

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

107

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Commerce
(Agency or Board)

Regulation No. SDiv 1701 thru 1722 (new)

Subject: Franchise

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
JAN 13 1975 2:30 pm
BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 1-13-75

Rev. 9-72

Robert W. Herr
Assistant Attorney General

January 14, 1974

- SDiv 1701 - 1722

F/F 3, 4, 8, 11-14

P. Franchise rules

7 Sub franchisees n/ w/in juris. — 80C-01 sub 8

20-21 Vague rule (?)

34 Snowmobiles n/ mot. veh. so shoulder + bz incl. by defn. in rules —

36 60 day notice provision for cancellation

41-42 Boats n/ w/in act — n/ legis. intent

Draft problems

2 "proscribed"

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

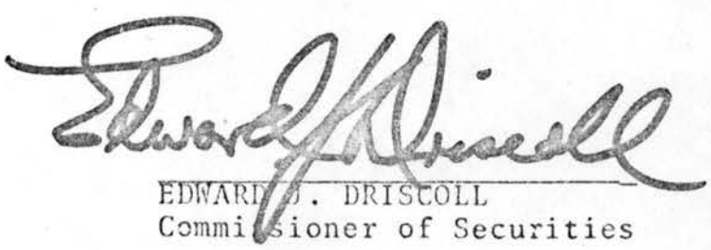
In the matter of Proposed)
Rules Relating to Franchises)
under Minn. Stat., 1973)
Supp., Chapter 80C)

STATEMENT OF NEED

The Securities Division of the Department of Commerce, State of Minnesota, proposes to adopt rules to implement Minnesota Statutes, 1973 Supplement, Chapter 80C (hereinafter referred to as "The Act") known as the Minnesota Franchise Act. These rules are not amendments of existing rules, but de novo proposals to implement the subject legislation. The need to adopt the proposed rules arises by way of legislative mandate. Rules are proposed to be adopted in accordance with Section 4 of The Act pertaining to the application for registration of franchises; Section 6 pertaining to the form of public offering statements; Section 7 pertaining to amendment of registration; Section 8 pertaining to annual reports; Section 9 pertaining to advertising; Section 14 pertaining to unfair practices; and generally pursuant to Section 18 which authorizes the adoption of rules and regulations to implement Sections 1 through 22 of The Act. Rules proposed to be adopted pursuant to Section 18 may include, but are not limited to provisions relating to false, fraudulent, or deceptive practices, prohibited practices, financial statements to be contained within the public offering statement, surety bonds and impoundment of fees, and rules and forms of specific classifications. The above captioned rules are necessary to implement and make effective the provisions and purposes of The Act and to establish objective standards for the purpose of advising those subject to The Act of their rights and obligations thereunder.

Date: July 16, 1974

STATE OF MINNESOTA
SECURITIES DIVISION



EDWARD J. DRISCOLL
Commissioner of Securities

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

December 23, 1974

Michael B. Miller, Esq.
Special Assistant
Attorney General
208 Administration Building
St. Paul, Minnesota 55155

Dear Mike:

I am hereby transmitting to you for review the following materials in connection with adoption of franchise rules and regulations of the Minnesota Department of Commerce:

A. Five copies of the Rules as Adopted
B. Three copies of the Rules as Proposed
C. One transcript of the public hearing on the rules
D. Three sets of the following:
    1. Order for Hearing
    2. Notice of Hearing
    3. Secretary of State's Certificate
    4. Mailing List
    5. Affidavit of Mailing
    6. Statement of Need
    7. Findings of Fact
    8. Order Adopting Rules
    9. Statement of Compliance with the Attorney General's Rule Making Procedures.

You will note that I have transmitted herewith an Order of the Commissioner dated January 25, 1974, withdrawing a predecessor proposal which was heard on December 10, 1973.

Please note that I have not enclosed an Affidavit of Acquisition of Mailing List in that the Secretary of State's Certificate evidences receipt of the mailing list.

If during your review you have any questions, please contact me at 296-6315.

Very truly yours,

ROBERT W. HERR
Assistant Attorney General
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RWH:lb
Att.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of Proposed Rules Relating to Franchises Under Minn. Stat., 1973 Supp., Chapter 80C	STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Assistant Attorney General Robert W. Herr, do hereby declare that I have examined the proposed Rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed without exception.

Dated: December 20, 1974.

ROBERT W. HERR
Assistant Attorney General

Adopted

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FRANCHISES

Proposed Regulations for Chapter 80C.

SDiv 1701 (M.S. 80C.01). Definitions - For the purposes of Minn. Stat., 1973 Supplement, Chapter 80C and these rules these terms shall have the following meanings:

(1) "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.

(2) "Approved source" means any source which meets the specifications or standards prescribed by the franchisor for the purchase or lease of goods by the franchisee as distinguished from a designated source.

(3) "Cancellation" and "termination" shall be synonymous and include the abolition of, ending of, or invalidation of a franchise agreement.

(4) "Designated sources" shall include any sources which the franchisor specifies as the only or exclusive suppliers from whom the franchisee may purchase or lease his goods as distinguished from an approved source.

(5) "Franchise" shall not include any contract or agreement whereby a person is granted the right to transport freight and perform household goods moving services by motor vehicles, provided such activity is subject to the jurisdiction and regulation of the Interstate Commerce Commission.

(6) "Grant" means to give, bestow or confer a franchise upon a franchisee.

(7) "Motor vehicle" means any automobile, truck, truck tractor, motorcycle or self-propelled motor home or camper if the foregoing is designed primarily for the transportation of persons or property on the public highways.

(8) "Recreational vehicle" - deleted.

(8) "Sale", "sell", "offer", and "offer to sell" shall include the renewal or extension of an existing franchise for value for the purposes of Minn. Stat., 1973 Supplement, Section 80C.10 to 80C.22 and SDiv 1710 to 1722.

(9) "Value" and "for value" shall include any consideration sufficient to support a simple contract.

SDiv 1702 (M.S. 80C.02). Registration Requirement.

Subd. 1. An effective order of registration shall authorize the offer, grant or sale of one or more franchises provided that the initial contracts or agreements under which they are offered are substantially identical in their terms or provisions. Whenever the franchisor offers, grants or sells more than one franchise and the resulting contracts or agreements vary substantially in their terms or provisions, separate franchises shall be deemed to have been offered, granted or sold and separate registrations shall be required. For the purpose of this rule, substantial variation in the contract or agreement shall relate to different products, services, fees charged, duties imposed, obligations incurred, or investments required to be made by the contract or agreement.

However, variation of terms or provisions within a contract or agreement designed to recognize individual differences in time, geography, market, volume or size or costs for goods, materials and supplies incurred by the franchisor shall not be considered as substantially varying the contract or agreement so as to constitute a new franchise offering.

Subd. 2. When a franchisor offers area franchises in the State of Minnesota, it shall be the primary responsibility of the franchisor to register the area franchise to be offered. It shall further be the primary responsibility of the franchisor to register the (sub)franchise to be offered whenever any obligations or duties exist or fees are transmitted, directly or indirectly, between the franchisor and the (sub)franchisee.

Subd. 3. There need be no registration in effect prior to the extension or renewal of an existing franchise or the grant of an additional franchise to an existing franchisee unless the extended, renewed or additional franchise varies substantially from the franchise which is presently possessed by the franchisee. However, no person, as a condition of the extension or renewal or the grant of such additional franchises, may require a franchisee to conform to any franchise contract or agreement the provisions of which are "unfair and inequitable" as those terms are ~~prescribed~~ defined within these rules.

SDiv 1703 (M.S. 80C.03). Exemptions.

(1) Isolated sales. The provisions of Minn. Stat., 1973 Supplement, 80C.03(1) shall be available to franchisees only. The provisions of this rule shall not be interpreted as to require registration of the franchise prior to its transfer under these circumstances. However, no person, in connection with such a transfer, may require a substituted franchisee to sign a franchise contract or agreement which violates the "unfair and inequitable" provisions of SDiv 1714 or SDiv 1718, whichever is applicable.

(2) Securities. The provisions of Minn. Stat., 1973 Supplement, 80C.03(4) shall be available only when the franchise is in fact registered as a security in the State of Minnesota. All reference to Minn. Stat., Chapter 80 shall include Minn. Stat., 1973 Supplement, Chapter 80A, and provisions amendatory thereto.

SDiv 1704 (M.S. 80C.04). Application for Registration.

Subd. 1. Guidelines for Preparation of Applications for Registration.

