and training of employees;

(c) Advertising and promotion. With respect to any such advertising and promotion, describe the nature of the advertising conducted including whether,

(i) the franchisor pays for such advertising and promotion, or

(ii) the franchisor accounts to the franchisee for any advertising and expenditures;

(d) Improvements and new developments in the franchise business;

(e) Pricing;

(f) The establishment and maintenance of administrative, bookkeeping, accounting, inventory control and general operating procedures; and

(g) Operating problems encountered by the franchisee.

(2) Some of these may have been made previously under Item 6 and, therefore, need not be repeated here. However, cross-reference should be made to these previous disclosures.

(3) Describe any operating manual provided to the franchisee to assist the franchisee and his employees in the operation of the franchised business and whether the franchisor retains the right to change the terms of the manual, and if so, under what circumstances.

Sample Disclosure, XI-C

The obligations to be performed by XYZ during the operation of the franchised business are:

1. Pursuant to Paragraph 9, page 17 of the franchise Agreement, XYZ will formulate and conduct national and regional advertising and promotion programs. This advertising will be primarily by television, radio and magazine. The cost of this advertising will be paid from the advertising fund created by the franchisee's payment of 2% of gross sales to XYZ.
2. Pursuant to Paragraph 10, page 18 of the Franchise Agreement, XYZ will provide information on new products and engage in the development of new products and methods for the ABX Muffler Shops.
3. Pursuant to Paragraph 11, page 19 of the Franchise Agreement, XYZ is required to participate in the ABX Muffler Shop guarantee claim program as it regards defective muffler and exhaust systems.
4. Pursuant to Paragraph 12, page 20 of the Franchise Agreement, XYZ will also loan to the Franchisee one or more copies of an operations manual containing mandatory and suggested specifications, standards, operating procedures and rules prescribed from time to time by XYZ, as well as information relative to other obligations of the Franchisee under the Franchise Agreement and the operation of the ABX Muffler Shop. The operating manual will remain confidential and the property of XYZ. XYZ will have the right to add to and otherwise modify the operations manual from time to time as it deems necessary, provided that no such addition or modification will alter the Franchisee's fundamental status and rights under the Franchise Agreement.

D. Other supervision, assistance or services to be provided by the franchisor during the operation of the franchise business although franchisor is not bound by the franchise agreement or any related agreement to provide the same. As part of this disclosure franchisor must disclose that he is not so bound by the franchise agreement or other agreement.

Instruction:

Describe any supervision, assistance or services which the franchisor is not obligated to provide under the franchise or other agreement but intends

to provide to its franchisee. This disclosure must include a statement that the franchisor is not obligated by the franchise or other agreement to provide such supervision, assistance or services.

Sample Disclosure, XI-D

Following the opening of the ABX Muffler Shop, XYZ, although not obligated to do so by the Franchise Agreement or any other agreement, will be in weekly contact with each franchisee for at least 90 days after the opening of the franchisee's ABX Muffler Shop to discuss any problems in the operation of the ABX Muffler Shop. Additionally, XYZ will hold conferences from time to time to discuss matters such as sales techniques, muffler and exhaust system installation techniques, training of personnel, performance standards, advertising programs and merchandising procedures. The franchisee must bear all expenses of attending these elective conferences, which are held at XYZ's headquarters in Jackson, Minnesota, or at other regional locations.

E. The methods used by the franchisor to select the location for the franchisee's business.

Instructions:

(1) State whether the franchise is granted for a specific location, and if so, whether the franchisor selects the site or merely approves a designated area within which the site may be selected by the franchisee, and whether a site so selected requires the franchisor's approval.

(2) Describe the factors such as the general location and neighborhood, traffic patterns, parking,

size, layout and other physical characteristics of the premises of the franchised business, rental, lease duration and other lease terms and conditions which the franchisor considers in selecting or approving sites.

(3) The disclosures under subitem E may be made under subitem A above, in which case they need not be repeated here. No cross-reference is necessary.

Sample Disclosure, XI-E

The franchisee selects the site of his business within his exclusive area. XYZ, however, must approve the Franchisee's site. XYZ assists in the site selection by ascertaining the number of new car registrations, population density, traffic patterns and proximity of the proposed site to other ABX Muffler Shops.

F. State the typical length of time between the signing of the franchise agreement or the payment of any consideration for the franchise and the opening of the franchisee's business.

Instructions:

(1) Describe the approximate length of time currently experienced by the franchisor between the signing of the franchise agreement or the receipt of consideration and the opening of the franchise business. The franchisor may disclose a range of times.

(2) Describe the factors which may affect such time period, such as the ability to obtain a lease,

obtaining acceptable financing arrangements, obtaining required zoning and building permits meeting other local ordinances or community requirements, weather conditions, shortages, slow delivery and other factors bearing on completion of construction, remodeling, decorating, purchasing and installing equipment, fixtures and signs and similar factors.

Sample Disclosure, XI-F

The typical length of time between the signing of the Franchise Agreement or the first payment of any consideration for the ABX Muffler Shop Franchise and the opening of the franchisee's business is four to seven months. Factors affecting this length of time usually include obtaining a satisfactory site, financing arrangements, local ordinance compliance questions and delivery and installation of equipment and signs.

G. The training program of the franchisor, including:

1. The location, duration and content of the training program;

Instructions:

(1) If the franchise includes a training program, identify the location(s) of the training program, e.g., at one or more of the franchisor's headquarters, at an outlet operated by the franchisor or at the franchisee's business premises. Indicate who determines where the training will take place.

(2) State to whom the training is available and who is required to attend the training program.

(3) State the length of time the franchisee will be trained at this location.

(4) Describe the instructional materials and instructional procedures.

(5) State whether the franchisor or other person(s) required to attend the training program must complete the program to the franchisor's satisfaction.

2. When the training program is to be conducted;

Instruction:

In relation to the date the franchise agreement is signed and/or consideration is received by the

franchisor or the approximated opening date of the business, state when the franchisee will attend the training program.

3. The experience that the instructors had with the franchisor;

Instructions:

(1) State whether the franchisor maintains a training staff. If no formal staff is maintained, the offering circular should so state.

staff who participates in the training program, state the position and principal duties of each with the franchisor. Include the prior experience of instructors that is relevant to the franchisor's training program.

(2) If a formal training staff is maintained, with respect to each such member of the formal training

4. Any charges to be made to the franchisee and the extent to which the franchisee will be responsible for travel and living expenses of the persons who enroll in the training program;

Instructions:

(1) Describe any charges for training or materials provided in connection therewith.

(3) State who pays for the living expenses of trainees.

(2) State who pays the transportation charges of trainees to and from the training site(s).

(4) Describe any compensation paid by the franchisor to the franchisee or his employees while in training.

5. If the training program is not mandatory, the percentage of new franchisees that enrolled in the training program during the 12 months immediately preceding the date of the offering circular;

Instructions:

(1) State whether the training program is mandatory.

in the training program during the 12 month period immediately preceding the date of the offering circular.

(2) If the training program is not mandatory, state the percentage of new franchisees who enrolled

6. Whether any additional training programs and/or refresher courses are available to the franchisee and whether the franchisee will be required to attend the same.

Instructions:

(1) State whether the franchisor plans to offer additional training and/or refresher courses.

(4) State who pays the transportation expenses and living expenses of trainees.

(2) If such courses are offered, state whether such courses are mandatory or optional.

(5) Describe the location, duration and content of the training program.

(3) Describe any payments that the franchisee is required to make for these courses.

Sample Disclosure, XI-G

As previously mentioned, two training programs are offered by XYZ. The technical training regarding the operation of the equipment and exhaust system installation is held at the franchisee's ABX Muffler Shop. The technical training is available to the franchisee and all of his employees. The training is for 3 days and averages 6 hours per day. The training includes instructional manuals on automobile exhaust systems, slide shows, instruction on the use of pipebending machines and other tools used by ABX

Muffler Shop franchisees. It also includes actual installation of exhaust systems on approximately 5 vehicles per trainee. Either the franchisee or one of his employees must satisfactorily complete the technical training.

The technical training program is conducted after installation of the franchisee's equipment and usually about 2 weeks prior to the grand opening of the franchisee's ABX Muffler Shop.

This technical training is conducted by XYZ's four-person professional training staff. The staff is managed by Mark Marks, who has been with XYZ for 18 months and for 3 years prior to that he owned and operated an ABX Muffler Shop in Flint, Michigan. Larry Lawrence, another member of our training staff has been with XYZ for 1 year and for 3 years preceding his employment with XYZ, he was a trainer for U-Bend-It, Inc., a manufacturer of pipebending machines with their main offices in Detroit, Michigan. Janis Jenks, another trainer, has been with XYZ for 1 year and for 3 years prior to that she was the manager of 3 ABX Muffler Shops in Chicago, Illinois. Walter Waters is another trainer and has been with XYZ for 6 months. Mr. Waters was previously employed for the past 2 years as the national training director for LMN Muffler Centers, Inc.

XYZ will compensate franchisee for any materials, such as exhaust pipes, which are used during the training and are not sold to the public.

Although the training program is not mandatory, during the past year, 95% of all new ABX Muffler Shops had one or more persons trained by XYZ. The few ABX Muffler Shop franchisees who did not participate in the training had all been in the exhaust system business for at least 10 years.

XYZ has offered in the past and plans to offer in the future additional training courses dealing with new products and methods useful to ABX Muffler Shops. These courses are optional and are given at XYZ's headquarters in Jackson, Minnesota. There is no charge by XYZ for these courses. The franchisee, however, must bear the entire cost of travel to and from such training courses and all living expenses while attending the courses.

The management training is held at XYZ's headquarters in Jackson, Minnesota. The management training is available to the franchisee or his employee who will be in charge of managing the ABX Muffler Shop. The training is for 3 days and averages 8 hours per day.

The training includes instructional manuals on the management of an ABX Muffler Shop, slide shows and other instruction in the operation and use of the ABX Muffler Shop bookkeeping and advertising programs. Either the franchisee or one of his employees must satisfactorily complete the management training course.

The management training course is conducted approximately 30 days prior to the expected grand opening of franchisee's ABX Muffler Shop. The management training is conducted by William Willis, president of Willis Management Consultants, St. Paul, Minnesota. Mr. Willis has been president of Willis Management Consultants for 20 years and has been conducting management training for XYZ for the past 4 years.

As previously mentioned, the management training course is mandatory. XYZ, however, pays all travel expenses, room and board for the person or persons to be trained.

XYZ has offered in the past and plans to offer in the future additional management training courses dealing with management, bookkeeping and advertising systems and courses are optional and given at XYZ's headquarters in Jackson, Minnesota. There is no charge by XYZ for these courses. The franchisee, however, must bear the entire cost of travel to and from the management training courses and all living expenses while attending the courses.

EXCLUSIVE AREA OR TERRITORY. (Item XII). Requirement (Item 12): Describe any exclusive area or territory granted the franchisee and with respect to such area state whether:

A. The franchisor has established or may establish another franchisee who also will be permitted to use the franchisor's trade name or trademark.

B. The franchisor has established or may establish a company owned outlet using the franchisor's trade name or trademark.

Instructions:

(1) The disclosure under Item 12 should be titled "Territorial Rights" or, as the case may be, "Territorial Rights and Obligations," because of the breadth of disclosure required under Item 12. The required disclosure pertains to more than mere exclusive areas or territories.

(2) With respect to any area or territory for which the franchisee or subfranchisor is granted any rights, describe the typical boundaries of such area or territory. For example, state that the franchise is granted for one or more cities, metropolitan areas, counties, states or other political subdivisions; or is typically delineated by boundary streets or highways or by an area encompassed within a radius of specific distance (or range of distances) or of a distance sufficient to encompass a specified population (or range of populations) and state that prior to the execution of a franchise or other agreement (as required by the state's statute or federal law), the area or territory applicable to a specific franchise will be described by:

(a) Inserting a description thereof in the body of the franchise or other agreement;

(b) Attaching a map or description thereof as an exhibit to the franchise or other agreement; or

(c) By other means, which should be described.

(3) Describe the territorial rights granted to franchisees or subfranchisors and the territorial restrictions imposed on the franchisor and franchisees or subfranchisors. Such restrictions are

applicable, presumably, to all franchisees or subfranchisors and should be disclosed fully. Such disclosures should include, to the extent applicable, a statement as to whether:

(a) The franchise is granted for a specific location, or a location to be approved by the franchisor, and whether the relocation of the franchised business or the establishment of additional business outlets under the franchise requires the approval of the franchisor;

(b) The franchisor agrees not to operate a company-owned outlet or grant a franchise for the operation of a similar or competitive business to be located within the defined area.

(c) The franchisee or other franchisees are prohibited from soliciting sales or accepting orders outside of their defined territories;

(d) The franchisee or other franchisees are restricted in any other manner from soliciting sales or accepting orders outside of their defined territories;

(e) The franchisee or other franchisees must pay any compensation to other franchisees, or subfranchisors or the franchisor, with respect to sales made or orders accepted outside of their defined territories; and

(f) The franchisor and/or subfranchisor are prohibited from soliciting sales or accepting orders inside the franchisee's defined territory or are restricted in any other manner from soliciting sales or accepting orders inside the franchisee's defined

territory or are required to pay any compensation to the franchisee with respect to sales made or orders accepted inside the franchisee's defined territory.

With regard to instructions (3)(e) and (f), above, describe the terms of any compensation to be paid.

(4) State whether, and, if so, the conditions or circumstances under which, one or more other franchisees or subfranchisors of the franchisor, using trade names or trademarks to be used by the franchisee or subfranchisor, are or may be located within such area or territory.

(5) State whether, and, if so, the conditions or circumstances under which, one or more business outlets owned by the franchisor, its parent or

C. The franchisor or its parent or affiliate has established or may establish other franchises or company owned outlets selling or leasing similar products or services under a different trade name or trademark.

Instructions:

(1) "Similar products and services" includes competing, interchangeable or substitute products and services, e.g., pizza and chicken. This category does not include products and services, which, although sold to the same class of customer, are not part of the same relevant product or service market, e.g., muffler replacement and transmission repair.

(2) State whether the franchisor, its parent or affiliate operates or franchises the operation of, or has any presently formulated plans or policy to operate or franchise the operation of, any business selling or leasing under different trade names or

D. Continuation of the franchisee's area or territorial exclusivity is dependent upon achievement of a certain sales volume, market penetration or other contingency and under which circumstances the franchisee's area or territory may be altered.

Instructions:

(1) Describe any conditions for the maintenance of territorial rights. For example, state whether the franchisee must meet sales quotas (or other measures of market penetration) or open additional business outlets in order to retain his territory on an exclusive basis. If so, describe such sales quotas or requirements to open additional outlets and the rights of the franchisor if the franchisee fails to achieve such quotas or requirement.

affiliate, using trade names or trademarks to be used by the franchisee or subfranchisor, are or may be located within such area or territory.

(6) If no territorial rights are granted to the franchisee or subfranchisor, the offering circular should include a statement to that effect.

