To: Steven Toporoff, FTC Consumer Protection Division (Stoporoff@ftc.gov)
CC: FRANPR@ftc.gov
From: Alaska Turner
Date: December 1, 1999
Re: Comment on Franchise Rule § 436.2 (a)1

R511003
B262737-13

I have a concern about the change to the disclosure time frames provided in the revision of the Franchise Rule. Having sold franchises for two years, I am aware of the difficulties the first face-to-face meeting and ten-day rule create for the franchisor. However, from a franchisee perspective, I cannot wish those time frames away. The ability to obtain disclosure early on in the purchase process is almost the only point of strength that a prospective franchise has in the negotiation process. The ability to request a UFOC or disclosure document for review at an early stage in the negotiation, and thereby control at least the beginning of the timing of the sales process, is the only potential advantage that a prospective franchisee may get. If the prospective franchisee cannot expect to be given the disclosure information until 10 days prior to a closing, then the franchisor has control of the sales process and can unduly pressure an investor.

Under the current rule, a prospective franchisee can expect to receive an UFOC or some disclosure document after a moderate amount of discussion. If a prospective franchisee is very interested, they can visit the franchisor and push the franchisor into providing the disclosure information by creating the "face-to-face" meeting. The franchisor, of course, can tell the franchisee that they will either consummate the deal in 10 days or there will be no sale, but that is not usually the case. Under the proposed changes, a franchisor can refuse to give the disclosure information until well into the negotiation (and into the prospective franchisee's pocket book) claiming that there is no need for the complete disclosure until 14 days prior to the closing. Some of the franchise sales take months-I for one would not want to go through the negotiation process and learn 14 days before closing that the President of the company is in jail, the company has had 5 bankruptcies or any of the other pertinent information. Fourteen days is not a long period for the negotiation of a contract that will bind two parties together for ten years, nor is it adequate time to engage accountants, attorneys and anyone else that is invited to read the document prior to purchasing. While I do not believe that dragging the sales process is the goal of the FTC, the disclosure period is not something that can be dictated across the industries that are involved in franchising. The investment requirements of many franchises may require that banks review the documents. Smaller franchise concepts may not have much to disclose, but the larger franchisors may have pages and pages to disclose-14 days to sift through all the data is not adequate.

Additionally, 14 days to contact franchisees from the franchise list provided in the disclosure information is not very much time to get a good feel for the system. There may also be a move for franchisors to provide partial disclosure of less sensitive information to prospective franchisees. The negative aspects of partial disclosure are plenty. Among other issues, partial disclosure may encourage unrealistic expectations for an investor and may allow for partial earnings claims without appropriate warnings. Prospective investors tend to be a little too willing to believe only the good-this change would allow franchisors to give all the "good" without the

bad at least for the initial periods of the negotiation.

I realize that "good" franchisors are not going to allow this situation to occur. They will continue to provide disclosure to prospective investors they are comfortable with at an earlier stage in the process. However, the rule is not merely for the 'good", but also is to keep the "not-so-good" from taking advantage of an unsuspecting investor. Today, a savvy franchise investor would know to request that document early on; if the proposed changes go into effect, that knowledge will not be as common. If the industry moves to shorter fuse on the decision making time period, I believe there will be a visible effect, both in the number of failing franchises and the number of suits and complaints to the FTC.

I do not think that a longer time period is the solution to this dilemma. I think perhaps a variation on the current face-to-face meeting may be the best plan. I understand the confusion that the current rule creates given the new technology; perhaps merely redefining "face-to-face" to cover internet and other forms of communication. Or perhaps it would be better to require franchisors to provide disclosure after a set amount of time spent with a prospective franchisee (both in person and via the modern conventions.)

These may not be the solutions, but neither is allowing a franchisor to withhold disclosure until 14 days before the money is due and the decision must be made.

CC: HQ.DCMAIL3(FRANPR)