(a) The guidelines set forth in these rules are intended to indicate the form and informational content of an application for registration required by the Securities Division of the Department of Commerce. These guidelines shall be applicable to applications filed pursuant to Minn. Stat., 1973 Supplement, Chapter 80C. The primary purpose of the application for registration is to provide compliance with the requirements of Minn. Stat., 1973 Supplement, Chapter 80C and the rules and regulations promulgated thereunder. The information to be included in the application for registration and public offering statement is set out in detail below and in SDiv 1706 and SDiv 1718. The information requested is not to be viewed as determinative of the entire obligation of disclosure. Disclosure means more than merely compiling the information requested by the application form or supplying the information suggested by the guidelines. The extent of the required disclosure will depend upon the materiality of the particular facts and circumstances involved. This

obligation is the independent obligation of all persons contributing to the disclosure including the franchisor and its counsel and accountant, to the extent of their professional involvement therein. Applications for registration which are inadequately prepared and seriously deficient in terms of compliance with the Statute and rules will be summarily denied.

(b) An application for registration of a franchise shall be made by filing a facing page in the form required by SDiv 1704, Subd. 2 accompanied by a proposed public offering statement required by SDiv 1706, the $250 fee and a consent to service of process required by SDiv 1720, if applicable.

Subd. 2. All applications for registration, annual report or registration amendment shall have as the first page thereof a facing page in the following form containing the information therein specified:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES DIVISION

This is submitted for (check one only):

Application for Registration (Franchise) ( )

Annual Report ( )

Amendment of Registration of _____ ( )
(date)

(For use by the Department of Commerce)

File No:_____

Fee Paid:_____

Receipt No.:_____

Initial Review:_____

Effective Date:_____

Orders Issued:_____

Examiners Initials:_____

Fee: $_____
(To be completed by the applicant)

Date of Application_____
(To be completed by the applicant)

Name, telephone number, and address of person to whom questions concerning this statement should be directed.

Subd. 3. Financial Statements. All financial statements required by these rules shall be prepared in accordance with generally accepted accounting principles. Financial statements shall be audited by an independent certified public accountant who shall express an opinion thereon, except where these Rules permit the use of unaudited statements for interim periods or otherwise. Any financial statement prepared in accordance with the rules and requirements of the Securities and Exchange Commission shall satisfy the requirements of this Section; provided, however, that the statements are audited by an independent certified public accountant who expresses an opinion thereon.

Subd. 4. Whenever in these rules financial statements of a franchisor or other person are required without further description, such requirement refers to a balance sheet as of the end of the franchisor's most recent fiscal year, as well as an income statement and a statement of changes in financial position for the twelve month period preceding the date of the balance sheet. If the fiscal year end of the franchisor is in excess of 90 days prior to the date of filing the application, the financial statements shall also contain a balance sheet, income statement, and statement of changes in financial position as of a date within 90 days of the date of filing the application; provided, however, that such interim statements need not be audited.

Subd. 5. If amendments or other delays cause the above-described financial statements to become more than four (4) months old as of the effective date of the registration statement, then updated financial statements as of a date within four (4) months of the effective date shall be filed if the franchisor has no established record of earnings or is currently showing losses or a weak financial condition. If the franchisor has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income and financial condition may be added in lieu of updating the financial statements, in the discretion

of the Commissioner. However, in no case shall the financial statements be more than six (6) months old as of the effective date of the registration statement. If a delay carries the effective date beyond the end of the franchisor's fiscal year, and by applying due diligence the registrant and accountant can have the audit completed prior to the effective date, certified statements should be filed as of the end of the fiscal year.

Subd. 6. The auditors' report required herein shall comply with the following requirements:

(a) The report shall be dated, manually signed, and shall identify the financial statements covered by the report.

(b) The report shall state whether the audit was made in accordance with generally accepted auditing standards and shall disclose any auditing procedures generally recognized as normal or deemed necessary under the circumstances of the particular case, which have been omitted, and the reasons for such omission.

(c) The report shall state clearly (i) the opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; (ii) the opinion of the accountant as to any changes in accounting principles or practices which have a material effect on the financial statements.

(d) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated and, to the extent practicable, the effect of each such exception on the related financial statements given, either in the auditor's report or in a footnote to the financial statements.

Subd. 7. (a) All financial statements filed with the Commissioner shall include a manually signed and dated consent of the accountant to the use of his name and his report in the public offering statement and registration statement.

(b) If the independent accountant who has been engaged as the principal accountant to audit the franchisor's financial statements was not the principal accountant for the franchisor's most recently filed certified financial statements, the franchisor shall furnish the Commissioner with a statement of the date when such independent accountant was engaged and whether, in the eighteen months preceding such engagements, there were any disagreements with the former principal accountant on any manner of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his opinion to the subject matter of the disagreement. The franchisor shall also request the former accountant to furnish the franchisor with a letter stating whether he agrees with the statements contained in the letter of the franchisor and, if not, stating the respects in which he does not agree; and the franchisor shall furnish such letter to the Commissioner together with its own.

Subd. 8. Consolidated Statements. Financial statements filed in accordance with the provisions of this regulation shall generally be prepared on a consolidated basis when the franchisor has a "controlling financial interest" in its subsidiary or subsidiaries as those terms are understood under generally accepted accounting principles.

The consolidated financial statements of a franchisor's parent company shall be accepted only when either (i) the parent company guarantees to assume the duties and obligations of the franchisor under the franchise agreement should the franchisor become unable to perform the duties and obligations; or, (ii) the parent company posts a surety bond in the amount of the initial franchise fee charged each franchisee conditioned upon the fulfillment of the franchisor's duties and obligations under the franchise agreement.

SDiv 1705 (M.S. 80C.05). Registration Provisions.

Subd. 1. Every application for registration, amendments thereto, and annual report shall be signed and verified by the applicant and by

the franchisor and subfranchisor on whose behalf the offering is to be made in the following form:

CORPORATE VERIFICATION

State of_____)
) ss.
County of_____)

_____,
being first duly sworn, says that he is the_____
of_____above-named applicant, and executes this instrument for and in its behalf, by authority of its board of directors; that he has read the foregoing application, including all exhibits submitted therewith, and states that the contents thereof are true to the best of his knowledge and belief.

_____

Subscribed and sworn to before me this
_____day of_____, 19__.

_____
Notary Public,_____County_____
My Commission expires:_____

INDIVIDUAL VERIFICATION

State of_____)
) ss.
County of_____)

_____,
being first duly sworn, says that he is_____
_____
applicant; that he has read the foregoing application, including all exhibits submitted therewith, and states that the contents thereof are true to the best of his knowledge and belief.

_____

Subscribed and sworn to before me this
_____day of_____, 19__.

_____
Notary Public,_____County_____
My Commission expires:_____

Subd. 2. Impoundments.

(a) The Commissioner shall be a party to any impoundment agreement imposed as a condition of registration under Minn. Stat., 1973 Supplement, Section 80C.05.

(b) When an impoundment is imposed under Minn. Stat., 1973 Supplement, Section 80C.05, 100% of franchise fees and all other funds paid by the franchisees or subfranchisors located in Minnesota for any purpose shall within two business days of the receipt of such funds, be placed with the depository until the Commissioner takes further action pursuant to Minn. Stat., 1973 Supplement, Section 80C.05. All checks shall be made payable to the depository.

(c) When an impoundment is imposed under Minn. Stat., 1973 Supplement, Section 80C.05, the franchisor shall deliver to each franchisee or subfranchisor, a purchase receipt, in a form approved by the Commissioner. Such purchase receipts shall be consecutively numbered and prepared in triplicate with the original being given to the franchisee or subfranchisor, the first copy to the depository together with the payment received and the second copy retained by the franchisor.

(d) Funds subject to any impoundment imposed under Minn. Stat., 1973 Supplement, Section 80C.05, shall be placed in a separate trust account with a bank located in Minnesota. A written consent of the depository to act in such capacity shall be filed with the Commissioner.

(e) (1) Prior to complete performance the Commissioner shall authorize in writing the depository to release to the franchisor such amounts of the impounded funds applicable to a specified franchisee (or subfranchisor) upon a showing that the franchisor has fulfilled its obligations under the franchise agreement or that for other reasons the impoundment is no longer required for the protection of the franchisee.

(2) An application to the Commissioner authorizing the release of impounded funds to the franchisor shall be verified and shall contain:

(i) A statement of the franchisor that all funds required to be impounded by Minn. Stat., 1973 Supplement, Section 80C.05, have been placed with the depository in accordance with the terms and conditions of the impoundment;

(ii) A statement of the depository signed by an appropriate officer setting forth the aggregate amount of impounded funds placed with the depository;

(iii) The names of each franchisee (or subfranchisor) and the amount held in the impoundment for the account of each franchisee (or subfranchisor);

(iv) A statement that the franchisor, with respect to each franchise the funds for which are sought to be released, has completely performed obligations, cited by reference to the franchise agreement and its provisions, to provide real estate, improvements, equipment, inventory, training or other items; and

(v) Such other information as the Commissioner may reasonably require.