(7) The franchisor may in connection with its disclosure under this Item describe the terms and conditions of any options, rights of first refusal or similar rights that the franchisee or subfranchisor will have to acquire additional franchises within:

(a) Such area or territory; and/or

(b) Contiguous or other areas or territories.

trademarks goods or services similar to or competitive with those to be offered for sale or leased by the franchisee or subfranchisor and, if so, describe:

(a) Such similar or competitive goods and services;

(b) Such trade names and trademarks; and

(c) Whether the franchisor and/or its franchisees under such different trade names or trademarks will or may be located, and/or solicit sales and accept orders, within the area or territory within which the franchisee or subfranchisor has territorial rights.

(2) Describe any other circumstances or contingencies which may permit the franchisor to modify territorial rights granted to the franchisee. For example, state that in the event of an increase in population within the territory, the franchisor has the right to operate a similar business or grant an additional franchise therein, describing the exact terms of such right.

Sample Disclosure, XII-A through XII-D

Territorial Rights: The XYZ franchisee will be granted an exclusive territory usually delineated by boundary streets or highways. Prior to the execution of the Franchise Agreement a map and written description of the exclusive territory will be provided to the prospective franchisee.

XYZ cannot establish either a company owned ABX Muffler Shop or another ABX Muffler Shop franchise within the aforementioned exclusive territory or modify the franchisee's exclusive territory without the written

permission of the franchisee holding the right to the exclusive territory unless a default occurs in the minimum purchase requirement of \$18,000 worth of inventory for the immediately preceding 18 month period. Relocation of the existing ABX Muffler Shop or establishment of additional ABX Muffler Shops under the Franchise Agreement requires the approval of XYZ. Further, XYZ agrees not to operate a company owned outlet or grant a franchise for the operation of a business to be operated within franchisee's exclusive territory which company owned outlet or business would sell any items carried or serviced by or similar to or competitive with those items carried and serviced by franchisee's ABX Muffler Shop.

The franchisor and other franchisees are restricted from advertising their ABX Muffler Shops in franchisee's exclusive territory except in the case where such advertising is contained in a general publication with general distribution also in the area in which the company owned outlet is located or said other franchisee's exclusive area, as the case may be.

TRADEMARKS, SERVICE MARKS, TRADE NAMES, LOGOTYPES, AND COMMERCIAL SYMBOLS (Item XIII). *Requirement (Item 13):* Describe any trademarks, service marks, trade names, logotypes or other commercial symbols to be licensed to the franchisee, including the following:

A. Whether the trademark, service mark, trade name, logotype or other commercial symbol is registered with the United States Patent Office and, if so, for each such registration state the registration date and number and whether or not the registration is on the principal or supplemental register.

Instructions:

(1) Identify each mark, name, logo or other commercial symbol licensed to the franchisee or which the franchisee may otherwise use. A reproduction of any logos or other commercial symbols may be included as part of this disclosure.

(2) Identify which, if any, of the trademarks and service marks identified under (1) has been registered with the United States Patent and Trademark Office or for which an application for registration is pending. With respect to each such registration or application, state the date of registration or application, the registration or

application number and whether the registration or application appears on the principal or supplemental register. State whether all affidavits of use (or explaining nonuse) required to be filed to maintain the registration of any trademark or service mark have been timely filed. State whether any trademark or service mark has become incontestable and whether any trademark or service mark has been renewed.

(3) With respect to each mark, name, logo or other commercial symbol, state whether the franchisor has common law rights and briefly describe the basis therefor.

B. Whether the trademark, service mark, trade name, logotype and other commercial symbol are registered in this state or the state in which the franchise business is to be located and the dates of such registration.

Instructions:

(1) State whether any mark, name, logo or other commercial symbol is registered in this state or the state in which the franchise business is to be located or whether an application for any such registration has been made.

(2) Identify the dates of such registration(s) and application(s) and the registration and application number(s).

(3) The franchisor may include a list of all state registration(s) and application(s) in lieu of the disclosures suggested above in order to obviate the necessity of substituting a different disclosure in each state. However, the franchisor must insure that the offering circular is amended as required to reflect any material change in such list.

Sample Disclosures, XIII-A and XIII-B

Trademarks, Service Marks, Trade Names, Logotypes, and Commercial Symbols: Under the Franchise Agreement, XYZ grants to the Franchisee the right to operate a Shop under the name ABX Muffler Shop and under any other trade names, trademarks, service marks and logos currently used or that may hereafter be used in the operation of the Shop. The following trademarks, service marks, trade names, logotypes or other commercial symbols listed below are registered with the United States Patent Office and the registrations are on the principal register.

"ABX Muffler Shop"
 Reg. No. 876,543
 Reg. Date: June 1, 1967
 Affidavit of Use filed
 July 6, 1973
 "Everlast Exhausts"
 Reg. No. 886,454
 Reg. Date: August 1, 1968
 Affidavit of Use filed
 September 6, 1974

"Mellow Mufflers"
 Reg. No. 981,123
 Reg. Date: September 2, 1969
 Affidavit of Use filed
 October 6, 1975
 "ABX Albert"
 Reg. No. 991,432
 Reg. Date: October 5, 1972

Additionally, the trademark ABX Mufflers is registered in the following states:

<i>Jurisdiction</i>	<i>Date</i>	<i>Reg. No.</i>
Minnesota	June 1, 1967	581-A
Wisconsin	June 3, 1967	11421
Iowa	June 8, 1967	4277

The ABX Muffler Shop Franchisee must use all names and marks in full compliance with rules prescribed from time to time by XYZ. The Franchisee is prohibited from using any name or mark as part of any corporate name or with any prefix, suffix or other modifying words, terms, designs or symbols (other than logos licensed by XYZ to the Franchisee). In addition, the Franchisee may not use any name or mark in connection with the sale of any unauthorized product or service or in any other manner not explicitly authorized in writing by XYZ.

C. A description of any presently effective determinations of the patent office, the trademark administrator of this state or any court, any pending interference, opposition or cancellation proceeding and any pending material litigation involving such trademarks, service marks, trade names, logotypes or other commercial symbols and which is relevant to their use in this state or the state in which the franchise business is to be located.

Instructions:

(1) Describe any effective decision, ruling or order of the United States Patent and Trademark Office regarding a registration or application for registration that could materially affect the ownership or use of any mark, name, logo or other commercial symbol. Describe the manner in which the determination affects such ownership, use or licensing, including any decided interference, cancellation or opposition proceedings. For example, if the Patent and Trademark Office has rejected an application for registration, this fact should be disclosed. The franchisor may indicate whether it will file an administrative appeal with regard to any such ruling and may attach an opinion of counsel as to the merits of such appeal. The disclosure requirements of Item 13. C. would also apply to interference, opposition or cancellation proceedings in which the franchisor sought unsuccessfully to prevent registration of a mark in order to protect a name, mark, logo or other commercial symbol licensed by the franchisor, if such registration may have a material effect upon the franchisee's use thereof.

(2) Describe any effective determination of the trademark administrative agency of the state in which the offering circular will be filed or where the franchised business is to be located with regard to the registration, ownership or use of any mark, name, logotype or other commercial symbol. Describe the terms of any such determination.

(3) Describe any petition filed in opposition to or cancellation of any registration with the United States Patent and Trademark Office that would

affect the ownership or use of any mark, name, logo or other commercial symbol licensed to the franchisee.

(4) Describe any pending material federal or state litigation regarding the use or ownership rights of the franchisor in any name, mark, logo or other commercial symbol that is relevant to its use in the state in which the offering circular will be filed or where the franchised business is to be located. This includes any litigation where the franchisor is either the plaintiff or defendant. With respect to each such pending lawsuit, identify and describe:

(a) The forum;

(b) The case number;

(c) The nature of claims made in opposition to the franchisor's use or by franchisor in opposition to another person's use; and

(d) Any effective ruling(s) by the court or agency hearing the matter.

An opinion of counsel may be included relative to the merits of the suit, provided that counsel issuing the opinion consents to such use. A summary of the opinion may be included as part of the text of the disclosure, provided the full opinion is attached and provided counsel issuing the opinion consents to such use.

(5) Effective registrations need not be disclosed here as a determination of the Patent and Trademark Office, nor must the franchisor disclose historical challenges resolved in the franchisor's favor.

Sample Disclosure, XIII-C

A previous application to register the mark "Super ABX Mufflers" was rejected on June 4, 1973, by the United States Patent Office due to the existence of a prior registration of a mark that may be found to be confusingly similar.

The inability of XYZ to obtain a registration in the United States Patent Office permits others to establish rights to use of the name in territories in which XYZ or its franchisees are not operating or advertising or which are not within the natural zone of expansion for future ABX Muffler Shops, provided such others do so in good faith and without actual knowledge of the existence of XYZ or its franchisees. If others do so establish rights to the name in such territories, XYZ may be restricted in its ability to expand into such territories.

D. A description of any agreements currently in effect which significantly limit the rights of the franchisor to use or license the use of such trademarks, service marks, trade names, logotypes or other commercial symbols in any manner material to the franchise.

Instructions:

(1) Describe any currently effective agreements pursuant to which the licensor derives its right to use or license, or which limit the use of, any mark, name, logo or other commercial symbol in any manner material to the franchise.

(2) With respect to any such agreement state:

(a) The manner and extent to which the use or right to license is affected, identifying the states and/or areas affected;

(b) The duration of the agreement;

(c) The parties to the agreement; and

(d) All other material terms including the circumstances under which the agreement may be cancelled or modified.

Sample Disclosure, XIII-D

There are no agreements currently in effect that significantly limit the rights of XYZ to use or license the use of the above-mentioned trademarks, service marks, trade names, logotypes, or other commercial symbols in any manner material to the franchise.

E. Whether the franchisor is obligated by the franchise agreement or otherwise to protect any or all rights which the franchisee has to use such trademarks, service marks, trade names, logotypes or other commercial symbols and to protect the franchisee against claims of infringement or unfair competition with respect to the same.

Instructions:

(1) Describe any obligation of the franchisee, under the franchise or other agreement, to notify the franchisor of any use of or claims of rights to any mark, name, logo or other commercial symbol identical to or confusingly similar to a mark, name, logo or other commercial symbol licensed to the franchisee.

(2) State whether, under the franchise or other agreement, the franchisor is obligated to take any affirmative action when notified of any such use or claim or whether any such action is discretionary. Identify who has the right to control any administrative proceedings or litigation.

(3) State whether the franchisor is obligated by the franchise or other agreement to participate in the defense of the franchisee and/or indemnify the

franchisee for damages or expenses incurred, if the franchisee is a party to any administrative or judicial proceeding involving a mark, name, logo or other commercial symbol of the franchisor licensed to the franchisee.

(4) Describe any rights the franchisor has to require the franchisee to discontinue or modify the use of any mark, name, logo or other commercial symbol licensed to the franchisee.

(5) Describe any rights the franchisee has if the franchisor requires the franchisee to modify or discontinue the use of any name, mark, logo or other commercial symbol as a result of any proceeding or settlement. For example, does the franchise agreement provide that the franchisee will be compensated in any manner as a result of a discontinuation or modification of any mark, name, logotype or other commercial symbol?

Sample Disclosure, XIII-E

In the event of any infringement of, or challenge to, the Franchisee's use of any name or mark, the Franchisee is obligated to immediately notify XYZ, and XYZ will have sole discretion to take such action as it deems appropriate.

If it becomes advisable at any time in the sole discretion of XYZ to modify or discontinue use of any name or mark and/or use one or more additional or

substitute names or marks, the Franchisee is obligated to do so and the sole obligation of XYZ in any such event will be to reimburse the Franchisee for his tangible costs (such as changing signs) of complying with this obligation.

While XYZ is not required by the Franchise Agreement to defend the Franchisee against any infringement, unfair competition or other claim respecting the Franchisee's use of any name or mark, XYZ is obligated to indemnify the Franchisee against, and to reimburse the Franchisee for, all damages for which he is held liable in any proceeding arising out of the use of any name or mark and for all costs reasonably incurred by the Franchisee in the defense of any such claim, provided that the Franchisee has notified XYZ of such claim as described above.

Under the Franchise Agreement, the Franchisee agrees not to contest, directly or indirectly, XYZ's ownership, title, right or interest in its names or marks, trade secrets, methods, procedures and advertising techniques which are part of the XYZ business or contest XYZ's sole right to register, use or license others to use such names and marks, trade secrets, methods, procedures and techniques.

F. Whether there are any infringing uses actually known to the franchisor which could materially affect the franchisee's use of such marks, trade names, logotypes or other commercial symbols in this state or state in which the franchise business is to be located.

Instructions:

(1) Describe any uses of any mark, name, logo or other commercial symbol that the franchisor believes to constitute an infringement of any of his marks, names, logos or other commercial symbols which could materially affect the franchisee's use of any such mark, name, logo or other commercial symbol, and with respect to any such infringement describe:

(a) The location(s) where the infringement is occurring;

(b) The length of time, if known, of the infringement; and

(c) Any action taken or anticipated by the franchisor.

