

**INDIANA SECRETARY OF STATE
SECURITIES DIVISION**

**STATEMENT OF POLICY REGARDING
ELECTRONIC DELIVERY OF FRANCHISE
DISCLOSURE DOCUMENTS**

The Indiana Secretary of State and the Securities Commissioner have determined that it is appropriate and in the public interest to issue a Statement of Policy permitting the electronic delivery of franchise disclosure documents from the franchisor to the franchisee.

Section 23-2-2.5-9 of the Indiana Franchise Act ("Act") prohibits anyone from offering or selling a franchise in the state of Indiana unless the franchisor provides the prospective franchisee a disclosure document at least ten (10) days prior to the (a) execution of a binding franchise agreement or (b) receipt by the franchisor of any consideration, whichever occurs first. The Act does not designate the medium which must be utilized to effect a proper delivery of that disclosure document.

Background

While the Act does not speak on the manner of delivery, there can be no doubt the drafters contemplated a paper system when they enacted the Franchise Act in 1975. The world of commerce has undergone many changes in the last 30 years not the least of which involves the ever increasing use of (even reliance on) the internet in general and email in particular. Due to these changes, electronic transfer of documents often makes sense from a business and economic perspective. It may be far easier and more cost-effective for franchisors to deliver the disclosure document by email or other electronic media than to spend the time and money printing the disclosure document and shipping it to each potential franchisee. The Securities and Exchange Commission also allows the electronic delivery of disclosure documents to shareholders under both the 1933 Securities Act and the 1934 Securities Exchange Act. *See* SEC Use of Electronic Media for Delivery Purposes 17 CFR 231 (1995) and 17 CFR 241 (1995). Through this release, the SEC allowed electronic delivery to shareholders of both prospectus documents under the 1933 Act and subsequent disclosure documents under the 1934 Act so long as the issuer or reporting company can demonstrate the standards that the SEC had already required for paper delivery. With respect to franchise disclosure documents, both the Federal Trade Commission and the North American Securities Administrators Association have adopted positions permitting electronic delivery. This Statement of Policy is consistent with this trend. However, while this Statement of Policy allows for franchisors to deliver documents electronically, prospective franchisees will be able to opt out of electronic delivery and request a paper document.

Policy

The Securities Division will not pursue enforcement action against a franchisor who delivers the disclosure document electronically so long as the franchisor otherwise complies with Indiana law and the conditions set forth in this Statement of Policy.

- (A) A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in a machine-readable media, provided:
- (1) the disclosure document
 - (i) is delivered as a single, integrated, document or file;
 - (ii) has no extraneous content beyond what is required or permitted by law and by the UFOC guidelines, but which may include customary devices for manipulating electronic documents in machine readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;
 - (iii) has no links to or from external documents or content;
 - (iv) is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document; and
 - (v) conforms as to its content and format to the requirements of law;
 - (2) the franchisor
 - (i) can prove that it delivered the disclosure document electronically in compliance with this Statement of Policy, and that it did so at or before the time required by law; and
 - (ii) keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commissioner,
 - (3) the prospective franchisee is afforded a right to obtain a paper disclosure document until the time of sale,

AND

- (4) the franchisor provides a prospective franchisee with a paper summary document, which includes, among other things, the disclosure document's table of contents, as well as an admonition to download or otherwise preserve the electronic disclosure document.
- (B) "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure document is stored be physically delivered to the prospective franchisee in accordance with subsection (a)(1).
- (C) This Statement does not change or waive any other requirement of law, including but not limited to, those concerning registration or presale disclosure of franchise offerings.

Franchisors may rely upon this Statement of Policy from and after the date indicated below.

DATED at Indianapolis, Indiana, this 25th day of October, 2005.

TODD ROKITA
SECRETARY OF STATE


O. WAYNE DAVIS
SECURITIES COMMISSIONER