Subd. 3. Surety bond in lieu of impoundment. In lieu of the imposition of an impoundment under Minn. Stat., 1973 Supplement, Section 80C.05, a franchisor may post a surety bond in such amount as shall be required by the Commissioner. The Commissioner shall take into consideration the amount of franchise fees and other fees to be charged and the number of franchises to be offered, granted or sold. Such bond shall be issued by a corporate surety authorized to transact business in the State of Minnesota, conditioned upon the completion by the franchisor of its obligations under the franchise contract to provide real estate, improvements, equipment, inventory, training or other items included in the offering. The State of Minnesota shall be named as an obligee by the terms of the surety bond.

SDiv 1706 (M.S. 80C.06). Public Offering Statement.

Subd. 1(a) Each public offering statement shall be typed or printed with standard sized black type or an adequate substitute rendering the document easily readable. No advertisement or photographs shall be permitted therein unless specifically permitted by the Commissioner.

(b) The outside front cover of the public offering statement, unless otherwise permitted by the Commissioner, shall contain the following information:

(1) The name, telephone number, and principal business address of franchisor and its type of organization.

(2) A brief description of the franchise to be offered including the trade name under which the franchisee will operate.

(3) A sample of the primary business trademark, patent, brand, logotype, name, or commercial label or symbol utilized by the franchisor under which his products or services are marketed and under which the franchisee will conduct his business. (Place in upper left-hand corner of the cover page.)

(4) The initial franchise fee, or explanation for the absence thereof. State that further information regarding the franchisee's anticipated investment can be found on the appropriate page in the body of the public offering statement. (This provision shall not be applicable in the case of franchises subject to the provisions of SDiv 1718, Subdivision 2 and Subdivision 3.)

(5) The name, telephone number, and address of the franchise sales organization if other than the franchisor.

(6) The following statement in bold face type:

> THESE FRANCHISES HAVE BEEN REGISTERED UNDER THE MINNESOTA FRANCHISE ACT. REGISTRATION DOES NOT CONSTITUTE APPROVAL, RECOMMENDATION OR ENDORSEMENT BY THE COMMISSIONER OF SECURITIES OF MINNESOTA OR A FINDING BY THE COMMISSIONER THAT THE INFORMATION PROVIDED HEREIN IS TRUE, COMPLETE AND NOT MISLEADING.
>
> THE MINNESOTA FRANCHISE ACT MAKES IT UNLAWFUL TO OFFER OR SELL ANY FRANCHISE IN THIS STATE WHICH IS SUBJECT TO REGISTRATION WITHOUT FIRST PROVIDING TO THE PROSPECTIVE FRANCHISEE, AT LEAST 7 DAYS PRIOR TO THE EXECUTION BY THE PROSPECTIVE FRANCHISEE OF ANY BINDING FRANCHISE OR OTHER AGREEMENT, OR AT LEAST 7 DAYS PRIOR TO THE PAYMENT OF ANY CONSIDERATION, BY THE FRANCHISEE, WHICHEVER OCCURS FIRST, A COPY OF THIS PUBLIC OFFERING STATEMENT, TOGETHER WITH A COPY OF ALL PROPOSED AGREEMENTS RELATING TO THE FRANCHISE. THIS PUBLIC OFFERING STATEMENT CONTAINS A SUMMARY ONLY OF CERTAIN MATERIAL PROVISIONS OF THE FRANCHISE AGREEMENT. THE CONTRACT OR AGREEMENT SHOULD BE REFERRED TO FOR AN UNDERSTANDING OF ALL RIGHTS AND OBLIGATIONS OF BOTH THE FRANCHISOR AND THE FRANCHISEE.

(7) The date of the public offering statement which shall be the date upon which the registration is ordered effective by the Commissioner.

Subd. 2(a). The body of the public offering statement shall contain the information required by SDiv 1706, Subd. 2(b) set forth under appropriate caption or headings reasonably indicative of the principal subject matter set forth thereunder.

(1) All information is to be included in one bound or stapled document and is not to be supplied separately.

(2) With the exception of financial statements and other tabular data, information set forth in the public offering statement shall be divided into concise paragraphs or sections and shall be in narrative form. Each disclosure item shall be either positively or negatively commented upon by use of a statement which fully incorporates the information required by the item.

(3) Each public offering statement shall contain a concise table of contents showing the subject matter of the various sections or subdivisions of the public offering statement and the page number on which each section or subdivision begins.

(4) When the requirement calls for a statement or description, the description shall be made without incorporating by reference or reproducing sections from the franchise agreement or other documents. However, the documents should be referred to for a more thorough understanding.

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

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

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

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

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

(2) IDENTITY & BUSINESS EXPERIENCE OF PERSONS AFFILIATED WITH THE FRANCHISOR: List by name and office held the officers, directors, trustees, general partners, or other persons who will have management responsibility in connection with the franchisor's business operations which relate to the franchises being offered. With respect to each person listed, state their principal occupations during the past five years. List the subfranchisors for this state, if any.

(3) LITIGATION. State whether the franchisor or any person identified in the public offering statement:

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

Is subject to any currently effective order, decree, consent judgment or other assurance relating to the business which is the subject of the franchise offered under any federal or state securities, antitrust, monopoly, franchise, trade practice

or trade regulation law. If so, set forth (i) the name of the person or entity involved, (ii) a summary of the allegations, (iii) the date, nature, terms and conditions of the order, decree, judgment or assurance, and (iv) the court or agency involved.

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

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

(4) INVESTMENT OF THE FRANCHISEE. Set forth in detailed tabular form the total initial investment which will be required of the franchisee. This statement should include, but is not limited to, a description of the following items:

(i) State the franchise fee or initial payment, if any, charged upon the signing of the franchise agreement, whether payable in lump sum or installments;

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

(iii) State whether any of the fees set forth in (4)(i) or (4)(ii) above are refundable and, if so, under what conditions;

(iv) Include a statement indicating the proposed use of the proceeds to be raised from such fees;

(v) State any other fees or payments or charges required by the franchisor in connection with the franchisee's preparation for entrance into the franchise;

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

(vii) State to whom the above payments are due, when the payments are due, and the method by which the payments are to be made;

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

(a) equipment; fixtures, other fixed assets, construction, remodelling, leasehold improvements and decorating costs, whether or not financed by contract or installment purchase, leasing or otherwise;

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

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

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

(5) FINANCING ARRANGEMENTS. State the terms and conditions of any financing arrangements offered directly or indirectly by the franchisor or his agent or affiliate.

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

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

(6) OBLIGATIONS OF FRANCHISEE TO PURCHASE ITEMS. State whether, by the terms of the franchise agreement or by other intentional device or practice, the franchisee or subfranchisor is required to purchase or lease from the franchisor or its designated sources any goods, services, supplies, products, fixtures, equipment, inventory, or real estate relating to the establishment or operation of the franchise business, together with a general description thereof.

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

(7) TERMS OF THE FRANCHISE. State the following with respect to the franchise and any related agreements:

(i) The term and whether the term is affected by the term of any other agreement;

(ii) The conditions under which the franchisee may renew or extend;

(iii) The conditions under which the franchisor may refuse to renew or extend;

(iv) The conditions under which the franchisor may terminate;

(v) The conditions under which the franchisee may terminate;

(vi) The obligations of the franchisee after termination of the franchise whether such termination be by the franchisor or the franchisee or the expiration of the franchise;

(vii) The conditions under which the franchisee or its owners may sell or assign, in whole or in part;

(viii) The conditions under which the franchisor may sell or assign, in whole or in part;

(ix) The conditions under which the franchisor may repurchase, in whole or in part. If the franchisor has the right or option to repurchase the franchise, state

whether there will be an independent appraisal of the franchise and recognition of goodwill or other intangibles associated therewith in the repurchase price to be given to the franchisee;

(x) Describe the provisions regarding the franchisee's equity upon sale, termination, refusal to renew or repurchase;

(xi) The conditions under which the franchisee may modify;

(xii) The conditions under which the franchisor may modify;

(xiii) The contractual rights of the heirs or personal representative of the franchisee to the franchise upon the death or incapacity of said franchisee; and

(xiv) The conditions of any covenant not to compete.

(8) LIMITATION ON GOODS AND SERVICES OFFERED BY FRANCHISEE. State any restriction or condition imposed by the franchisor, whether by the terms of the franchise agreement or by other device or practice of the franchisor, whereby the franchisee is limited in the goods or services which he may offer to his customers.

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

(9) OBLIGATIONS OF FRANCHISOR. State the obligations which the franchisor agrees, by contract or otherwise, to perform: (i) prior to the opening of the franchise business, and (ii) during the operation of the franchise business.

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

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

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

(i) The location, duration and content of the promised training program.