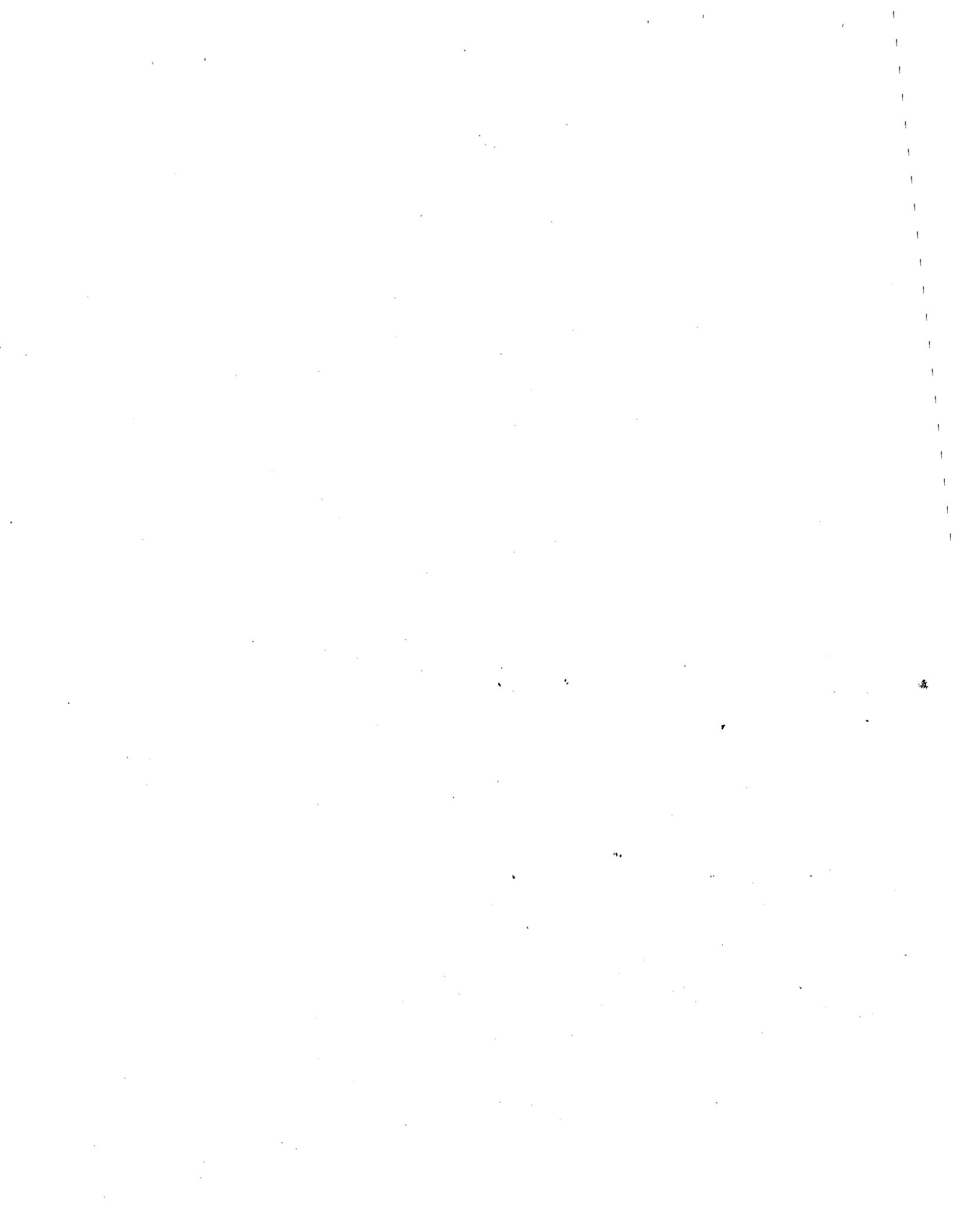
(2) Superior rights in a geographic area of another user of the same or similar mark, name, logo or symbol, based on such use preceding the franchisor's federal registration or otherwise, does not constitute an infringement of the franchisor's mark, name, logo or other commercial symbol. However, care should be taken to disclose such superior right to the prospective franchisees of the affected geographic area. Such superior rights and the geographic areas affected thereby should be disclosed under Item 13.F.

Sample Disclosure, XIII-F

There are no infringing uses actually known to XYZ, Inc. that could materially affect the Franchisee's use of such trademarks, service marks, trade names, logotypes or other commercial symbols in this state or any other state in which the franchise business is to be located.

or

John D. Jones, 4231 Main Street, Reno, Nevada, currently is doing business as ABX Muffler Shoppe at the aforementioned address. XYZ, Inc., believes this is an infringing use of its trademark "ABX Muffler Shop," registered with the U.S. Patent Office on July 6, 1973, and intends to file an action to enjoin Jones' use, recover profits and damages. In the event the court would hold that Jones' use was not infringing, it is possible that XYZ may not be able to operate as ABX Muffler Shop in Jones' immediate area.



PATENTS AND COPYRIGHTS (Item XIV). Requirement (Item 14): If the franchisor owns any rights in or to any patents or copyrights which are material to the franchise, describe such patents and copyrights, their relationship to the franchise and the terms and conditions under which the franchisee may use them, including their duration, whether the franchisor can and intends to renew any copyrights, and, to the extent relevant, the information required by Item 13 above with respect to such patents and copyrights.

Instructions:

(1) Identify each patent licensed to the franchisee by patent number, issue date and title. Identify each patent application licensed to the franchisee by serial number, filing date and title. Describe the type of patent or patent application, i.e. mechanical, process, design, etc. Identify each copyright licensed to the franchisee by registration number and date. If the franchisor has no patents, patent applications or copyrights, the offering circular should so state.

(2) Describe the relationship of the patent, patent application or copyright to the franchised business. With respect to the patent, patent application or copyright indicate:

(a) The manner in which the franchisee will be able to use the patent, patent application or copyright; and

(b) The term for which the franchisee will be able to use the patent, patent application, or copyright.

(3) In connection with any pending patent or copyright application licensed to the franchisee, an opinion of counsel may be included with respect to the likelihood of obtaining the patent or copyright, provided that counsel issuing the opinion consents to such use. A summary of the opinion may be included as part of the text of the disclosure, provided that the full opinion is attached and counsel issuing the opinion consents to such use.

(4) Describe any currently effective determination of the Patent and Trademark Office, Copyright Office (Library of Congress) or court with respect to the patent or copyright, including the:

(a) Forum;

(b) Number of the case or matter; and

(c) Effect of the determination or decision on the franchisee's use of the patent or copyright.

(5) Describe any proceeding pending in the Patent and Trademark Office or the Court of Customs and Patent Appeals with regard to any patent. With regard to these state:

(a) The forum;

(b) The number of the case or matter;

(c) The claims asserted and the issues involved; and

(d) Any effective determinations.

An opinion of counsel may be included relative to the proceedings, provided that counsel issuing the opinion consents to such use. A summary of the opinion may be included as part of the text of the disclosure, provided that the full opinion is attached and counsel issuing the opinion consents to such use.

(6) Describe any currently effective agreements pursuant to which the franchisor, its parent or affiliate derives its right to use and/or license the patent, patent application or copyright and that will or may limit the franchisee's use thereof. With respect to such agreements state:

(a) The parties to the agreement;

(b) The duration of the agreement;

(c) The extent to which the franchisee's use is or may be affected by the agreement, identifying the states and/or locales where affected; and

(d) Any other material terms, including the circumstances under which the agreement may be modified or cancelled.

(7) Describe any obligations of the franchisor, by the franchise agreement or otherwise, to protect any or all rights that the franchisee has to use such patent, patent application or copyright. With respect to any such obligations, state:

(a) Any obligation of the franchisee, under the franchise or other agreement, to notify the franchisor of any claims or rights to any patent, patent application or copyright;

(b) Whether the franchisor under the franchise or other agreement is obligated to take any affirmative action when notified of any infringement or whether any such action is merely discretionary and identify who has the right to control any litigation;

(c) Whether the franchisor is obligated by the franchise or other agreement to participate in the defense of the franchisee and/or indemnify the

franchisee for damages or expenses incurred if the franchisee is a party to any administrative or judicial proceeding involving a patent, patent application or copyright licensed to the franchisee;

(d) Any rights the franchisor has to require the franchisee to discontinue or modify any use of its patent(s) or copyright(s); and

(e) Any rights the franchisee has if the franchisor requires the franchisee to modify or discontinue the use of any patent or copyright as a result of any legal proceeding or settlement.

(8) Describe any infringements actually known to the franchisor that could materially affect the franchisee's use of such patent or copyright in the filing state or state in which the franchise business will be located. With respect to any such infringement:

(a) Describe the nature of the infringement;

(b) Identify the location(s) where the infringement is occurring;

(c) The length of time, if known, of the infringement; and

(d) Any action taken or anticipated by the franchisor.

(9) State whether the franchisor intends to renew the copyright when the registration expires.

(10) Other proprietary information, such as a formula or recipe considered by franchisor as a trade secret, if mentioned, should be mentioned under this item.

Sample Disclosure, XIV

Patents and Copyrights: U.S. Patent 3,999,142, which was issued December 14, 1970, will be licensed to the Franchisee for the term of the Franchise Agreement. U.S. Patent 3,999,142 is a description of a process for installing exhaust systems which comprises the steps of marking a straight length of exhaust pipe to be installed on a particular model vehicle according to the specifications and instructions in the ABX Muffler Shop Pipe-bender Index Guide, bending the exhaust pipe on a pipe-bending machine meeting the specifications of XYZ, coating the inside and outside of the exhaust pipe with XYZ Pipe Protector by use of the XYZ coating apparatus, and installing the exhaust pipe on the motor vehicle. The Franchisee is granted the right to use this process in connection with the sale of ABX Muffler Shop installed exhaust systems during the term of the Franchise Agreement.

XYZ has copyrights on its Operations Manual. The Operations Manual was registered with the United States Copyright Office on December 15, 1970, under registration number A 41139; and amendments to the Operations Manual have been copyrighted on January 7, 1973, Reg. No. A 521,371, and June 6, 1974, Reg. No. A 541,333. The Operations Manual is a six volume manual consisting of instructions and techniques used in the installation and maintenance of ABX Muffler Shop Exhaust Systems. The Franchise Agreement grants the Franchisee the right to use the copyrighted Operations Manual for the term of the Agreement.

There are no agreements currently in effect that significantly limit the rights of XYZ to use or license the use of the above-mentioned patent and/or copyright in any manner material to the Franchise. In the event of any infringement of or challenge to the Franchisee's use of any patent or copyright, the Franchisee is obligated to immediately notify XYZ and XYZ will have sole discretion to take such action as it deems appropriate.

If it becomes advisable at any time in the sole discretion of XYZ to modify or discontinue use of any patent or copyright and/or use one or more additional or substitute patents or copyrights, the Franchisee is obligated to do so and the sole obligation of XYZ in any such event will be to reimburse

the Franchisee for his tangible costs (such as changing equipment) of complying with this obligation.

While XYZ is not required by the Franchise Agreement to defend the Franchisee against any infringement, unfair competition or other claim respecting the Franchisee's use of any patent or copyright, XYZ is obligated to indemnify the Franchisee against, and to reimburse the Franchisee for, all damages for which he is held liable in any proceeding arising out of the use of any patent or copyright and for all costs reasonably incurred by the Franchisee in the defense of any such claim, provided that the Franchisee has notified XYZ of such claim as described above.

Under the Franchise Agreement, the Franchisee agrees not to contest, directly or indirectly, XYZ's ownership, title, right or interest in its patents or copyrights, trade secrets, methods, and procedures which are part of the XYZ business or contest XYZ's sole right to register, use or license others to use such patents and copyrights, trade secrets, methods, and procedures.

There are no infringing uses actually known to XYZ, Inc. that could materially affect the franchisee's use of such patent or copyright in this state or any other state in which the franchised business is to be located.

XYZ can and intends to arrange for the renewal of the copyright on the Operations Manual.

and/or

Proprietary Rights: XYZ, Inc., does not own any patents or copyrights that are material to the Franchise. However, XYZ does own proprietary rights on a number of technical processes used in connection with the installation of exhaust systems, the use of which are licensed to the Franchisee pursuant to the Franchise Agreement.

The Franchise Agreement provides that the Franchisee acknowledges that, except as specifically described in an exhibit attached to the Franchise Agreement, its entire knowledge of XYZ processes, services and products, all proprietary formulations, technology, know-how and the operation of the ABX Muffler Shop is derived from information disclosed to the Franchisee by XYZ pursuant to the Franchise Agreement and that such information is proprietary and confidential and a trade secret of XYZ. XYZ has established comprehensive security procedures to maintain the secrecy of all such proprietary information.

The Franchise Agreement further provides that the Franchisee will: (1) fully and strictly adhere to all security procedures prescribed by XYZ in its sole discretion for maintaining the secrecy of such information; (2) disclose such information to his employees only to the extent necessary to market XYZ's products and services and for the operation of the ABX Muffler Shop in accordance with the Franchise Agreement; (3) not use any such information in any other business or in any manner not specifically authorized or approved in writing by XYZ; and (4) exercise the highest degree of diligence and make every effort to maintain the absolute confidentiality of all such information during and after the term of the Franchise Agreement.

The Franchisee is further obligated to require each employee of the ABX Muffler Shop to execute the XYZ Standard Nondisclosure—Noncompetition Agreement before performing any work at or otherwise having access to the ABX Muffler Shop. A copy of such agreement shall be delivered to XYZ within one week of its execution.



OBLIGATION OF THE FRANCHISEE TO PARTICIPATE IN THE ACTUAL OPERATION OF THE FRANCHISE BUSINESS (Item XV).
Requirement (Item 15): State fully the obligation of the franchisee or the subfranchisor, whether arising by terms of the franchise agreement or other device or practice, to participate personally in the direct operation of the franchise business or whether the franchisor recommends participation in the same.

Instructions:

(1) If the franchisee is an individual, state whether the franchise business must be under the direct on-premises supervision of the franchisee. If such on-premises supervision is not required state:

(a) Whether the franchisor recommends on-premises supervision participation by the franchisee;

(b) Who the franchisee can or cannot hire to conduct the on-premises supervision as manager of the franchised business;

(c) Whether any such manager must attend the franchisor's training program; or

(d) Whether the franchisor must be informed of the identity of the manager.

(2) If the franchisee is a corporation or partnership, identify who must conduct the on-premises

supervision of the franchised business. With respect to such manager(s), state whether:

(a) Such manager(s) must attend the franchisor's training program;

(b) The franchisor must be informed of the identity of the manager; or

(c) The manager must have an equity interest in the franchise and, if so, the magnitude of such equity interest.

(3) Describe any obligation of the franchisee to enter into an agreement with any such manager. With respect to such agreement, describe the terms that are required by the franchisor including:

(a) Maintenance of trade secrets; and

(b) Restrictive covenants and covenants not to compete.

Sample Disclosure, XV

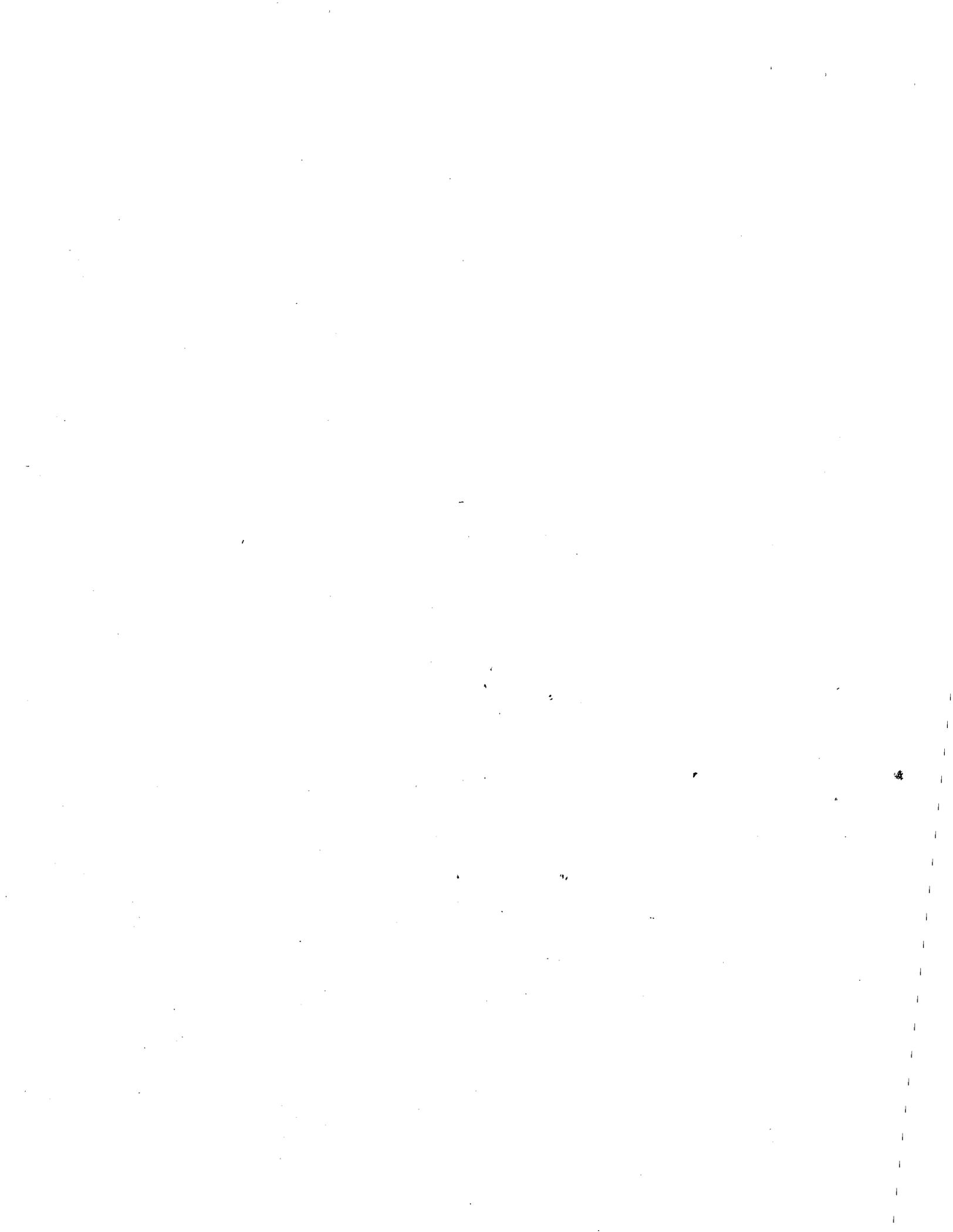
Obligation of the Franchisee to Participate in the Actual Operation of the Franchise Business: The Franchise Agreement provides that the ABX Muffler Shop shall at all times be under the direct, on-premises supervision of the Franchisee or a principal thereof who must devote his full time and energy to the operation of the ABX Muffler Shop.

or

XYZ does not require the Franchisee to participate personally in the direct operation of the ABX Muffler Shop. The Franchise Agreement does provide, however, that the ABX Muffler Shop must at all times be under the direct, on-premises supervision of a manager (who may be the Franchisee) who has completed the training program and devotes his entire time during business hours to the management of the ABX Muffler Shop. Such manager may not have any interest as an owner, employee, director, officer, salesman, representative, agent or in any other capacity "in any other business competitive with ABX Muffler Shops.

or

XYZ does not require the Franchisee to personally manage or operate the ABX Muffler Shop.



RESTRICTION ON GOODS AND SERVICES OFFERED BY FRANCHISEE (Item XVI). *Requirement (Item 16):* State any restriction or condition imposed by the franchisor, whether by terms of the franchise agreement or by other device or practice of the franchisor, whereby the franchisee is restricted as to the goods or services he may offer for sale, or limited in the customers to whom he may sell such goods or services.

Instructions:

(1) Describe any obligations of the franchisee to sell or provide only those goods and services approved by the franchisor and whether such restriction is conditioned on meeting certain defined sales efforts or results. With respect to any such conditions, describe the terms and their effect on the right of the franchisee to sell or provide other goods and services.

(2) Describe any obligation of the franchisee to sell or provide all the goods and services authorized by the franchisor.

(3) State whether the franchisee is restricted as to the customers to whom he may sell his goods and services. If so, define those customers, describe such restrictions, and state whether they are related to any sales quotas or other measure of market penetration that the franchisee is required to meet.

(4) The disclosures made under this Item will, in some respects, complement those made in Items 8, 9 and 12. Where appropriate, cross-reference should be made to those Items.

Sample Disclosure, XVI

Restriction on Goods and Services Offered by Franchisee: The Franchise Agreement provides that the Franchisee must sell all the products and services required by XYZ. Further, the Franchisee is prohibited from offering or selling any products or services not authorized by XYZ and from using the premises for any other purpose than the operation of the ABX Muffler Shop. The Franchisee is not limited in the customers to whom he may sell such goods or services.

or

There are no restrictions or conditions imposed by XYZ, either by the Franchise Agreement or otherwise, whereby the Franchisee is restricted as to the goods or services he may offer or as to the customers to whom the Franchisee may sell.

RENEWAL, TERMINATION, REPURCHASE, MODIFICATION AND ASSIGNMENT OF THE FRANCHISE AGREEMENT AND RELATED INFORMATION (Item XVII). *Requirement (Item 17):* With respect to the franchise and any related agreements state the following:

A. The term and whether such term is affected by any agreement (including leases or subleases) other than the one from which such term arises.

Instructions:

(1) State the length of the initial term.

(2) State whether the initial term commences upon:

(a) The date of execution of the franchise agreement:

(b) The date of commencement of business operations; or

(c) Any other date or event.

(3) Describe any obligation of the franchisee to commence business operations within a specified time period after execution of any agreement.

(4) Describe any agreement (other than the franchise agreement) that affects the term of the

franchise agreement. For example, if termination of the lease of the premises terminates the franchise agreement, disclose such fact here and/or under events of termination below.

Sample Disclosure, XVII-A

Term of the Franchise: The term of the Franchise Agreement is for a period of ten (10) years from the date of the opening of Franchisee's ABX Muffler Shop. The term of the Franchise is not affected by any Agreement other than the Franchise Agreement.

B. The conditions under which the franchisee may renew or extend.

Instructions (if franchisee has right to renew or extend):

(1) State the length of any renewal or extension term provided for in the franchise agreement.

(2) Describe the extent to which, if any, the franchisee's right to renew or extend is contingent upon his attainment of specified sales volumes or other measures of market penetration. Disclose how any such sales volumes or other measures of market penetration are calculated and when determined.

(3) Describe the extent to which the franchisee's right to renew or extend is contingent upon his maintenance of possession of the original premises (including extensions of leases or subleases) or the obtaining of alternative premises approved by the franchisor.

(4) Describe the extent to which the franchisee's right to renew or extend is contingent upon his refurbishing or remodelling the premises or the replacement of equipment, including:

(a) Who determines what refurbishing, remodelling or replacement is required; and

(b) Whether there is any limitation on the amount that is required to be expended.

(5) Describe the method by which the franchisee exercises his right to renew, including disclosure of the time period within which he must make the election, and whether he must pay any fee as a condition of such renewal, and, if so, the amount of such renewal fee or if no set fee, the manner by which it is determined.

(6) If the renewal or extension is effectuated by renewing or extending the existing franchise agreement and other documents without material change in their terms, so state.

(7) If the renewal or extension is effectuated other than by the renewal or extension of the existing

franchise agreement and other related agreements or documents without material change in their terms, state whether the:

(a) Franchisee is required to execute the then current form of franchise agreement and other agreements or documents;

(b) Franchisor has the right to charge an additional initial franchise fee;

(c) Royalties, advertising fees or other fees and charges remain at the previous levels or whether same are based on the then current charges of the franchisor under franchises being granted or are otherwise determined; or

(d) Franchisor is restricted in its right to change other significant provisions of the previously existing franchise agreement, other agreements or documents.

Instructions (if franchise agreement does not grant franchisee a right to renew or extend):

(1) State that the franchise agreement does not grant to the franchisee a right to renew or extend.

(2) Disclose the provisions in the franchise agreement that relate to expiration of the franchise and if expiration is treated as a termination, disclose same here and/or under Items 17 F. and G. with appropriate cross reference.

(3) If the franchise agreement does not grant to the franchisee the right to renew or extend, but the franchisor's policy is to do so, such policy may be disclosed here, provided same is clearly indicated to be only the franchisor's policy and not a binding obligation of the franchisor and there is included a statement of the actual number, as well as the percentage, of franchises which in the three year period immediately preceding the date of the offering circular have been renewed or extended without having any right to do so pursuant to the franchise agreement.

Sample Disclosure, XVII-B

Renewal of the Franchise: The Franchise Agreement provides that the Franchisee will have the right to renew and continue to renew the ABX Muffler Shop Franchise Agreement for additional five (5) year terms provided that:

1. The Franchisee has maintained an average gross sales volume for the five year period immediately preceding the notice of intent to renew of \$50,000 per year; and
2. The Franchisee is able to maintain possession of the premises of the ABX Muffler Shop or the Franchisee is able to secure and develop suitable substitute premises approved by XYZ; and
3. The equipment and inventory used in connection with the operation of the ABX Muffler Shop meets the then existing specifications and standards of XYZ.

Renewals must be effected by the execution by the Franchisee and XYZ of a Renewal Franchise Agreement and all other agreements, legal instruments and documents then customarily used by XYZ in the grant of franchises. These agreements, legal instruments and documents may vary materially from those agreements, legal instruments and documents currently in use by XYZ. There will not be, however, another initial franchise fee charged for renewal of the Franchise Agreement.

The Franchise Agreement provides that XYZ and the Franchisee each agree to give the other not less than six (6) months prior written notice of an election not to renew the Franchise. Failure or refusal by the Franchisee to execute such agreements, instruments and documents within thirty (30) days after their delivery to the Franchisee shall be deemed an election by the Franchisee not to renew the ABX Muffler Shop Franchise.

or

The ABX Muffler Shop Franchise Agreement does not grant the Franchisee the right to renew the ABX Muffler Shop Franchise. See the discussion under "Termination" at pages 16 and 17 of this Offering Circular for a further explanation of the procedures upon termination.

XYZ's policy in the past, although such policy is *not* binding upon XYZ, has been to offer new ten (10) year Franchise Agreements to its existing Franchisee's approximately six (6) months prior to the expiration of said Franchisee's existing Franchise Agreement. During the five year period preceding the date of this offering circular, XYZ has followed this policy in the case of ninety (90) franchisees, which amount represents ninety per cent of the franchisees whose original Franchise Agreements expired during the aforementioned five year period.

C. The conditions under which the franchisor may refuse to renew or extend.

Instructions:

(1) If the franchisee has a contractual right to renew or extend, state whether the franchisor has any right to refuse to renew or extend, assuming the franchisee has met the other contingencies or

conditions precedent, such as sales quotas or the retention of its premises.

(2) If the franchisor has the right to refuse to renew or extend as a result of the failure of the franchisee to satisfactorily comply with the

provisions of the franchise agreement, state whether:

(a) The determination due to such unsatisfactory performance is in the sole discretion of the franchisor or is determined by reference to predetermined standards;

(b) The franchisor must give the franchisee prior notification, and, if so, describe the time period of

such notification and whether the notification must contain the reasons for such refusal to renew or extend; or

(c) There are any provisions in the franchise agreement that relate to how the disputes respecting such refusal are resolved, i.e., judicially or through arbitration proceedings.

Sample Disclosure, XVII-C

(Sample Disclosure XVII-C is covered by Sample Disclosure XVII-B, above.)

D. The conditions under which the franchisee may terminate.

Instructions:

(1) State whether the franchisee is granted the right under the franchise agreement to terminate the agreement and franchise as a result of the franchisor's default. If so, state:

(a) The time period and form of notice required to be given prior to termination;

(b) Whether the franchisee must specify its reason for such termination; and

(c) Whether the franchisor is given an opportunity to cure such default.

(2) Describe any provision in the franchise agreement that grants to the franchisee the right to

terminate the franchise agreement for any reason other than the default of the franchisor. If the franchisee has any such right, state:

(a) Whether such right is only for specific reasons or for any reason; and

(b) The form of notification and the time period prior to such termination becoming effective after the giving of such notice.

(3) Whether termination by the franchisee in accordance with the agreement results in different post-termination consequences than if franchisor terminates the agreement.

Sample Disclosure, XVII-D

Termination by Franchisee: If the Franchisee is in compliance with the Franchise Agreement and XYZ breaches the Franchise Agreement and fails to cure such breach within thirty (30) days after written notice of such breach is delivered to XYZ, the Franchisee may terminate the Franchise Agreement and the Franchise, effective ten (10) days after delivery to XYZ of notice of such termination. A termination of the Franchise Agreement and the Franchise by the Franchisee without complying with the foregoing requirements or for any reason other than breach of the Franchise Agreement by XYZ and the failure of XYZ to cure such breach within thirty (30) days of receipt of written notice of such breach shall be deemed a termination by the Franchisee not in accordance with the provisions of the Franchise Agreement.

Also, if for any reason the Franchisee has not opened the ABX Muffler Shop within one (1) year after the date of the Franchise Agreement, the Franchisee may terminate the Franchise Agreement at any time thereafter, but prior to the opening of the ABX Muffler Shop, by giving written notice of termination to XYZ. If the Franchise Agreement is so terminated by the Franchisee, XYZ will refund to the Franchisee the initial franchise fee.

E. The conditions under which the franchisor may terminate.

Instructions:

(1) Specify the events of default where the franchisee is not given an opportunity to cure, (e.g., making of an assignment for the benefit of creditors; filing a voluntary petition in bankruptcy; a material violation of law; understatement of sales of the franchised business; unauthorized assignment of the franchise; failure to actively operate the franchise business; failure to maintain possession of the premises; and other similar defaults). With respect to such events of default, state:

(a) The form of notification required; and

(b) The time period between the giving of such notice and the effective date of such termination.

(2) Specify the events of default where the franchisee is given an opportunity to cure (e.g., failure to pay monies due; failure to properly adhere to specifications; failure to utilize proper materials; failure to comply with any requirement of the

franchise agreement or specifications, standards or operating procedures prescribed by the franchisor; and other curable defaults). With respect to such events or curable defaults, state:

(a) The form of notification required;

(b) The time period or periods during which the franchisee may cure the default; and

(c) Whether the effective date of termination upon failure to cure is the date upon which the cure period expires or whether the same is retroactive to the date of the notice.

Describe any conditions (other than defaults by the franchisee) that grant the franchisor the right to terminate. If so, state whether such other conditions relate to specific events, such as the failure of the franchisee to attain previous predetermined sales volumes or to meet other standards of market penetration or performance.

Sample Disclosure, XVII-E

Termination by XYZ: XYZ may terminate the Franchise Agreement and the Franchise immediately and without other cause and is effective thirty (30) days after delivery of notice of termination to the Franchisee, if the Franchisee or the ABX Muffler Shop:

1. Makes an assignment for the benefit of creditors or an admission of his inability to pay his obligations as they become due;
2. Files a voluntary petition in bankruptcy or any pleading seeking any reorganization, arrangement, composition, adjustment, liquidation, dissolution or similar relief under any law, or admitting or failing to contest the material allegations of any pleading filed against him, or is adjudicated a bankrupt or insolvent;
3. Fails to continuously and actively operate the ABX Muffler Shop;
4. Suffers cancellation of or fails to renew or extend the lease or sublease for, or otherwise fails to maintain possession of, the premises occupied by the ABX Muffler Shop and fails to secure a suitable alternative premises approved by XYZ;
5. Submits two (2) or more monthly or annual financial statements, other information, sales or income tax returns or supporting records to XYZ that understate by two percent (2%) or more the gross sales of the ABX Muffler Shop or materially distorts any other material information;
6. Consistently fails to submit when due monthly or annual financial statements or other information or fails to pay when due the royalty and service fees or advertising fees;
7. Violates and fails to cure or consistently violates any health or safety law, ordinance or regulation or operates the ABX Muffler Shop in a

manner that presents a health or safety hazard to its customers or the public;

8. Makes an unauthorized assignment of the Franchise Agreement, the Franchise or ownership of the Franchisee described below under the subheading "Assignment";
9. Repeatedly fails to comply with the Franchise Agreement, whether or not such failures are corrected, after notice thereof is delivered to the Franchisee; or
10. Has made any material misrepresentations or misstatements on his application for the Franchise or with respect to the ownership of the Franchisee.