(ii) When the training program is to be conducted.

(iii) The amount of experience the instructors have had with the franchisor.

(iv) Who shall bear the expenses, including travel and living expenses, incurred in connection with the training program.

(v) The number of and average length of training programs and refresher courses made available to the franchisee after the initial training period and whether the franchisee will be required to attend the same.

(10) ARRANGEMENTS WITH PUBLIC FIGURES. State any compensation or other benefit given or promised to a public figure arising, in whole or in part, from the use of the public figure in the name or symbol of the franchise or the endorsement or recommendation of the franchise by the public figure in advertisements, and the extent to which such public figure is involved in the actual management of the franchisor.

State whether or not the franchisee has the ability to use the name of a public figure or celebrity in his promotional efforts and advertising and any charges to be made to the franchisee in connection with such usage.

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

(11) EXCLUSIVE AREA OR TERRITORY. State whether the franchisee or subfranchisor receives an exclusive area or territory. State whether the franchisor may establish another franchisee or a company owned operation within that area or territory.

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

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

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

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

(12) OTHER FRANCHISES. State, as of the filing date of this statement, the following:

(i) (a) The total number of franchises presently operating in the United States;

(b) Of that number, the total number of franchises presently operating in the State of Minnesota;

(c) If the franchisor owns or operates any of the outlets, the number of such operations shall be stated independently of the above.

(ii) The number of franchises in the United States and the State of Minnesota for which a business is not yet operational although a franchise agreement has been signed.

(iii)(a) Estimate the total number of franchises to be sold or granted in the United States for the twelve month period following the date of this statement.

(b) Of that number, estimate the total number of franchises to be sold or granted in the State of Minnesota for the twelve month period following the date of this statement.

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

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

(14) FRANCHISE CONTRACT. A copy of the entire franchise contract or agreement proposed for use, including all amendments thereto.

(15) FINANCIAL STATEMENTS. A copy of the financial statements which meet the requirements of SDiv 1704. These statements are to be an actual part of the public offering statement rather than contained in a separate document.

(c) When the franchises to be registered are proposed to be offered or sold by a subfranchisor or his agents, the application shall also include the same information concerning the subfranchisor as is required concerning the franchisor pursuant to this section.

Subd. 3. The last page of each public offering statement shall contain a detachable document acknowledging receipt of the public offering statement by the prospective franchisee.

Subd. 4. The Commissioner may accept as application for registration under Minn. Stat., 1973 Supplement, Chapter 80C any currently effective public offering statement prepared for compliance with the registration provisions of the franchise laws of such other jurisdictions as the Commissioner may, from time to time, designate. The Commissioner reserves the right to require alterations in such statements as he deems necessary to fulfill the requirements of Minn. Stat., 1973 Supplement, Chapter 80C.

Subd. 5. The Commissioner may accept as application for registration the Uniform Franchise Registration Application adopted by the Midwest Securities Commissioners Association; however, the Commissioner reserves the right to require alterations in the Uniform Franchise Offering Circular as he may deem necessary.

Subd. 6. There shall be on file with the Commissioner at all times a complete copy of the public offering statement amended to reflect the current status of the franchisor and in use in connection with the offer, grant or sale of the franchise registered.

SDiv 1707 (M.S. 80C.07). Amendment of registration.

(1) "Material event" or "material change" shall include, but not be limited to, the following:

(a) The termination, closing or failure to renew by the franchisor during any consecutive three-month period after registration of (i) 10% of all franchises of the franchisor, regardless of location, or (ii) 10% of the franchises of the franchisor located in the State of Minnesota.

(b) Any change in control, corporate name or state of incorporation, or reorganization of the franchisor.

(c) The purchase by the franchisor during any consecutive three-month period after registration of (i) 10% of its existing franchises, regardless of location, or (ii) 10% of its existing franchises in the State of Minnesota.

(d) The commencement of any new product, service or model line involving, directly or indirectly, an additional investment in excess of 20% of the current average investment made by all franchisees or the discontinuation or modification of the marketing plan or marketing system of any product or service of the franchisor where the average total sales from such product or service exceed 20% of the average gross sales of the existing franchisees on an annual basis.

(e) Any change in the franchise fees charged by the franchisor.

(f) Any significant change in:

(i) the obligations of the franchisee to purchase items from the franchisor or its designated sources; or

(ii) the limitations or restrictions on the goods or services which the franchisee may offer to his customer; or

(iii) the obligations to be performed by the franchisor; or

(iv) the franchise contract or agreement, including all amendments thereto.

(2) The occurrence of any of the events mentioned in (1) above shall necessitate the filing of a revised public offering statement.

(3) An application to amend the registration shall be made by submitting a facing page in the form described in SDiv 1704, Subd. 2, accompanied by a revised public offering statement as indicated in (4) below and the $50 fee.

(4) The amended public offering statement filed in connection with an application to amend registration shall indicate by means of underscoring all alterations of the text of the public offering statement previously filed as a part of registration.

SDiv 1708 (M.S. 80C.08). Annual Report.

Subd. 1(a) The registrant shall file an annual report by submitting a facing page in the form described in SDiv 1704, Subd. 2, a public offering statement as indicated in (b) below and the $100 fee.

(b) The proposed public offering statement filed in connection with the annual report shall contain all data current as of the anniversary date including audited financial statements in accordance with SDiv 1704. All alterations in the text of the public offering statement previously filed as a part of registration shall be indicated by means of underscoring.

(c) No later than the 90th day following the end of the franchisor's fiscal year, the franchisor shall file financial statements in accordance with SDiv 1704. The newly filed financial statements are to be included in all public offering statements used by the franchisor after such filing date.

Subd. 2. "Payment of fee" shall mean the payment of the fee due for every year for which the registrant is delinquent in filing an annual report.

SDiv 1709 (M.S. 80C.09). Advertising.

Subd. 1. Standards for advertisements offering a franchise subject to registration.

(a) No advertisement shall make reference to:

(1) The acquiring of a franchise as a safe investment, as free from loss, default or failure, or that such is impossible or unlikely or as an assurance of earnings or profits.

(2) Projections or statements of operations of or income from the operation of any franchise.

(3) Any opinion of counsel without stating the name and address of such counsel.

(b) All advertisements must contain:

(1) The name and address of the person using the advertisement or making the offer, including the name or the primary commercial symbol of the franchisor.

(2) The registration number assigned to the offering by the Commissioner.

Subd. 2. Filing of advertisements.

(a) One copy of each advertisement intended for use shall be filed with the Commissioner at least three business days prior to the first publication thereof.

(b) If not disallowed by the Commissioner by written notice or otherwise within three business days from the date filed, the advertisement may be published.

(c) No formal approval of the advertisement shall be issued by the Commissioner.

(d) The person placing the advertisement shall be responsible for the accuracy and reliability of the advertisement and its conformity with the Act and this rule.

SDiv 1710 (M.S. 80C.10). Books, records, and accounts. Reserved for future use.

SDiv 1711 (M.S. 80C.11). Opinion, Appraisals and Reports - deleted. Reserved for future use.

SDiv 1712 (M.S. 80C.12). Denial, suspension or revocation of registrations or exemptions. Reserved for future use.

SDiv 1713 (M.S. 80C.13). Prohibited practices.

Subd. 1. No person may promote, offer or grant participation in a chain distributor scheme, multi-level distribution scheme, or pyramid sales scheme as defined by Minnesota law.

Subd. 2. No person may make or cause to be made any statement or representation that:

(a) Other individuals are willing to enter into a franchise agreement substantially similar to that being offered, granted or sold without, at the same time, disclosing in writing the source of such information and the names, addresses, and telephone numbers of such individuals.

(b) The State of Minnesota or its agents or employees have:

(1) Approved or endorsed the franchise or the franchisor.

(2) Found the contents of any advertising is true and not misleading.

(3) Determined that the promotion, advertisement, offer, grant or sale of the franchise complies with the applicable laws unless such is accomplished by a showing of an official record, to-wit: an order of registration.

(c) Execution of any document in connection with the offer, grant or sale of a franchise constitutes only an application for such franchise when, in fact, execution of the subject document or documents creates a binding obligation.

SDiv 1714 (M.S. 80C.14). Unfair practices.