In addition, XYZ will have the right to terminate the Franchise Agreement and the Franchise, effective upon delivery of notice of termination to the Franchisee, if the Franchisee fails to adhere to any material provision of the Franchise Agreement or any specification, standard or operating procedure prescribed by XYZ and does not correct such failure within fifteen (15) days (if such failure is to pay any money payable by the Franchisee), otherwise thirty (30) days after receipt by franchisee of written notice of such failure to comply.

F. The obligations (including lease or sublease obligations) of the franchisee after termination of the franchise by the franchisor and the obligations of the franchisee (including lease or sublease obligations) after termination of the franchise by the franchisee or the expiration of the franchise.

Instructions:

(1) Describe any and all of the following that may be applicable:

(a) Obligations of the franchisee regarding disposition of the existing inventory;

(b) Obligations of the franchisee regarding disposition of the equipment or real estate;

(c) Continuing obligations of the franchisee on any lease or sublease of the premises of the franchised business;

(d) Continuing obligations of the franchisee regarding financing arrangements with the franchisor or its parent or affiliate;

(e) The applicability of any covenant not to compete (Disclosure may be made here or in Item 17. M. below with an appropriate cross reference);

(f) Obligations of the franchisee to change its trade name or to alter its premises;

(g) Obligations of the franchisee to assign the telephone numbers of the franchised business to the franchisor or any party designated by the franchisor; and

(h) Other obligations or restrictions on the franchisee in the event of termination.

With respect to each post-termination obligation of the franchisee, state, if applicable, whether such obligation is affected by whether the termination was by: (a) the franchisor, (b) the franchisee, or, (c) expiration of the franchise.

Sample Disclosure, XVII-F

Post-termination Obligation of the Franchisee: The Franchisee is obligated upon termination of the Franchise Agreement to:

1. Pay to XYZ within seven (7) days such royalties, service fees, advertising fees and other charges owed by the Franchisee to XYZ;
2. Return all consigned inventory to XYZ;
3. Return all equipment leased from XYZ Commercial Leasing Corporation to XYZ Commercial Leasing Corporation;
4. Return to XYZ all copies of the Operations Manual then in the possession or control of the Franchisee;
5. Take such action as may be required to cancel all assumed name or equivalent registrations relating to the use of any name or mark and to notify the telephone company and listing agencies of the termination or expiration of Franchisee's right to use all telephone numbers and all classified and other directory listings of the ABX Muffler Shop and to authorize same to transfer to XYZ or its Franchisee all such numbers and directory listings;
6. If the Franchisee retains possession of the premises, make such reasonable modifications in the exterior and interior decor to minimize its identification as an ABX Muffler Shop;
7. Cease doing business under XYZ's names and marks and refrain from identifying himself or the premises as an ABX Muffler Shop; and
8. Abide by all provisions of the covenant not to compete as described at page 15 below and paragraph 23, page 24 of the Franchise Agreement.

G. The franchisee's interest upon termination, or refusal to renew or extend the franchise by the franchisor or by the franchisee.

Instruction:

Describe any provision in the franchise agreement or related document respecting the franchisee's "equity" (including goodwill, assets of the franchised business, leases or subleases) upon

termination, or if none, so state. With respect to the interest of the franchisee, state, if applicable, whether such interest is affected by whether the termination was by: (a) the franchisor, (b) the franchisee, or, (c) expiration of the franchise.

Sample Disclosure, XVII-G

Franchisee's Interest upon Termination or Nonrenewal: Upon termination of or refusal to renew or extend the ABX Muffler Shop Franchise Agreement, whether by the Franchisee, Franchisor or expiration of the Franchise Agreement, the Franchisee will receive the fair market value (as reasonably determined by XYZ) of all property to be returned to XYZ or any of its subsidiaries, plus payment for all accounts that have not been outstanding for more than 30 days prior to the date of termination, less a 10% allowance thereon for doubtful accounts. The Franchisee receives no payment or adjustment whatsoever for any goodwill the Franchisee may have established either prior to or during his operation of the ABX Muffler Shop.

H. The conditions under which the franchisor may repurchase, whether by right of first refusal or at the option of the franchisor. If the franchisor has the option to

repurchase the franchise, state whether there will be an independent appraisal of the franchise, whether the repurchase price will be determined by a predetermined formula and whether there will be a recognition of goodwill or other intangibles associated therewith in the repurchase price to be given the franchisee.

Instructions:

(1) Describe any right of first refusal and state:

(a) Whether such right of first refusal is applicable to an assignment of the franchise, a sale of the assets of the franchised business, and/or a sale of an equity interest in the franchisee, if a partnership or corporation;

(b) Procedures relating to the right of first refusal, including the form of required notice to the franchisor, the time period in which the franchisor may accept, and the form of such acceptance;

(c) Whether the assignment provisions of the franchise agreement remain equally applicable upon the nonexercise by the franchisor of the right of first refusal. (For example, if the franchisor does not exercise the right of first refusal, must the franchisor approve the assignee?); and

(d) Any right of the franchisor to purchase the franchise, the assets of the franchise business or an

equity interest in the franchisee on terms other than the terms contained in the offer to the franchisee by the third party.

(2) Describe any option of the franchisor to purchase the franchise, assets of the franchised business, and/or an equity interest in the franchisee, if a partnership or corporation, and state:

(a) When such option is effective, i.e., at any time, upon termination by the franchisor, upon termination by the franchisee, or upon expiration and nonrenewal;

(b) How the purchase price is determined (i.e., predetermined price, formula, or appraisal) and state whether goodwill is a factor in the determination of the purchase price;

(c) The terms of payment by the franchisor upon exercise of its option to purchase; and

(d) The procedure to be followed by the franchisor in exercising the option.

Sample Disclosure, XVII-H

Franchisor's Right of First Refusal to Purchase Franchised Business from Franchisee: The Franchisee may not sell, transfer, assign, lease or sublet any interest in the ABX Muffler Shop Franchise or in the equipment or furnishings located thereon, without first offering the same to XYZ, in writing, at a stated price and stated terms, which XYZ may accept in writing at any time within sixty (60) days from receipt of the written offer by the Franchisee. If XYZ declines, or does not accept the offer within sixty (60) days, the Franchisee may thereafter sell or dispose of the business to a third party, but not at a lower price nor on more favorable terms than have been offered to XYZ in writing and subject to the prior written permission of XYZ as described below under the subheading "Assignment." If the franchised business is not sold by the Franchisee within six months from the date it is offered to XYZ, then the Franchisee must re-offer to sell to XYZ prior to the sale to a third party.

Franchisor's Right to Purchase Business: Upon termination of the Franchise Agreement for any reason, or in the event that the Franchisee desires, prior to the termination of the Franchise Agreement, to discontinue the operation of his ABX Muffler Shop for any reason other than a sale to a third person, the Franchisee must give XYZ a written offer to sell the Franchisee's entire interest in the business and all related personal property. If, within sixty (60) days after receipt of the written offer from the Franchisee, the parties are unable to agree on the purchase price and terms, then the fair value of the business and property will be determined by arbitration according to the rules of the American Arbitration Association. The decision of the Arbitrator will be conclusive and the Arbitrator will exclude from the decision any

value for goodwill or going concern value created by the names, trademarks, service marks, logos, commercial symbols and business system licensed to the Franchisee. XYZ will have the right, at any time within thirty (30) days after receipt of the written decision of the Arbitrator, to purchase the business and other property at the valuation fixed by the Arbitrator, and upon such terms and conditions that he may determine.

I. The conditions under which the franchisee or its owners may sell or assign all or any interest in the ownership of the franchise or of the franchisee or in the assets of the franchise business.

Instructions:

(1) Describe any provisions in the franchise agreement which prohibit the assignment or sale of the franchise, the assets of the franchised business, or an equity interest in the franchisee.

(2) Disclose whether an assignment or sale is permitted only with the consent of the franchisor and whether such consent is required for all assignments or only certain assignments.

(3) Describe any specific provisions in the agreement as to related assignees and other transferees, such as transfers:

(a) To members of the franchisee's family;

(b) To a corporation or partnership without a change in control;

(c) Between shareholders or partners; or

(d) To employees.

(4) Describe any specific provisions as to unrelated assignees or purchasers, including:

(a) Any specific standards to be met by such assignees or purchasers;

(b) Whether the unrelated assignee or purchaser receives an assignment of the existing franchise agreement or is required to execute the then current form of franchise agreement containing the then current economic and other terms;

(c) Any fee payable to the franchisor as a condition of his consent, and if so, the amount and purpose thereof;

(d) Any other conditions precedent to the obtaining of the franchisor's consent; and

(e) Whether the franchisor requires the franchisee (and its owners) to execute a general release as a condition of its consent to the assignment.

In connection with this disclosure, a cross-reference to Item 17.M. may be appropriate.

Sample Disclosure, XVII-I

Assignment by the Franchisee: The Franchise Agreement provides that neither the Franchise Agreement, the Franchise, nor any part of the ownership of the Franchisee (which shall mean and include voting stock, securities convertible thereto, proprietorship and general partnership interests) may be voluntarily, involuntarily, directly or indirectly assigned or otherwise transferred or encumbered by the Franchisee or its owners (including without limitation by will, declaration of or transfer in trust or the laws of intestate succession) except as provided therein without the prior written approval of XYZ, and any such assignment, transfer or encumbrance without such approval constitutes a breach of the Franchise Agreement. XYZ will not, however, unreasonably withhold consent to an assignment if the conditions specified below are met.

The Franchise Agreement may be assigned to a corporation in which Franchisee owns all of the issued and outstanding capital stock provided that: (i) Franchisee or a manager approved by XYZ actively manages the corporation and continues to devote his best efforts and full and exclusive time to the day to day operation and development of the Franchise and the business of the ABX Muffler Shop; (ii) the corporation is newly organized

and its activities are confined exclusively to acting as an ABX Muffler Shop Franchisee under the Franchise Agreement; (iii) the corporation executes a document in such form as shall be approved by XYZ in which it agrees to become a party to and be bound by all the provisions of the Franchise Agreement; (iv) the Franchisee remains personally liable in all respects under the Franchise Agreement and the Franchisee executes on a form approved by XYZ a personal guaranty and agreement not to sell, assign, pledge, mortgage or otherwise transfer or encumber the stock; and (v) all stock certificates representing shares in the corporation bear a legend that they are subject to the terms of the Franchise Agreement.

If Franchisee dies and his personal representative does not desire to sell the ABX Muffler Shop, and if under controlling local law the deceased Franchisee's interest in the ABX Muffler Shop, the Franchise and this Agreement are distributable to heirs or legatees who are members of his immediate family and who otherwise would qualify as assignees, then, such attempted assignment by operation of law or will shall not be deemed in violation of the Franchise Agreement, provided that such heirs or legatees accept the conditions imposed on otherwise permitted assignees.

Consent to an assignment otherwise permitted or permissible as reasonable may be refused by XYZ unless prior to the effective date of the assignment: (i) all obligations of the Franchisee in connection with the ABX Muffler Shop have been assumed by assignee; (ii) all ascertained or liquidated debts of the Franchisee in connection with the ABX Muffler Shop have been paid; (iii) the Franchisee is not in default under any provision of the Franchise Agreement; (iv) the assignee has completed the training program required of new operators; (v) the assignee has executed XYZ's then current Standard Franchise Agreement for a full term as provided therein; (vi) the Franchisee or assignee has paid four thousand dollars (\$4,000.00) for assignee's training and on-site field technical and management supervision and training; (vii) the Franchisee or assignee has paid five hundred dollars (\$500.00) to reimburse XYZ for its reasonable legal and accounting fees, credit and investigation charges and expenses incurred as a consequence of such assignment; (viii) the Franchisee has paid to XYZ a sales commission of six percent (6%) of the gross selling price of the ABX Muffler Shop, the Franchise and all related assets (if XYZ obtained the purchaser for the Franchisee); and (ix) Franchisee and all officers, directors and shareholders to which the Franchise Agreement has been assigned must execute a general release under seal in favor of XYZ.

The Franchisee will not have the right to grant a subfranchise.

J. The conditions under which the franchisor may sell or assign in whole or in part.

Instructions:

(1) Describe any restrictions on any right of the franchisor to sell or assign its interest in the franchise in whole or in part.

(2) Describe any provision of the franchise or other agreement that relieves the franchisor of liability to the franchisee upon the franchisor's assignment of such agreement.

Sample Disclosure, XVII-J

Assignment by XYZ: The Franchise Agreement is fully assignable by XYZ and shall inure to the benefit of any assignee or other legal successor to the interest of XYZ.

K. The conditions under which the franchisee may modify.

Instruction:

Describe any events, or conditions contained in the franchise agreement, that permit the franchisee to modify the agreement.

Sample Disclosure, XVII-K

Modification by Franchisee: The Franchisee may modify the Franchise Agreement only upon the execution of a written agreement between XYZ and the Franchisee.

L. The conditions under which the franchisor may modify.

Instructions:

(1) Describe any specific provisions in the franchise agreement permitting the franchisor to modify the franchise agreement upon the occurrence of certain events or conditions.

(2) Describe any provision in the franchise agreement permitting the franchisor to alter or modify any operating manual to which the franchisee is required to adhere. If such right exists, state:

(a) To what extent may the manual(s) be modified; and

(b) Under what conditions may the franchisor modify the manual(s) (e.g., to meet competition, protect trademarks or trade names, or improve the quality of the product or service provided by the franchised business).

Sample Disclosure, XVII-L

Modification by XYZ: XYZ may modify the Franchise Agreement only upon the execution of a written agreement by XYZ and the Franchisee. XYZ may modify the operations manual unilaterally under any conditions and to any extent which XYZ, in the exercise of its sole discretion, deems necessary to meet competition, protect trademarks or trade names, or improve the quality of the product or service provided by the ABX Muffler Shop.

M. The rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee.

Instructions:

(1) Describe any specific provisions in the franchise agreement relating to the rights of the franchisee's heirs or personal representative upon the death or incapacity of the franchisee or the death or incapacity of a substantial shareholder or partner if the franchisee is a corporation or partnership.

(2) Describe the applicability of the general assignment provisions as they may relate to the

rights of the franchisee's heirs or personal representative (see Item 17. I.).

(3) If the franchisor has a policy relating to the rights of the franchisee's heirs or personal representative, it may be disclosed here provided that such policy is clearly indicated to be only the franchisor's policy and not a binding obligation of the franchisee.

Sample Disclosure, XVII-M

Right of Franchisee's Heirs upon Death of Franchisee: As noted above under the subheading "Assignments," if franchisee dies and his personal representative does not desire to sell the ABX Muffler Shop or interest therein and if under controlling local law the deceased Franchisee's interest in the ABX Muffler Shop, the Franchise and Franchise Agreement are distributable to heirs or legatees who are members of his immediate family and who otherwise would qualify as assignees, then such attempted assignment by operation of law or will shall not be deemed in violation of the Franchise Agreement, provided such heirs or legatees accept the conditions imposed on otherwise permitted assignees.

If the franchisee is incapacitated and his personal guardian does not desire to sell the ABX Muffler Shop or interest therein, such personal guardian or a member of the immediate family may, if such party otherwise would qualify as an assignee, continue to operate the Franchisee's ABX Muffler Shop, provided that such person personally manages the ABX Muffler Shop.

or

Upon the death or incapacity of the Franchisee, or any partner, officer, director or principal shareholder of such Franchisee, the Franchisor has a first option to purchase any interest held by such person at the book value of such interest. In the event that the Franchisor fails to exercise its option, the heirs of the Franchisee may take the interest of the deceased person, but subject always to the express written consent of the Franchisor and also to the requirement that the heir personally manage the Franchise.

or

In the event of the death or total and permanent disability of the ABX Muffler Shop Franchisee, or any partner or shareholder owning 50% or more of the Franchise and business, such person or the legal representative of such Franchisee, partner or shareholder shall within sixty (60) days of such death or disability set forth in writing and deliver to XYZ a description of the proposed disposition of such interest following the procedures set forth in the Franchise Agreement and the Operations Manual.

N. The provisions of any covenant not to compete.

Instructions:

(1) Describe the provisions of any covenant not to compete that are applicable during the term of the franchise, including:

(a) The types of businesses and positions therein that are prohibited;

(b) Any exceptions to such prohibitions; and

(c) The geographic area in which such prohibitions are effective.

(2) Describe the provisions of any covenant not to compete that are applicable after the expiration or termination of the franchise, and state:

(a) Whether the applicability of such provisions is affected by whether the franchisee terminates or

fails to renew or the franchisor terminates or refuses to renew. If so, describe how such provisions are affected;

(b) The types of businesses and positions therein that are prohibited;

(c) The geographic area in which the prohibitions are effective; and

(d) The time period during which the prohibitions are effective.

Describe any obligations that the franchisor must meet as a condition of the enforcement of the covenant not to compete, (e.g., the repurchase of inventory and equipment or the termination of leases and subleases).

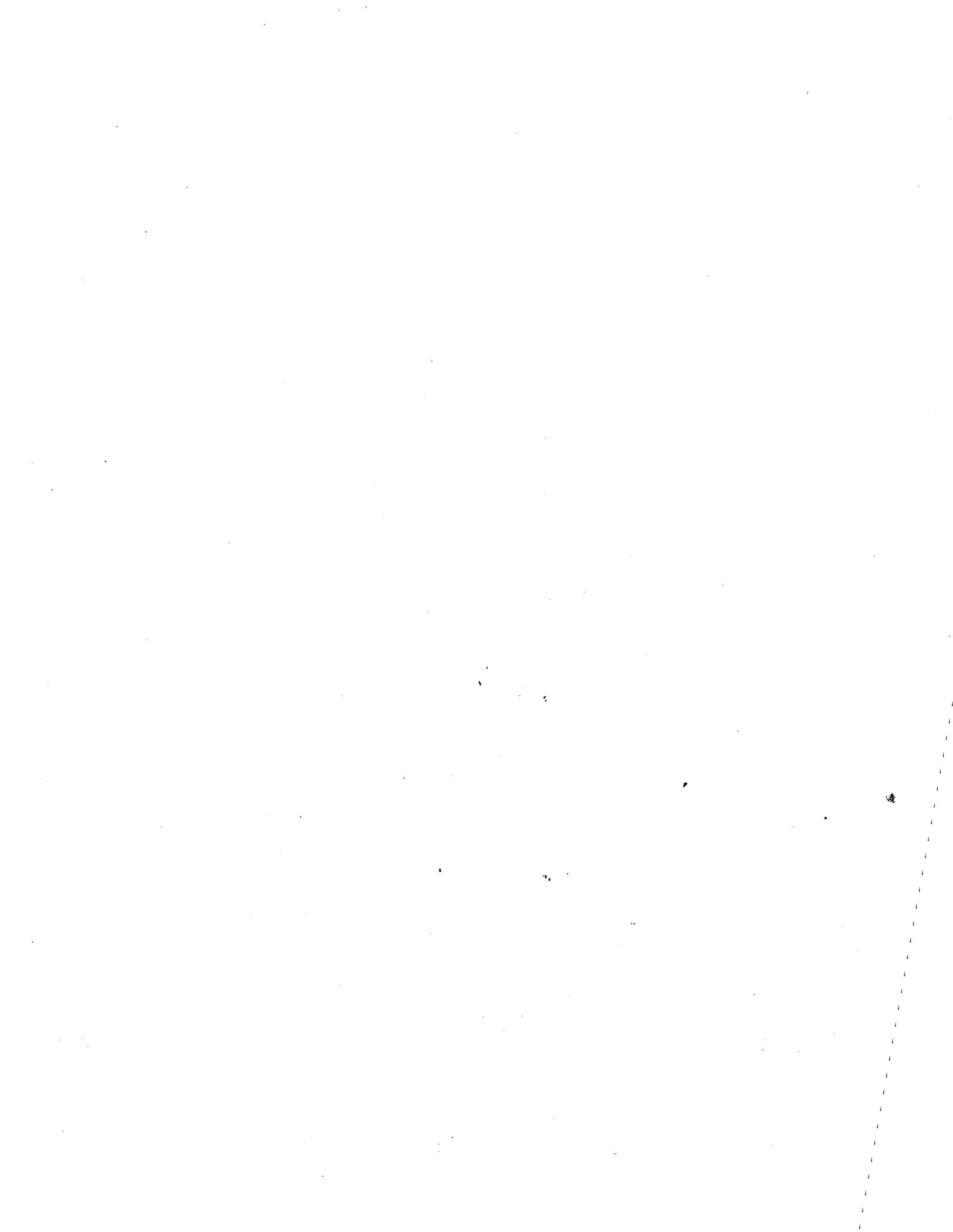
Sample Disclosure, XVII-N

Covenants Not To Compete:

During the Term of the Franchise: The Franchise Agreement provides that the Franchisee may not during the term of the Franchise engage as an owner, partner, director, officer, employee, consultant, agent or in any other capacity in any other business selling goods and services similar to the goods and services sold by ABX Muffler Shops (except for other ABX Muffler Shops under Franchise Agreements entered into between the Franchisee and XYZ) without the prior written approval of XYZ. Such approval will not be unreasonably withheld.

After Termination or Expiration of the Franchise: The Franchise Agreement provides that the Franchisee may not engage as an owner, partner, director, officer, employee, consultant, salesperson, representative or agent or in any other capacity in any retail business selling goods and services similar to the goods and services carried for sale by the ABX Muffler Shop for a period of 2 years after termination or expiration within a three (3) mile radius of the Franchisee's ABX Muffler Shop if the Franchisee is terminated by XYZ either in accordance with the provisions of the Franchise Agreement or by mutual agreement of the Franchisee and XYZ or if the Franchisee fails to renew the Franchise.

XYZ may partially or fully waive the foregoing restriction. If XYZ elects to enforce the restriction, in order to minimize any resulting hardship to the Franchisee, XYZ agrees to accept an assignment of the lease or sublease for the premises of the ABX Muffler Shop and to purchase from the Franchisee at fair wholesale market value all approved fixtures, equipment and signs of the ABX Muffler Shop in good repair and working order and all authorized and approved inventory of the ABX Muffler Shop in saleable condition. There is no provision in the Franchise Agreement for an independent appraisal of such items or for the recognition of goodwill or other intangibles associated with the business of the Franchisee. However, in the event that the Franchisee and XYZ are unable to agree on the fair wholesale market value of such items, the Franchisee will have the right to have the matter settled by arbitration, as described below under the subheading "Arbitration."



ARRANGEMENTS WITH PUBLIC FIGURES (Item XVIII).
Requirement (Item 18): State the following:

A. Any compensation or other benefit given or promised to a public figure arising, in whole or in part, from:

1. The use of the public figure in the name or symbol of the franchise; or
2. The endorsement or recommendation of the franchise by the public figure in advertisements.

Instructions:

(1) A "public figure" is a person whose name or physical appearance would be known to a substantial portion of the public within the geographic area in which the franchise is sold. "Public figures" are typically persons who have achieved prominence such as athletes, entertainers or persons whose involvement in public affair is well known. The term "public figure" also includes fictionalized characters such as cartoon characters.

(2) Describe any compensation or benefits given or promised to a public figure, the owner thereof or

any officer and/or director of such owner for the use of the public figure in the name or symbol of the franchise.

(3) Describe any compensation or benefits given or promised to a public figure, the owner thereof or any officer and/or director of such owner for the endorsement or recommendation of the franchise by the public figure in advertisements for the sale of the franchise.

B. Any right the franchisee may have to use the name of a public figure in his promotional efforts or advertising and any charges to be made to the franchisee in connection with such usage.

Instructions:

(1) Describe any provisions in the franchise agreement or pursuant to the present policy of the franchisor, that grant to the franchisee the right to use the name of a public figure in his promotional efforts or advertising. If the franchisee has any such right, describe in what manner he may utilize such

name of a public figure and any limitations with respect thereto.

(2) Describe any separate charges that the franchisee must pay to utilize the name of a public figure in its promotional efforts or advertising and how such charges are computed.

C. The extent to which such public figure is involved in the actual management or control of the franchisor.

Instructions:

(1) Describe the position of the public figure, the owner thereof or any officer and/or director of such owner in the structure of the franchisor, including whether the public figure, the owner thereof or any

officer and/or director of such owner, is an officer and/or director of the franchisor.

(2) Describe the duties or function of the public figure, the owner thereof or any officer and/or director of such owner.

D. The total investment of the public figure in the franchise operation.

Instructions:

(1) Describe the total investment of the public figure, the owner thereof or any officer and/or director of such owner in the franchise operation including a description of the type of investment, e.g., common stock, notes, etc.

(2) Describe the extent to which the investment was for services performed or to be performed by the public figure, the owner thereof, or any officer and/or director of such owner.

Sample Disclosure, XVIII

Arrangements with Public Figures: There is no compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of a public figure in the name or symbol of the franchise, or the endorsement or recommendation of the franchise by a public figure in advertisements.

The franchisee does have a right to use the name of a public figure in his promotional efforts or advertising without prior written approval from XYZ.

There are no public figures involved in the actual management or control of XYZ.

or

There is no compensation or other benefit given or promised to a public figure arising 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. Also, the Franchisee does not have any right to use the name of the public figure or celebrity in his promotional effort and



Representations Regarding Earnings Capability (Item XIX)

Requirement

A. An earnings claim made in connection with an offer of a franchise must be included in full in the offering circular and must have a reasonable basis at the time it is made. If no earnings claim is made, Item 19 of the offering circular shall contain the negative disclosure prescribed in the instruction.

Instructions

(1) *Definition*: "Earnings Claim" means information given to a prospective franchisee by, on behalf of or at the direction of the franchisor or its agent, from which a specific level or range of actual or potential sales, costs, income or profit from franchised or non-franchised units may be easily ascertained.

A chart, table or mathematical calculation presented to demonstrate possible results based upon a combination of variables (such as multiples of price and quantity to reflect gross sales) is an earnings claim subject to this item.

An earnings claim limited solely to the actual operating results of a specific unit being offered for sale need not comply with this item if it is given only to potential purchasers of that unit and is accompanied by the name and last known address of each owner of the unit during the prior three years.

(2) *Supplemental Earnings Claim*. If a franchisor has made an earnings claim in accordance with this Item 19, the franchisor may deliver to a prospective franchisee a supplemental earnings claim directed to a particu-

lar location or circumstance, apart from the offering circular. The supplemental earnings claim must be in writing, explain the departure from the earnings claim in the offering circular, be prepared in accordance with this Item 19, and be left with the prospective franchisee.

(3) *Scope of Requirement*. An earnings claim is not required in connection with the offer of franchises; if made, however, its presentation must conform with this Item 19. If an earnings claim is not made, then Negative Disclosure 19 (below) must be used.

(4) *Claims Regarding Future Performance*. A statement or prediction of future performance that is prepared as a forecast or projection in accordance with the Statement on Standards for Accountants' Services on Prospective Financial Information (or its successor) issued by the American Institute of Certified Public Accountants, Inc., is presumed to have a reasonable basis.

(5) *Burden of Proof*. The burden is upon the franchisor to show that it had a reasonable basis for its earnings claim.

(Negative Disclosure 19)

Franchisor does not furnish or authorize its salespersons to furnish any oral or written information concerning the actual or potential sales, costs, income or profits of (an ABX Muffler Shop). Actual results vary from unit to unit and franchisor cannot estimate the results of any particular franchise.

B. An earnings claim shall include a description of its factual basis and the material assumptions underlying its preparation and presentation.

Instructions

i. *Factual Basis*: The factual basis of an earnings claim includes significant matters upon which a franchisee's future results are expected to depend, including, for example, economic or market conditions, and which are basic to a franchisee's operation and encompass matters affecting, among other things, franchisee's sales, the cost of goods or services sold and operating expenses.

In the absence of an adequate operating experience of its own, a franchisor may base an earnings claim upon the results of operations of a substantially similar business of a person affiliated with the franchisor, or franchisees of that person; PROVIDED that disclosure is made of any material differences in the economic or market conditions known to, or reasonably ascertainable by, the franchisor.