All franchise contracts or agreements and any other device or practice of a franchisor shall conform to the following provisions. It shall be "unfair and inequitable" for any person to:

(1) Restrict or inhibit, directly or indirectly, the free association among franchisees for any lawful purpose; or

(2) Discriminate between franchisees in the charges offered or made for royalties, goods, services, equipment, rentals, advertising services, or in any business dealing, unless any classification of or discrimination between franchisees is based on franchises granted at different times, geographic, market, volume or size differences, costs incurred by the franchisor, or other reasonable grounds considering the purposes of Minn. Stat., 1973 Supplement, Sections 80C.01 to 80C.22; or

(3) Compete with the franchisee in an exclusive territory or grant competitive franchises in the exclusive territory previously granted to another franchisee if the terms of the franchise agreement provide that an exclusive territory has been specifically granted to a franchisee; or

(4) Require a franchisee to assent to a release, assignment, novation, or waiver which would relieve any person from liability imposed by Minn. Stat., 1973 Supplement, Section 80C.01 to 80C.22; provided, that this rule shall not bar the voluntary settlement of disputes; or

(5) Terminate or cancel a franchise without first having given written notice setting forth all the reasons for such termination or cancellation to the franchisee at least 60 days in advance of such termination or cancellation, except that the notice shall be effective immediately upon receipt where the alleged grounds are:

(a) Voluntary abandonment of the franchise relationship by the franchisee; or

(b) The conviction of the franchisee in a court of competent jurisdiction of an offense directly related to the business conducted pursuant to the franchise; or

(c) Failure to cure a default under the franchise agreement which materially impairs the good will associated with the franchisor's tradename, trademark, service mark, logotype or other commercial symbol after the franchisee has received written notice to cure of at least 24 hours in advance thereof; or

(6) Terminate or cancel a franchise except for good cause which shall be defined as failure by the franchisee substantially to comply with those reasonable requirements imposed upon him by the franchise

including, but not limited to, (i) the bankruptcy or insolvency of the franchisee; (ii) assignment for the benefit of creditors or similar disposition of the assets of the franchise business; (iii) voluntary abandonment of the franchise business; (iv) conviction or a plea of guilty or no contest to a charge of violating any law relating to a franchise business; or (v) any act by or conduct of the franchisee which materially impairs the good will associated with the franchisor's trademark, tradename, service mark, logotype or other commercial symbol; or

(7) Impose on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct which is unreasonable; or

(8) Unreasonably withhold consent to any assignment, transfer, or sale of the franchise whenever the franchisee to be substituted meets the present qualifications and standards required of the franchisees of the particular franchisor; or

(9) Enforce any unreasonable covenant not to compete after the franchise relationship ceases to exist; or

(10) Require a franchisee to waive his rights to a trial or to consent to liquidated damages, termination penalties, or judgment notes; provided, that this rule shall not bar a voluntary arbitration of any matter if the proceeding is conducted by an independent tribunal under the rules of the American Arbitration Association; or.

(11) Require a security deposit except for the purpose of securing against damage to property, equipment, inventory or leaseholds; or

(12) Require or prohibit any change in management or personnel of any franchisee unless the current or potential management or personnel fails to meet the present qualifications and standards required by the particular franchisor; or

(13) Fail to renew a franchise unless the franchisee has been given written notice of the intention not to renew at least 90 days in advance thereof and has been given a sufficient opportunity to recover his investment or unless for good cause as defined in clause (6).

SDiv 1715 (M.S. 80C.15). Investigations, proceedings. Reserved for future use.

SDiv 1716 (M.S. 80C.16). Enforcement, penalties and remedies. Reserved for future use.

SDiv 1717 (M.S. 80C.17). Civil liability. Reserved for future use.

SDiv 1718 (M.S. 80C.18). Rules and Regulations.

Subd. 1. False, fraudulent and deceptive practices. In connection with an offer, grant or sale of a franchise in this state, any person authorizing, aiding in, or causing such offer, grant or sale of franchises shall be deemed to be engaging in a "false, fraudulent or deceptive practice" within the meaning of Minn. Stat., 1973 Supplement, Sections 80C.12 and 80C.13, without limiting the authority of the Commissioner under Minn. Stat., 1973 Supplement, Sections 80C.12 or 80C.15, if such person:

(a) Applies, authorizes or causes to be applied any material part of the proceeds from the grant or sale of such franchises in any way contrary to the purpose specified in advertising or oral representations utilized in connection with the offer, grant or sale of such franchise or in the public offering statement required to be utilized in connection with the offer, grant or sale of the franchises.

(b) Makes or causes to be made any statement or representation:

(1) Which is contrary to any disclosure made in the public offering statement; or

(2) With regard to:

(i) Industry-wide total income representations or a portion thereof applicable to the prospective franchisee, whether actual or projected, for the product or service marketed by the franchisor without written disclosure of the relationship of such representations to the actual income experiences of the franchisor's existing franchised businesses; or

(ii) Projections of operations or of income or gross or net profits capable of being obtained from operation of the franchise by the franchisee without written disclosure of the number of the franchisor's existing franchised businesses that have, to the franchisor's knowledge, actually attained that projected level; or

(iii) The income experiences or net worth of the franchisor or its franchisees without written disclosure whether certified audited financial statements are available and, if so, from what source; or

(iv) The date by which a prospective franchisee's business will be totally operational without written disclosure of the basis on which that date has been determined; or

(v) Recovery of a portion or all of a franchise fee or other investment from the franchisor without written disclosure whether such fee or investment is secured or guaranteed, and, if so, in what manner; or

(vi) The nature and number of the locations appropriate for the franchisee's enterprise, whether or not to be obtained by the franchisor, without disclosing in writing by whom such sites are to be secured, the manner by which their procurement is to be financed, the relationship between such site procurement and the execution of a franchise agreement and with whom the franchisor has a binding obligation for the procurement of such locations; or

(c) Fails to make the following representations:

(1) When a relationship exists between the franchisor and any affiliate which has offered, is offering or will offer a franchise program substantially similar to that being offered, granted or sold, to state in writing the nature of such relationship and to disclose the similarity, if any, of the tradename, trademark, service mark, logotype, advertising, or commercial symbol or production or marketing plan of the affiliate to that of the franchise being offered, granted or sold; or

(2) To state in writing the qualifications and experience which the prospective franchisee should possess in order to successfully operate the business which is the subject of the franchise offered or the additional personnel that will be required for the operation of the business if such qualifications and experience are not possessed by the prospective franchisee; or

(3) Any representation required to be made in the public offering statement; or

(3) Misrepresents:

(1) The number of similar franchises of the franchisor which are conducting business or have conducted business within a given area at any time; or

(2) That the franchise agreement and all of its obligations is or are embodied in one or several documents presented to, made available to, or executed by the prospective franchisee when, in fact, the execution of additional documents or the giving by the franchisee of additional consideration is required to obtain the franchise or that execution of some of the documents is not related to or necessary for the acquisition of the franchise; or

(3) Any element of a franchise agreement or the business of a franchisor or any material disclosures required to be made in the public offering statement; or

(4) The date upon which the franchisee signed the franchise agreement or the receipt of the public offering statement.

Subd. 2. The Commissioner specifically recognizes the classification of motor vehicle fuel franchises and prescribes that the rules set forth hereafter shall apply only to that class.

(a) The provisions of SDiv 1706, Subd. 2(b) shall not apply. The body of the public offering statement shall contain the following information:

(1) A copy of the entire motor vehicle fuel franchise contract or agreement proposed for use, including all amendments thereto.

(2) A summary of the obligations of the franchisor (hereafter referred to as supplier) and the franchisee (hereafter referred to as dealer) together with a summary of the agreement referred to in Clause (1) above.

(3) Any existing offer for the sale or other disposition of the location subject to the franchise agreement or negotiations which might result in an offer, sale or other disposition of the location.

(4) Any existing agreement that would result in the demolition of or a major alteration of the condition of the location, or negotiations that would proceed an agreement to demolish or otherwise materially alter the condition of the location.

(5) A statement disclosing the interest, and the nature thereof, enjoyed by the supplier in the location and, further, a disclosure of any other interest, and the nature thereof, enjoyed by any other person in said location.

(6) Full disclosure of the total amount of any security deposits required, plus the amount of interest that shall be paid on any cash security deposit, and the conditions for the return of any security deposit.

(7) The training program, if any, and the specific goods and services the supplier will provide for and to the dealer.

(8) The gallonage volume history, if any, of the location under negotiation for and during the three-year period immediately past or for the entire period for which the location has been supplied by the supplier, whichever is shorter.

(9) The name and last known address of the previous dealer or dealers for the last five years or for and during the entire period for which the location has been supplied by the supplier, whichever is shorter, and the reason or reasons of the supplier where an aforedescribed relationship has ended by cancellation under (d) below.

(b) The following information shall be filed with the Commissioner in connection with the registration:

(1) Financial statements which comply with the provisions of SDiv 1704.

(2) The names, addresses, and business telephone numbers of all the franchisees of the franchisor located in the State of Minnesota.

(c) The provisions of SDiv 1714 shall not apply. All motor vehicle fuel franchise agreements shall conform to the following provisions. A violation of any of these provisions shall be considered "unfair and inequitable".

(1) The dealer shall have the unconditional right to cancel his franchise agreement until midnight of the seventh business day after the day on which the agreement was signed, by giving the supplier in person or by certified mail written notice of cancellation; provided, that any money, equipment, or merchandise loaned, sold or delivered to the dealer is returned to the supplier for full credit, or cash equivalent, together with delivery of full possession of the service station location, if leased from the supplier, to the supplier within ten days after delivery of notice;

(2) The price at which the dealer sells products shall not be fixed or maintained by the supplier;

(3) No dealer shall be required to use or utilize any promotion, premium, coupon, give-away, or rebate in the operation of the business. Except as otherwise provided by law, nothing herein shall be construed to prohibit the dealer from voluntarily participating financially in a promotion, premium, coupon, give-away, or rebate sponsored by the supplier;

(4) In the event of any termination or cancellation, whether by mutual agreement or otherwise, the supplier shall be required to purchase from the dealer within thirty days from the date of termination at the then current wholesale prices any and all merchantable products purchased by the dealer from the supplier; provided, however, that in the event of purchase, the

supplier shall have the right to apply the proceeds against any existing indebtedness owed to him by the dealer and that the repurchase obligation is enforceable to the extent that there are not other valid claims or liens against the products by or on behalf of other creditors of the dealer;

(5) No supplier shall unreasonably withhold its consent to any assignment, transfer, or sale of a franchise agreement;

(6) No supplier shall restrict or inhibit, directly or indirectly, the right of free association among dealers for any lawful purpose;

(7) No supplier shall require a dealer to assent to a release or waiver of the dealer's rights hereunder; the right of either party to trial by jury or the interposition of counterclaims or crossclaims shall not be waived by agreement of the parties; any agreement to the contrary is void;

(8) The supplier may set forth in the franchise agreement the required number of hours per day and days per week that the dealer must maintain his retail outlet open for business; however, the supplier shall not unreasonably withhold consent to a modification of such requirements where dictated by changes of circumstances;

(9) The supplier may set forth in the franchise agreement prohibitions and limitations on the conduct of any other business at the service station site by the dealer, including a charge for additional rent where another business is permitted and conducted; however, the supplier shall not:

(i) Unreasonably withhold its consent to the performance of another business; or

(ii) Impose unreasonable limitation on the dealer's ability to perform another business; or

(iii) Charge an unreasonable rent for the conduct of another business, considering the fair rental value of the site and any imposition upon the supplier's business.

(10) Require a security deposit except for the purpose of securing against loss of or damage to real or personal property. Any security deposit required of the dealer may be satisfied by the deposit of cash or a pledge of a savings account or its equivalent in a Minnesota banking institution.

(d) Any provisions regarding cancellation of the franchise agreement shall be governed by the following rules:

(1) A supplier shall not cancel a franchise agreement except for one or more of the following grounds:

(i) A mutual agreement between the parties;

(ii) The bankruptcy or insolvency of the dealer;

(iii) The dealer's failure to act in good faith in carrying out the terms of his franchise agreement with the supplier.

(iv) A good faith voluntary or involuntary decision by the supplier to discontinue doing business at the service station site;

(v) Decline in annual sales from the service station site below the figure set forth in the franchise agreement or otherwise agreed to by the parties in writing when the franchise agreement was signed. The foregoing shall not apply to declines that materially result from extrinsic physical changes, including, but not limited to, those resulting from highway construction, construction on the premises or changes in highway routes.

(2) Cancellation of the franchise agreement by the supplier shall be preceded by written notice to the dealer in person or by certified mail. The notice shall be given at least sixty days prior to the date on which the supplier intends to terminate or cancel the franchise agreement, except that the notice shall be effective immediately upon receipt when the cause for termination or cancellation is: (i) criminal misconduct, (ii) fraud, (iii) abandonment, (iv) bankruptcy or insolvency of the dealer, (v) adulteration of product or (vi) the giving of a

non-sufficient fund check which remains dishonored for a period of ten days after notice, which notice shall be effective on the fifth day after the date of mailing.

(e) Any provisions regarding the renewal of a franchise agreement shall be governed by the following rules:

(1) Either party to a franchise agreement may refuse to renew the franchise agreement upon giving the other party written notice of his intent not to renew at least ninety days prior to the expiration of the franchise agreement.

(2) Where the supplier and the dealer have been parties to one or more franchise agreements extending for three consecutive years, or where the dealer has been supplied the same brand name motor vehicle fuel for such period, or where the dealer has been in business as a motor vehicle fuel dealer in the same location for such period and the supplier has obtained the interest of the prior supplier to that location, the supplier shall either automatically renew the existing franchise agreement, or in good faith, offer another franchise agreement, different either in its terms or location. For the purposes of this rule, the three-year period shall be measured from the original date of commencement of any of the relationships mentioned above. However, this obligation of the supplier shall not apply where the supplier would have a right to cancel its relationship with the dealer under any of the provisions of (d) above.

Subd. 3. The Commissioner specifically recognizes the classification of motor vehicle franchises and prescribes that the rules set forth hereafter shall apply only to that class.

(a) The provisions of SDiv 1706, Subd. 2(b) shall not apply. The body of the public offering statement shall contain the following information:

(1) A copy of the entire franchise contract or agreement proposed for use, including all amendments thereto.

(b) The following information shall be filed with the Commissioner in connection with the registration and all annual reports:

(1) Financial statements which comply with the provisions of SDiv 1704, Subdivision 3 through Subdivision 7, including, but not limited to, a copy of financial statements prepared in accordance with the rules and regulations of the Securities and Exchange Commission. However, statements of a franchisor or its affiliated manufacturer which have been prepared in a country other than the United States shall be prepared according to the generally accepted accounting principles of such country, shall be stated in English, shall indicate American monetary equivalencies and shall be filed within 30 days of the date they are approved for use in such country.

(2) The names, addresses, and business telephone numbers of all franchisees of the franchisor located in the State of Minnesota;

(c) The provisions of SDiv 1714 shall not apply. No franchisor, whether by means of a term or condition of a franchise or otherwise, shall engage in any of the following practices which are deemed unfair and inequitable:

(1) Restricting or inhibiting, directly or indirectly, the right of free association among franchisees for any lawful purpose.

(2) Requiring a franchisee to purchase or lease goods or services other than motor vehicles which are the subject of the franchise from the franchisor or from designated sources of supply unless and to the extent that the franchisor can satisfy the burden of proving that such restrictive purchasing requirements are reasonably necessary for a lawful purpose justifiable on business grounds and except for goods and services used in performing warranty, policy or campaign work for which the franchisee is compensated by the franchisor as provided by law.

(3) Charging different prices to franchisees in the same line make for goods, services, equipment, rentals, advertising services, or in any other business dealing, unless and to the

extent that the franchisor satisfies the burden of proving that any classification of or price differences between franchisees is reasonable, and is based on proper and justifiable distinctions considering the purposes of Minn. Stat., 1973 Supplement, Chapter 80C.

(4) Obtaining money, goods, services, anything of value, or any other benefit from any other person with whom the franchisee does business, on account of such business, except for compensation for services rendered by the franchisor, unless such benefit is promptly accounted for and transmitted to the franchisee.

(5) Competing with a franchisee in a relevant market area; provided that a franchisor shall not be deemed to be competing if it operates a franchise, either (i) temporarily for a reasonable period or (ii) as a bona fide retail operation which is for sale to any qualified independent person at a fair and reasonable price or (iii) in a bona fide relationship in which an independent person has made a significant investment, subject to loss, in the franchise and can reasonably expect to acquire full ownership on reasonable terms and conditions.

(6) Requiring a franchisee to assent to any condition, stipulation or provisions purporting to bind any person acquiring any franchise to waive compliance with any provision of Minn. Stat., 1973 Supplement, Chapter 80C. Nothing herein shall be construed to limit or prohibit good faith settlements of disputes when such settlements are voluntarily entered into between the parties.

(7) Imposing on a franchisee by contract, rule or regulation, whether written or oral, any standard of conduct which is unreasonable.

(8) Unreasonably withholding consent to any assignment, transfer or sale of the franchise or an interest therein, at a fair market value, including good will.

(9) Requiring or prohibiting any change in personnel, other than a change in senior management; provided, that the franchisor shall not unreasonably withhold consent to a change in senior management.

(10) Requiring a franchisee to waive his rights to trial or venue or to consent to liquidated damages, termination penalties, or judgment notes; provided that the franchisee may consent to arbitration conducted by an independent tribunal under the rules of the American Arbitration Association.

(11) Making any charge against a franchisee for advertising or promotional advertising material without the prior consent of the franchisee.

(12) Discontinuing a franchise without establishing within a reasonable time thereafter another franchisee in the same line make, provided that the trade area can reasonably support such a franchise.