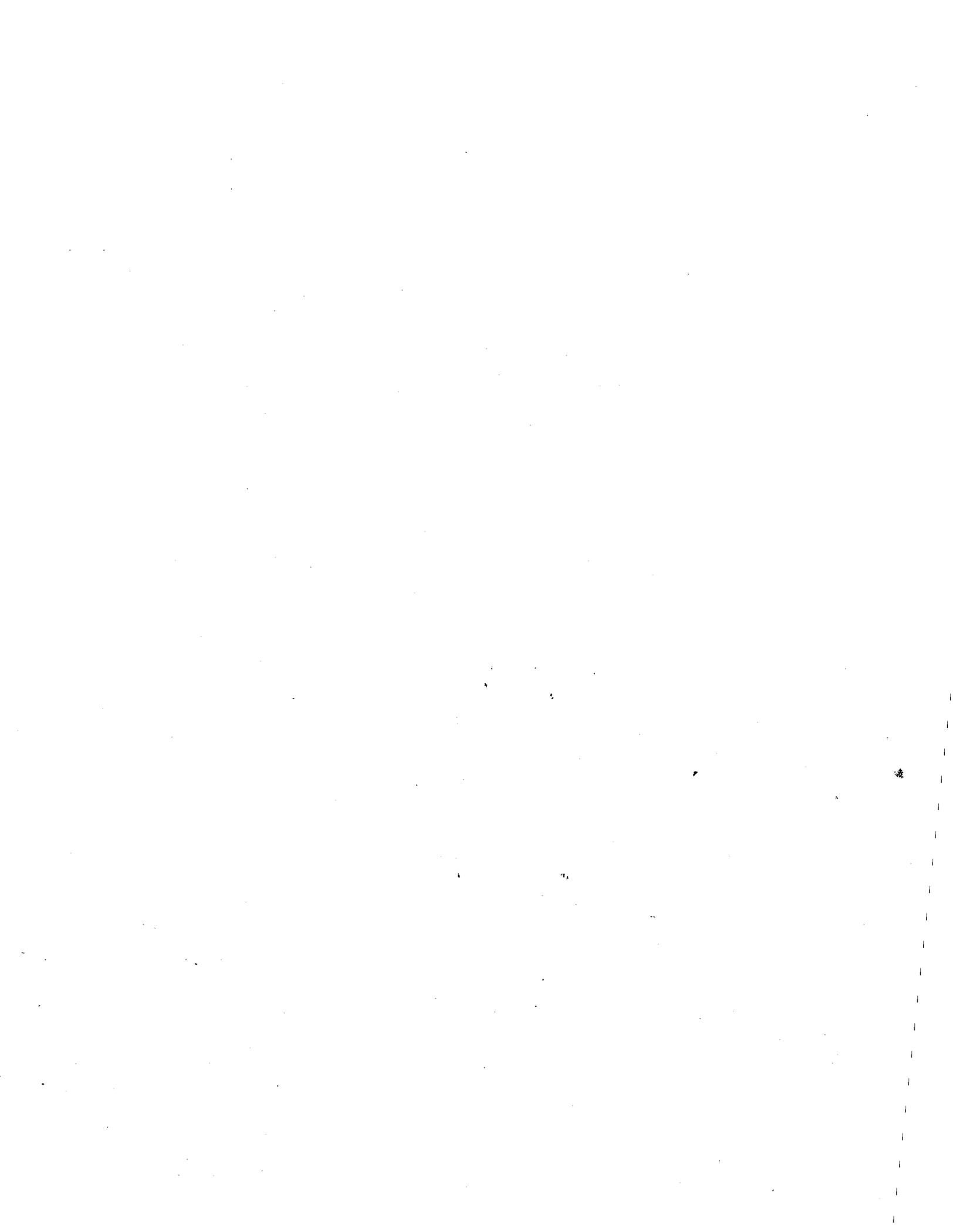
ii. *Basic Disclosures*. The earnings claim must state:

(a) material assumptions, other than matters of common knowledge, underlying the claim (see General Instruction iii.a. under Item III. LITIGATION for the definition of "Material"),

(b) a concise summary of the basis for the claim including a statement of whether the claim is based upon actual experience of franchised units and, if so, the percentage of franchised outlets in operation for the period covered by the earnings claim that have actually attained or surpassed the stated results;

(c) a conspicuous admonition that a new franchisee's individual financial results are likely to differ from the results stated in the earnings claim; and,

(d) a statement that substantiation of the data used in preparing the earnings claim will be made available to the prospective franchisee on reasonable request.



20. INFORMATION REGARDING FRANCHISES OF THE FRANCHISOR:

State the following as of the close of franchisor's most recent fiscal year (unless another time period is specifically indicated):

A. The total number of franchises, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

B. The number of franchises in this state, exclusive of company owned or operated distribution outlets, of a type substantially similar to those offered herein and of that number, the number of such franchises which were operational as of the date of this offering circular.

C. The total number of franchises substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

D. The number of franchises in this state substantially similar to those offered herein for which a business is not yet operational although a franchise agreement has been signed.

E. The names, addresses and telephone numbers of all franchises under franchise agreements with the franchisor or its subfranchisor which are located in the state where the proposed franchise is to be located. To the extent that there are fewer than 10 such franchises located in said state, the list shall include at least the 10 such franchises which are most proximate to the location of the proposed franchise; and if fewer than 10 such franchises exist, the list shall identify all such franchises and include a statement to that effect.

In lieu of the above disclosure, the franchisor may attach to the offering circular a list of the names, addresses and telephone numbers of all its franchises under franchise agreements with the franchisor or its subfranchisors.

F. An estimate of the total number of franchises to be sold or granted during the one-year period following the date of the offering circular.

G. An estimate of the number of franchises to be sold or granted in this state during the one-year period following the date of the offering circular.

H. State the number of franchises in each of the following categories which within the three-year period immediately preceding the close of franchisor's most recent fiscal year have:

(1) been cancelled or terminated by the franchisor for:

(a) failure to comply with quality control standards; and

(b) other reasons;

(2) not been renewed by the franchisor;

(3) been reacquired through purchase by the franchisor; and

(4) been otherwise reacquired by the franchisor.

I. The name and last known address and telephone number of every franchisee in this state under a franchise agreement with the franchisor or its subfranchisor whose franchise has, within the twelve month period immediately preceding the effective date of this offering circular, been terminated, canceled, not renewed, or who has, during the same time period, otherwise voluntarily or involuntarily ceased to do business pursuant to the franchise agreement.

Instructions:

(1) The information requested in Items 20. A. and B. is as of the close of the franchisor's most recent fiscal year as to the number of franchises in existence and as of the date of offering circular as to the number which were then operational. The disclosures required for the remaining Items are to be as of the close of the franchisor's most recent fiscal year. However, all of the disclosures in this Item may be as of a more recent date than that specified provided that the actual date utilized is clearly disclosed.

(2) Items 20. A. and B. refer to the number of franchises that have been granted and have not expired or been otherwise terminated.

(3) With respect to Items 20. B. and D., the franchisor may include a listing showing the required information for all states in order to avoid the necessity of having a different page to satisfy this disclosure with respect to each state. However, it should be noted that any material change in the listing as a whole, even if not a material change as to the information respecting the state in which the registration is effective, would require a post-effective amendment.

(4) Requirement 20. E. requires the disclosure of the names, business addresses and telephone numbers of franchise locations, as opposed to the names, addresses and telephone numbers of the franchisee's personal residence.

(5) Where applicable, franchisor should disclose for company owned or operated distribution outlets of a type substantially similar to the franchises offered by the offering circular, information parallel to that information required under Items 20. A. and B., and Items 20. F. and G. for franchised outlets. Thus, franchisor should disclose in the same format as, but separately from, the information regarding its franchised outlets, the following information:

(a) The total number of company owned or operated distribution outlets of a type substantially similar to those franchises offered by the offering circular, and of that number, the number of such company owned or operated distribution outlets that were operational as of the date of this offering circular;

(b) The number of company owned or operated distribution outlets in this state of a type substantially similar to those franchises offered by the offering circular, and of that number, the number of such company owned or operated distribution outlets that were operational as of the date of this offering circular;

(c) An estimate of the total number of company owned or operated distribution outlets of a type substantially similar to those franchises offered by

the offering circular to become operational during the one year period following the date of the offering circular; and

substantially similar to those franchises offered by the offering circular to become operational in this state during the one year period following the date of the offering circular.

(d) An estimate of the number of company owned or operated distribution outlets of a type

Sample Disclosures, XX-A through XX-H

There are 250 ABX Muffler Shops in operation as of the date of this offering circular. A list follows:

State	Number of Shops
Alabama	5
Arizona	15
Arkansas	5
California	50
Connecticut	15
Florida	10
Georgia	10
Illinois	15
Indiana	5
Louisiana	10
Maryland	10
Massachusetts	10
Michigan	20
Minnesota	10
New Jersey	5
New York	15
Ohio	10
Pennsylvania	10
Texas	10
Virginia	10
TOTAL	250

In addition, as of the date of this offering circular, Franchise Agreements have been executed for ABX Muffler Shops in the following states, although the shops are not yet operational:

State	Number of Shops
Kentucky	3
Oregon	1
Tennessee	3
Washington	2
TOTAL	9

A list of the names, addresses and telephone numbers of the above listed 259 franchises is attached to this Offering Circular as Exhibit C.

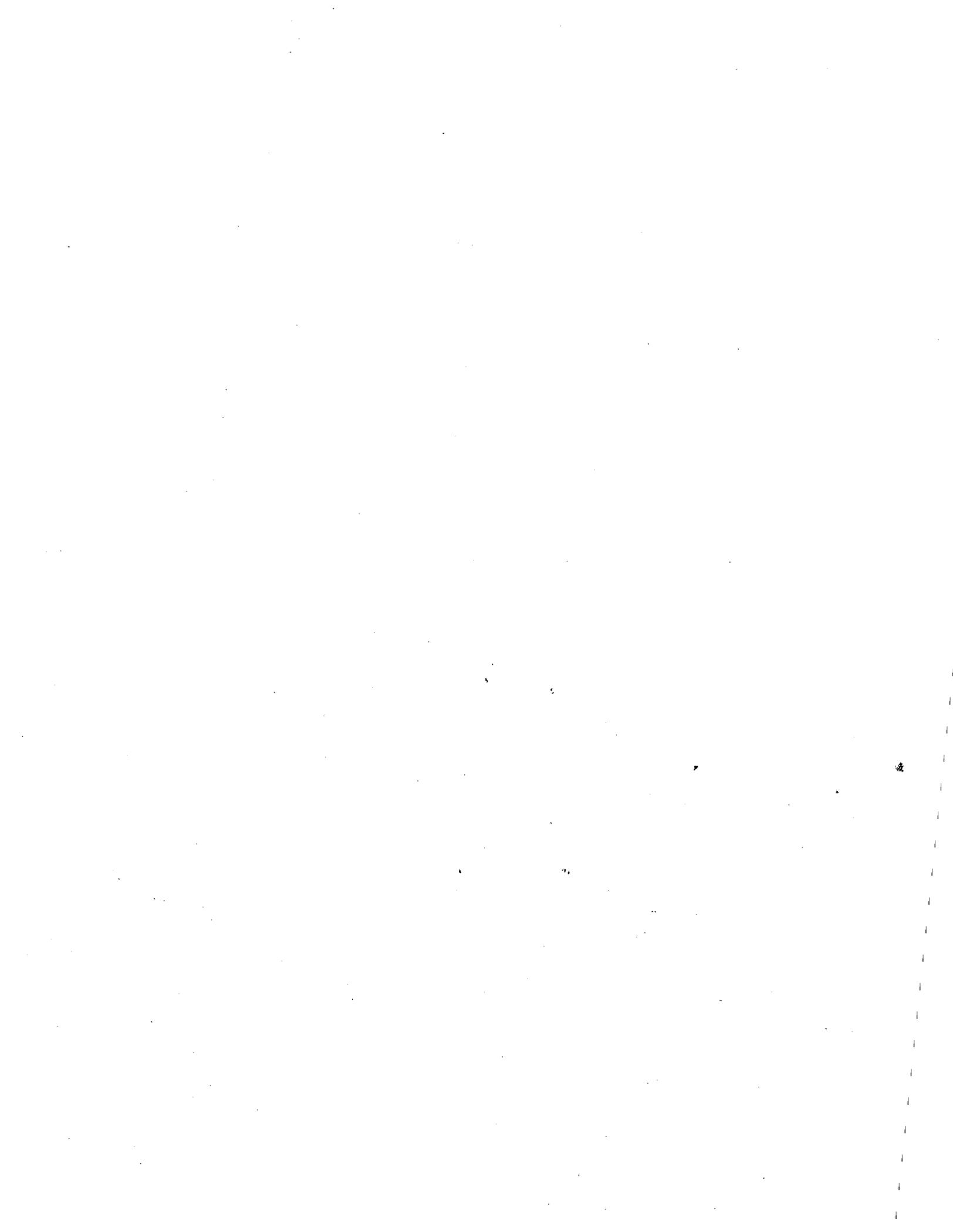
XYZ estimates that it will grant franchises as follows during the one year period following the date of this Offering Circular:

State	Number of Shops
Illinois	10
Michigan	15
Minnesota	5
Ohio	10
Wisconsin	5
TOTAL	45

During the three year period immediately preceding the close of XYZ's fiscal year (June 30, 1976) 8 franchises have been terminated for failure to comply with quality control standards and two were terminated because of the franchisee's bankruptcy. Additionally XYZ did not renew 3 ABX Muffler Shop Franchises and also reacquired 3 by purchase from the Franchisee.

In addition to the aforementioned ABX Muffler Shop franchises, XYZ owns and operates 8 ABX Muffler Shops. All of these ABX Muffler Shops are located in the state of Minnesota and all such ABX Muffler Shops were operational as of the date of this Offering Circular.

XYZ anticipates that it will open 2 additional company owned and operated ABX Muffler Shops within one year from the date of this offering circular.



FINANCIAL STATEMENTS (Item XXI). *Requirement (Item 21):* Financial statements shall be prepared in accordance with generally accepted accounting principles. Such financial statements shall be audited by an independent certified public accountant or, if permitted by the franchise law of a particular state, an independent public accountant. Unaudited statements may be used for interim periods.

A. The financial statements required to be filed by a franchisor shall include a balance sheet as of a date within 90 days prior to the date of the application and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of such fiscal years and the date of the balance sheet. The balance sheet as of a date within 90 days prior to the date of the application need not be audited. There shall be filed in addition an audited balance sheet as of the end of the franchisor's last fiscal year unless such last fiscal year ended within 90 days of the date of the application in which case there shall be filed an audited balance sheet as of the end of the franchisor's next preceding fiscal year. The profit and loss statements shall be audited up to the date of the last audited balance sheet filed, if any.

Instructions:

(1) Example—Assuming a calendar year end and a filing on July 15, 1977, the required statements would be as follows:

(a) Unaudited balance sheet as of either April 30, May 31, or June 30, 1977, and unaudited income statement for the period from January 1, 1977, to the date of the balance sheet; and

(b) Audited balance sheets as of December 31, 1974, 1975, and 1976, and audited statements of profit and loss, changes in financial position, changes in retained earnings and changes in other

paid-in capital accounts for each of the three years ending on the dates of the respective balance sheets.

(2) Certain states may impose requirements in addition to those specified in 21. A. above. For example, certain states may require that the latest financial statements be as of a date within 120 days of the date on which the registration within that state became effective rather than being within 90 days of the date of the application.

(3) The financial statements required under Item 21. A. must be included as part of the Offering Circular, as opposed to being presented to the prospective franchisee as an independent document.

B. Controlling company statements: Where state law permits, in lieu of the disclosure required by Item 21. A., complete financial statements of a company controlling the franchisor may be filed, but only if the unaudited financial statements of the franchisor are filed and the controlling company absolutely and unconditionally guarantees to assume the duties and obligations of the franchisor under the franchise agreement should the franchisor become unable to perform its duties and obligations.