(13) Establishing an additional franchise in the area of sales and service responsibility designated by the franchisor to another franchisee of the same line make unless the franchisor shall give written notification to each franchisee in such line make within such area of its intention to establish such additional franchise and unless good cause can be shown for such addition.

(d) Notwithstanding the terms, provisions, or conditions of any franchise, a franchisor may terminate, cancel or fail to renew a franchise with a franchisee only in the manner and in accordance with the provisions of this rule.

(1) Notice. Termination, cancellation or failure to renew shall be preceded by written notice to franchisee, setting forth the reasons for such action. Sixty (60) days' notice is required, except that fifteen (15) days' notice is required:

(i) in the case of abandonment by franchisee of the franchise business; or

(ii) where franchisee has been convicted by any court of competent jurisdiction of an offense which would reflect adversely on the franchised business or franchisor; or

(iii) in the event of the dissolution, liquidation or insolvency of franchisee.

(2) Good Cause. A franchise may not be terminated, cancelled or not renewed except for "good cause" which shall be defined as failure of the franchisee to substantially comply with those reasonable requirements imposed upon the franchisee; provided, that the franchisee shall be given an opportunity, after reasonable written notice not to exceed six months, to cure any default involving the sales, services or facilities obligations under the franchise contract or agreement.

(3) Exception. A franchisor may terminate a franchise for a particular line make of motor vehicle:

(i) if the franchisor discontinues that line make, or

(ii) if the franchisee's license as a motor vehicle dealer is revoked pursuant to Minnesota Statutes, Chapter 163.

Subd. 4. The Commissioner specifically recognizes the classification of hardware franchises and prescribes that the rules set forth hereafter shall apply only to that class.

(a) The provisions of SDiv 1706, Subd. 2(b) items (4) and (13) shall not apply. In lieu thereof, the public offering statement shall contain the following items:

INVESTMENT BY THE FRANCHISEE. State any fees, payments or charges associated with preparation for entrance into the franchise. State to whom the payments are due, when the payments are due, and the method by which the payments are to be made.

Estimate the minimum expenditures, if any, for the following items which prospective franchisees should make in order to maintain the franchise relationship:

(i) fixed assets, whether or not financed by contract or installment purchase, leasing or otherwise;

(ii) working capital, deposits, and prepaid expenses;

(iii) all other goods or services, including inventory, which the franchisee should purchase or lease.

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

Subd. 5. The Commissioner specifically recognizes the classification of franchises, other than those specifically classified elsewhere in SDiv 1718, which require that the franchisee make an initial, unfinanced investment in excess of $200,000, and prescribes that the rules set forth hereafter shall apply only to that class.

(a) The provisions of SDiv 1706, Subd. 2(b), items (6), (7), (8), (9), (10), (11), (12), (13) and (15) shall not apply.

(b) The following information shall be filed with the Commissioner in connection with the registration:

(1) Financial statements which comply with the provisions of SDiv 1704.

(2) The names, addresses, and business telephone numbers of all the franchisees of the franchisor located in the State of Minnesota.

Subd. 6. Interpretive opinions issued by the Commissioner pursuant to Minn. Stat., 1973 Supplement, Section 80C.18 shall be applicable only to the transaction identified in the request thereafter, and may not be relied upon in connection with any other transaction. The burden of proving an exemption or exception to any definition is upon the person

claiming it; therefore, the request shall clearly set forth the basis upon which non-applicability of the act is contended and shall be accompanied by all pertinent documentation.

SDiv 1719 (M.S. 30C.19). Scope. Reserved for future use.

SDiv 1720 (M.S. 80C.20). Service of Process. Every consent to service of process shall be made in the following form:

CONSENT TO SERVICE OF PROCESS

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, _____,
(a corporation organized under the laws of the State of _____)
(a partnership) (an individual) (other _____)
for the purpose of complying with Minnesota Statutes, 1973 Supplement, Chapter 80C, relating to franchises hereby irrevocably appoints the Commissioner of Securities, and the successors in such office, its attorney in the State of Minnesota upon whom may be served any notice, process or pleading in any civil action or proceeding against it, its successor, executor or administrator which arises under the aforesaid laws of said State or any rule or order thereunder; and the undersigned does hereby consent that any such action or proceeding against it may be commenced in any court of competent jurisdiction and proper venue within said State by service of process upon said officer with the same effect as if the undersigned, its successor, executor or administrator had personally been served with process in said State.

It is requested that a copy of any notice, process or pleading served hereunder be mailed to:

_____
(Name and Address)

_____

Dated: _____, 19___.

By _____

Title_____

By _____

Title_____

Subscribed and sworn to before me this
_____ day of _____, 19 ___.

_____
Notary Public, _____County_____
My Commission expires: _____

SDiv 1721 (M.S. 80C.21). Waivers void. Reserved for future use.

SDiv 1722 (M.S. 80C.22). Administration.

Subd. 1. The following charges shall be made for copies of documents furnished by the Commissioner and for certification thereof:

(a) Fifty cents for each certificate under seal affixed thereto, plus fifty cents for each page or fraction thereof to be certified, whether the copies to be certified are furnished by the person requesting the certification or by the Commissioner.

(b) Fifty cents for each page or fraction thereof when the copies are not to be certified.

APPROVED AS TO FORM AND LEGALITY
JAN 10 1975 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY Michael B Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED - 2:00 pm
JAN 13 1975
John Anderson Jr.
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
2:20 p.m.
JAN 13 1975
BY Eda Staudenmaier
AUTH. SIGNATURE

Exhibit #1

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of the Proposed)
Adoption of Rules of the State)
Securities Division, Governing)
Franchises under Minn. Stat.,)
1973 Supp., Chapter 80C)

ORDER FOR HEARING

To effectively implement Minnesota Statutes, 1973 Supplement, Chapter 80C, the Minnesota Commissioner of Securities deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Minnesota Statutes, 1973 Supplement, Section 80C.18.

NOW, THEREFORE, IT IS ORDERED this 19th day of June, 1974, that a public hearing on the proposed rules captioned above be held in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota, on July 26, 1974, commencing at 9:00 a.m. and continuing until all representatives have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
Commissioner of Securities

Exhibit #2

STATE OF MINNESOTA
COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of Proposed Rules)
Relating to Franchises under Minn.) NOTICE OF HEARING
Stat., 1973 Supp., Chapter 80C)

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1973, Section 15.0412, Subd. 4, in the above entitled matter in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota on Friday, July 26, 1974, commencing at 9:00 a.m. and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commissioner proposes to adopt rules relating to the following matters: public offering statements; unfair practices; fraudulent and deceptive practices; prohibited practices; advertising, etc.

Copies of the proposed rules are now available and may be obtained by writing to Robert R. Raines, Jr., Securities Division, Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
Commissioner of Securities

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of the Proposed Adoption of Rules of the State Securities Division, Governing Franchises under Minnesota Laws, 1973, Chapter 612

NOTICE OF HEARING

WHEREAS, a public hearing was held on the 10th day of December, 1973, in the Minnesota Department of Commerce on the proposed rules captioned above and testimony was taken from interested representatives; and

WHEREAS, the Minnesota Commissioner of Securities deems it appropriate and in the public interest to withdraw said rules.

NOW, THEREFORE, IT IS ORDERED this 25th day of January, 1974, that the proposed rules and regulations of this division governing franchises which came before hearing on the 10th day of December, 1973, be withdrawn.

STATE OF MINNESOTA
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
Commissioner of Securities

Exhibit #3

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed
Adoption of Rules of the State
Securities Division Governing
Franchises.

I hereby certify that the attached 3 366 Labels sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock a.m., this 20th day of June, 1974, have requested pursuant to M.S. Section 15.0412 that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Arlen I. Erdahl

By Ceil Dirlam

Exhibit #4

DEPARTMENT OF COMMERCE
STATE OF MINNESOTA
COUNTY OF RAMSEY

In the matter of the Proposed
Adoption of Rules of the State
Securities Division Governing
Franchises

AFFIDAVIT OF MAILING

Anna M. Clint, being first duly sworn, deposes and says:

That on the 21st day of June, 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Anna M. Clint

Subscribed and sworn to before me
this 21st day of June, 1974.

Cyrilla Delaney

Notary Public, Ramsey County, Minnesota
My Commission Expires Feb. 27, 1980

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN
COMMERCE COMMISSION

In the Matter of Proposed)
Rules Relating to Franchises)
Under Minn. Stat., 1973 Supp.,) FINDINGS OF FACT
Chapter 80C)

The above-entitled matter came on for hearing before the Commerce Commission on the 26th day of July, 1974 at 9:00 A.M. at the Fifth Floor of the Metro Square Building, St. Paul, Minnesota after proper notice required by Minn. Stat., § 15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and to all persons then members of the Minnesota Legislature.