Instructions:

(1) The financial statements to be included as part of the Offering Circular pursuant to Item 21. B. are the audited financial statements of the controlling company, not the unaudited financial statements of the franchisor. The unaudited financial statements of the franchisor only are to be filed with the state franchise administrator, not included as part of the Offering Circular. *California requires that both the audited statement of the controlling company and the unaudited statement of the franchisor be included in the body of the offering circular.*

(2) The above referred to guarantee by the franchisor relates only to the guarantee of the performance of the obligations of the franchisor to the franchisee pursuant to the franchise agreement and need not be a guarantee in favor of third parties or to the franchisee respecting obligations that are not provided for under the franchise agreement. A sample guarantee is found at the end of this document.

(3) The rules of the filing state may permit the substitution of a surety bond for the parent company guarantee. A sample surety bond is found at the end of this document.

C. Consolidated and separate statements.

1. Where a franchisor owns, directly or beneficially, a controlling financial interest in any other corporation, the financial statements required to be filed should normally reflect on a consolidated basis the financial condition of the franchisor and each of its subsidiaries.

2. A separate financial statement will normally be required for each substantial franchisor or subfranchisor related entity.

3. A company controlling 80% or more of a franchisor shall normally be required to file its financial statements.

4. Consolidated and separate financial statements shall be prepared in accordance with generally accepted accounting principles.

Instructions:

(1) Each state administrator may determine the circumstances in which the statements described in Items C. 1., 2., and 3. will be required to be included in the offering circular. Typical circumstances are:

(a) With respect to the requiring of consolidated financial statements, where the subsidiaries are substantial in size and their exclusion would preclude the presentation of the franchisor's financial condition on a proper basis;



(b) With respect to the requirement of separate financial statements for each related entity, where the related entity engages in significant financial transactions directly with the franchisee; and

(c) With respect to the requirements of a controlling company statement, where the controlling company engages in significant financial transactions with the franchisee.

(2) If the statements described in Items C. 2. or 3. are required to be included, the franchisor should include a clear and conspicuous disclosure that such other company whose statements are included is not responsible for or liable on the franchise agreement and is not a guarantor of the performance of the franchisor or any of franchisor's obligations.

Contracts (Item XXII). Requirement (Item 22): Attach a copy of all franchise and other contracts or agreements proposed for use or in use in this state, including, without limitation, all lease agreements, option agreements, and purchase agreements.

Instructions:

(1) Copies of agreements attached to the offering circular pursuant to Item XXII form a part of the offering circular. Accordingly, each offering circular delivered to a prospective franchisee must include copies of all agreements required to be attached to the offering circular, regardless of whether all such agreements will be executed in any given proposed transaction with a particular franchisee.

(2) The copies of the agreements attached to and forming a part of the offering circular are not for

execution. One or more copies of each agreement proposed to be executed by a prospective franchisee must be delivered to such franchisee in completed form (i.e., in form for execution, with no blanks or open terms) within the requisite period of time, according to federal and applicable state franchise law. If such completed agreements are not delivered to a prospective franchisee concurrently with the delivery of the offering circular, a separate receipt should be obtained acknowledging receipt of such agreements.

ACKNOWLEDGEMENT OF RECEIPT BY PROSPECTIVE FRANCHISEE (Item XXIII). Requirement (Item 23): The last page of each offering circular shall contain a detachable document acknowledging receipt of the offering circular by the prospective franchisee.

Instruction:

The receipt form should be the final and separate page to the Offering Circular and should not contain

any disclosure items. The receipt form also may constitute the acknowledgement by the franchisee of the receipt of the franchise agreement and related documents in a form for execution.

Sample Receipt

ACKNOWLEDGEMENT OF RECEIPT BY PROSPECTIVE FRANCHISEE OF THE OFFERING CIRCULAR FOR ABX MUFFLER SHOP FRANCHISES OFFERED BY XYZ, INC.

The undersigned, personally and/or as an officer or partner of the proposed Franchisee, does hereby acknowledge receipt of the "Franchise Offering Circular For Prospective Franchisees Required by the State of Wisconsin" including all Exhibits attached thereto, to wit: the Statement of Actual Sales by Franchisees (Exhibit A), the names, address and telephone numbers of 259 ABX Muffler Shop Franchises (Exhibit B), XYZ's Audited Financial Statements for

fiscal years 1974, 1975 and 1976 (Exhibit C), the ABX Muffler Shop Franchise Agreement (Exhibit D) and the XYZ Commercial Leasing Corporation Equipment Lease Agreement (Exhibit E).

Dated: _____

individually

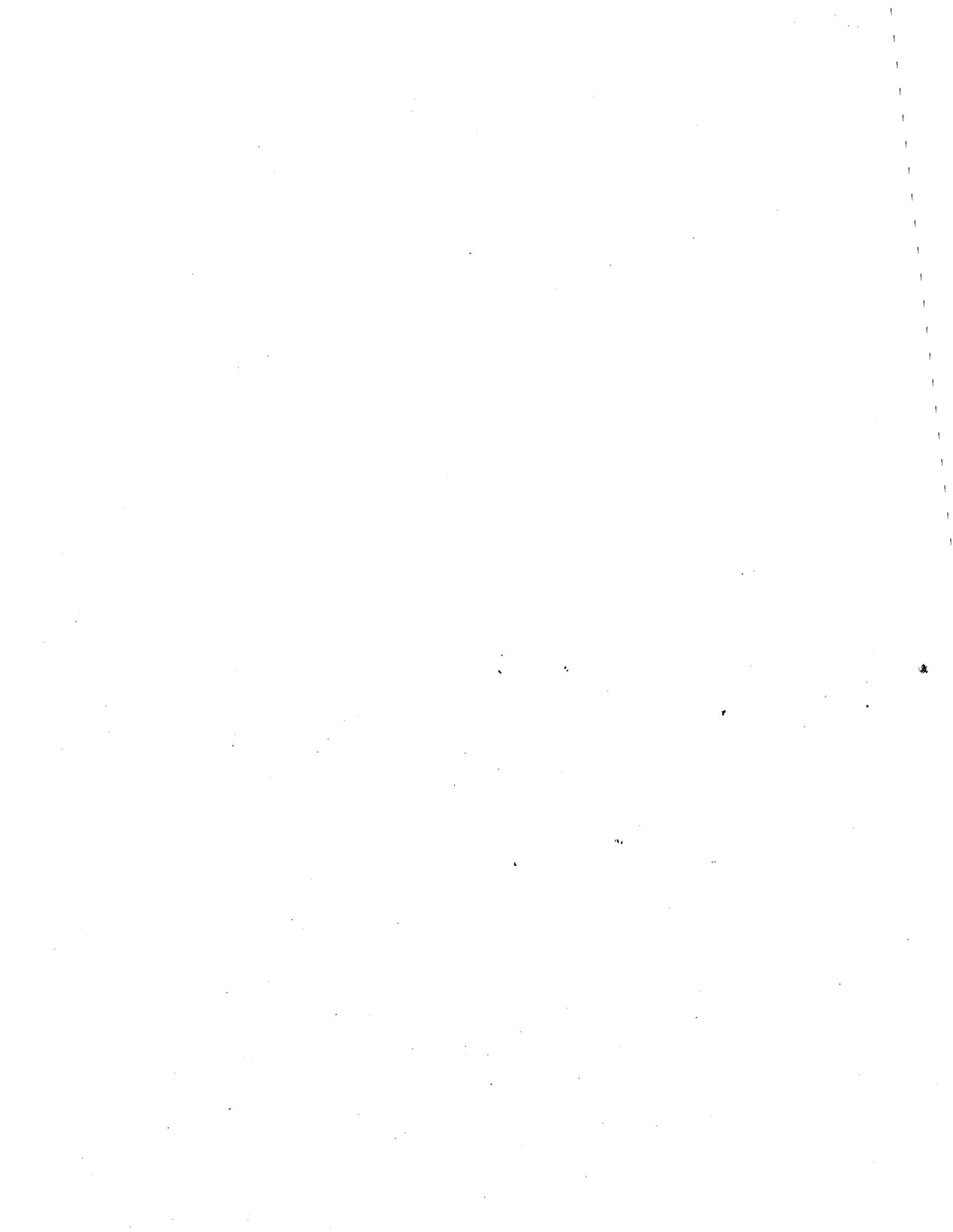
and as an officer or partner of

_____ a (_____) corporation)

(_____) partnership)

Subscribed and sworn to before me this ____ day of 19____.

Notary Public



GUARANTEE OF PERFORMANCE (APPENDIX A)

GUARANTEE OF PERFORMANCE

For value received, (Parent), located at (Address), absolutely and unconditionally guarantees the performance by its subsidiary, (Subsidiary), located at (Address), of all of the obligations of (Subsidiary), in accordance with the terms and conditions of its franchise registration in the State of _____, dated (effective date of renewal) and of its License Agreement with the franchisee, (Franchisee's name and address), dated _____, 19____, as the same have been or may hereafter be amended, modified, renewed or extended from time to time. This guarantee shall continue in force until all obligations of (Subsidiary) under the said franchise registration and License Agreement shall have been satisfied or until (Subsidiary's) liability to the franchisee under the franchise registration and License Agreement has been completely discharged, whichever first occurs. (Parent) shall not be discharged from liability hereunder as long as any claim by the franchisee against (Subsidiary) remains outstanding. Notice of acceptance is waived. Notice of default on the part of (Subsidiary) is not waived. This guarantee shall be binding on (Parent) and on its successors and assigns.

In witness whereof, _____ has, by a duly authorized officer, executed this guarantee at _____ on this _____ day of _____ 19____.

By: _____

Title: _____

Attest: _____

SURETY BOND (APPENDIX B)

SURETY BOND

We, (Franchisor), a corporation, with principal offices at (Address of Franchisor's Home Office) as principal, and (Name of Surety Company) a Surety Company incorporated under the laws of the State of _____ and authorized to conduct business in the State of _____ as surety, are indebted to the (State Regulatory Authority and Address thereof) Oblige in the sum of _____ to be paid to the Oblige or its legal representatives, successors, or assigns, for which payment we bind ourselves and our legal representatives and successors, jointly and severally.

WHEREAS, the above-named principal has made application to the (State Regulatory Authority) for registration of the offer of its franchises under the (State Franchise Law and statutory citation thereto) and is required pursuant to said law to include in its offering circular financial statements certified and audited by an independent certified public accountant; and

WHEREAS, the Principal proposes to offer in (State) franchise(s) within one year from the effective date of the proposed registration under (State Franchise Law); and

WHEREAS, financial statements certified and audited by an independent certified public accountant have not been prepared for Principal's fiscal year ending _____ and the only financial statement for Principal's fiscal year ending _____ is an unaudited financial statement (or the certified and audited financial statements, prepared on a consolidated basis, of Principal's parent); and

WHEREAS, the purpose of Principal furnishing the financial statements certified and audited by an independent certified public accountant is to disclose to the Obligee and to the prospective franchisees the financial condition of the Principal; and

WHEREAS, the Obligee is willing to waive the requirement that the Principal furnish financial statements certified and audited by an independent certified public accountant from the books and records of the Principal according to generally accepted principles upon the condition that the Principal furnish a surety bond to the Obligee; and

WHEREAS, the Obligee intends to assign this bond to the respective purchaser(s) of the aforementioned franchise upon sale of the aforementioned franchise(s) to said purchaser.

THEREFORE, the condition of this obligation is that the Principal furnish to the Obligee certified and audited financial statements for fiscal year ending _____ (or the most recent certified and audited financial statements, prepared on a consolidated basis, of Principal's parent) and the unaudited financial statements dated _____ for Principal and interim unaudited financial statements current as of _____ days of the date of sale, as required by (*State Franchise Law*) and shall furnish a copy of the same to prospective franchisees as required by (*State Franchise Law*), and that in connection with the sale of the aforementioned franchise, Principal shall fulfill all obligations to provide real estate, improvements, equipment, inventory, training and all other items included in the franchise offering. The condition of this bond is that if the Principal, its agent and employees shall.

1. Comply with the (*State Franchise Law*) and all rules and orders promulgated thereunder; and
2. Pay all damages suffered by any person by reason of the violation of said (*State Franchise Law*) or any rules or orders promulgated thereunder or any acts, rules or orders amendatory thereof and/or supplementary thereto, or hereafter enacted, or by reason of any misrepresentation, deceit, fraud or omission to state a material fact necessary in order to make any statement made in the light of the circumstances under which such statement was made, not misleading, including, but not limited to, the failure to disclose, as required by (*State Franchise Law*) and the rules promulgated thereunder, the true financial condition of (*Franchisor*); and
3. Fully completes its obligations under the Franchise Agreement and all related Agreements to provide real estate, improvements, equipment, inventory, training and other items included in the franchise offering, then this obligation shall be void; otherwise this obligation will remain in full force and effect.

This bond and obligation hereunder shall be deemed to run continuously and shall remain in full force and effect for four full years after the effective date of Principal's registration of the offer of franchises under (*State Franchise Law*).

In the event that any action or proceeding is initiated with respect to this bond, the parties agree that the venue thereof shall be the (*State*) County in which the offer or sale of the franchise occurred.

IN WITNESS WHEREOF, Principal and Surety have executed this instrument at _____ the _____ day of _____ 1976.

Principal



State of Wisconsin

OFFICE OF THE COMMISSIONER OF SECURITIES

Tommy G. Thompson
Governor

Walter H. White, Jr.
Commissioner of Securities

Wesley L. Ringo
Deputy Commissioner

November 14, 1989

111 WEST WILSON STREET
BOX 1768
MADISON, WISCONSIN 53701

INFORMATION (608) 266-3431
REGISTRATION (608) 266-1064
LICENSING (608) 266-3693
LEGAL SERVICES (608) 266-8557
ADMINISTRATION (608) 266-3583

Office of the Secretary of State
30 West Mifflin St.
Madison, WI 53703

RECEIVED

NOV 14 1989

Revisor of Statutes
Bureau

✓ Revisor of Statutes Bureau
30 West Mifflin St.
Madison, WI 53703

Gentlemen and Mesdames:

Re: Filing of Certified Copies of Final Order
Adopting Rules/Clearinghouse Rule 89-141

Pursuant to the requirements of ss. 227.20 and 227.21, Wis. Stats., a certified copy is herewith filed with each of your offices of the above-referenced Final Order Adopting Rules in the form prescribed by sec. 227.14, Wis. Stats. The Final Order Adopting Rules was adopted by this agency on November 14, 1989.

Also attached are photocopies of two securities and franchise disclosure regulatory standards incorporated by reference in sections 3.23(3) and SEC 32.06(2), Wis. Adm. Code, contained in SECTIONS 8 and 28, of the Final Order Adopting Rules. Authorization for the incorporation by reference of the regulatory standards has been received under s. 227.21(2), Wis. Stats., from the Attorney General and the Revisor of Statutes.

If you have any questions, please call me at 266-3414.

Very truly yours,

Randall E. Schumann
General Counsel

RES/sak

enclosures

cc: Walter H. White, Jr.
Commissioner of Securities