Many witnesses appeared at the hearing on behalf of franchisors and franchisees. All interested persons were afforded an opportunity to present written and oral data, statements and arguments. There was substantial agreement on the part of all interested persons in favor of adoption of the proposed Rules. Upon the testimony, records, files and proceedings had in this matter, I find the following:

1. Minn. Stat., § 80C.18, subd. 1 (Supp. 1973) provides in relevant part as follows:

> The commissioner may promulgate rules and regulations to carry out the provisions of sections 80C.01 to 80C.22, including rules and forms governing public offering statements, applications, financial statements and annual reports, and defining any terms, whether or not used in sections 80C.01 to 80C.22, insofar as the definitions are not inconsistent with sections 80C.01 to 80C.22. The commissioner may define by rule false, fraudulent or deceptive practices in the offer and sale of franchises.

The rules and forms provided for herein are, unless otherwise noted, proposed pursuant to the authority vested in the Commissioner of Securities by this section of law.

2. S.Div. 1701 is proposed pursuant to Section 80C.18 and contains a definition of terms. The Commissioner finds such definitions to be reasonable and necessary to facilitate uniform understanding and application of the provisions of Chapter 80C. As a result of suggestions made at the hearing and written comments submitted thereafter "recreational vehicle" was excluded from the definition of "motor vehicle." The Commissioner further finds that none of the definitions contained in S.Div. 1701 are in conflict with the definitions provided in Section 80C.01.

3. S.Div. 1702 and 1703 are proposed pursuant to Section 80C.18. S.Div. 1702 clarifies special situation requiring registration. S.Div. 1703 clarifies statutory exemptions. The Commissioner finds that the special situations provided for by these rules are supported by administrative experience. No evidence was adduced at the hearing contrary to these rules.

4. S.Div. 1704 and 1705 are proposed pursuant to Section 80C.18 and make uniform the form and information content of applications for registration in accordance with the requirements of Sections 80C.04 and 80C.05. The Commissioner of Securities has taken administrative notice of the necessity for uniform forms and uniform minimum informational content of applications for registration, particularly with reference to the financial data of a franchisor which must accompany such applications. The Commissioner further finds that the forms prescribed will facilitate the registration process and the Commissioner's ability to evaluate the data required to be submitted with such applications by Sections 80C.04 and 80C.05. No evidence was adduced contrary to this finding at the hearing. With respect to S.Div. 1705, subd. 2, the Commissioner of Securities finds, based upon his administrative experience, that the impoundment procedures and alternatives thereto prescribed by this rule are reasonable, practical, and necessary to carry out the purpose of Section 80C.05, subd. 3. No evidence contrary to this findings was adduced at the hearing.

5. S.Div. 1706 is proposed pursuant to Section 80C.18 and prescribes the uniform form and informational content of public offering statements in accordance with Section 80C.04 and 80C.06. The Commissioner of Securities finds that such uniformity of form and informational content is necessary for proper administration of Chapter 80C and that the wording and substantive content of this rule is consistent with the requirements of 80C.04 and 80C.06. All comments adduced at

the hearing and written statements received thereafter relative to the wording and content of the public offering statement were considered by the Commissioner.

6. S.Div. 1707 is proposed pursuant to Section 80C.18 and defines the terms "material event" and "material change." The Commissioner finds that the defintions contained therein will facilitate an understanding of the circumstances under which an amended or revised public offering statement must be filed with the Commissioner. The Commissioner further finds that the prescribed definitions are reasonable and practical. No evidence to the contrary was adduced at the hearing.

7. S.Div. 1708 is proposed pursuant to Section 80C.18 and prescribes a uniform form, the minimal informational content and filing requirements for annual reports in accordance with Section 80C.08. The Commissioner of Securities finds that the form and procedures required by this Rule are necessary to facilitate the updating of the information required by Chapter 80C. No evidence to the contrary was adduced at the hearing.

8. S.Div. 1709 and 1713 are proposed pursuant to Section 80C.18. The Commissioner of Securities has taken administrative notice of numerous complaints received by his office relative to deception and advertising and pyramid sales schemes. The Commissioner finds that S.Div. 1709 will prevent or reduce misrepresentation in advertising by disallowing statements concerning potential financial profits from the purchase of a franchise, by preventing "blind ads" which do not identify the company making the offer and by including the franchise registration number to afford easy reference for inquiry by potential franchisees. The Commissioner further finds that pyramid schemes have from time to time been used to promote the sale of franchises and that such schemes are inherently deceptive and are illegal under Minnesota law and that prohibition of such schemes pursuant to S.Div. 1713, subd. 1 is in the public interest. The Commissioner further finds that S.Div. 1713, subd. 2 is necessary to prohibit statements which often accompany a sales pitch for a franchise regarding

the number of other persons who are willing to obtain the franchise being offered to a particular prospect and that such prohibition is necessary for the protection of the public. No evidence contrary to any of these findings was adduced at the hearing.

9. S.Div. 1714 is proposed pursuant to Section 80C.14 which provides in part as follows:

> No person, whether by means of a term or condition of a franchise or otherwise, shall engage in any unfair or inequitable practice in contravention of such rules as the Commissioner may adopt defining as to franchises the words "unfair and inequitable."

The Commissioner finds that the primary purpose of Chapter 80C is to protect franchisees and that the standards of fairness contained in S.Div. 1714 are necessary for the accomplishment of this purpose. Considerable discussion of a predecessor of this proposed rule was had at a hearing on December 10, 1973, and this proposal was substantially rewritten to take into consideration the suggestions and objections made at that time. The Commissioner further finds that the provisions of S.Div. 1714 are supported by principles of common law equity, case law, administrative decisions and general writings on the subject of abuses prevalent in franchising.

10. S.Div. 1718, subd. 1 is proposed pursuant to Section 80C.18 and defines false, fraudulent and deceptive practices in connection with the offer and sale of franchises. The need for this rule arises from numerous complaints, of which the Commissioner has taken administrative notice, with respect to the particular acts and practices defined therein as false, fraudulent or deceptive. There was no evidence adduced contrary to this finding or this rule at the hearing.

11. S.Div. 1718, subd. 2 is proposed pursuant to Section 80C.18 which provides in part as follows: "For the purpose of rules and forms the commissioner may classify franchises, persons and matters within his jurisdiction, and prescribe different requirements for different classes." The following classes of franchises are established pursuant to this Rule: motor vehicle fuel franchises, motor vehicle franchises, hardware franchises and franchises requiring an initial unfinanced investment in excess of $200,000. The Commissioner of Securities finds that the business of motor vehicle fuel franchisor, motor vehicle franchisor and hardware franchisor are materially unlike

the business of the broad spectrum of franchisors within his jurisdiction, that they have unique problems requiring special treatment and that it is proper and appropriate to impose different requirements for these classes. The Commissioner takes notice of the fact that all interested parties agreed to the different treatment provided for these classes in S.Div. 1718. With respect S.Div. 1718, subd. 5, the Commissioner finds that potential franchisees with $200,000 or more to invest will likely have legal and financial counsel to advise them and assist them in evaluating the franchise being offered and that, therefore, less disclosure is necessary and proper as to such franchisees. There was no evidence adduced contrary to this finding at the hearing.

12. S.Div. 1718, subd. 6 is proposed pursuant to Section 80C.18 and provides for the proper use of interpretive opinions and the procedures to follow for establishing non-applicability of Chapter 80 in accordance with Section 80C.12, subd. 4. The Commissioner finds that this rule is necessary to apprise franchisors of proper procedures and to facilitate uniform understanding and applicability of the provisions of Chapter 80C pertaining to interpretive opinions and proving of exemptions and exceptions from definitions. There was no evidence adduced contrary to this finding at the hearing.

13. S.Div. 1720 is proposed pursuant to Section 80C.18 and 80C.20 and prescribes and a form for consent to service of process. The Commissioner finds that such form is necessary to carry out the provisions of Section 80C.20. There was no opposition or evidence adduced contrary to the form prescribed by S.Div. 1720 at the hearing.

14. S.Div. 1722 is proposed pursuant to Section 80C.18 and prescribes fees for documents furnished by the Commissioner. The Commissioner finds that the charges specified in S.Div. 1722 are fair and reasonable in accordance with Section 80C.22, subd. 6. There was no opposition or evidence adduced contrary to this finding at the hearing.

STATE OF MINNESOTA
SECURITIES DIVISION

Dated: December 20, 1974.

EDWARD J. DRISCOLL
STATE SECURITIES COMMISSIONER

STATE OF MINNESOTA

COUNTY OF RAMSEY

DEPARTMENT OF COMMERCE
BEFORE EDWARD J. DRISCOLL
CHAIRMAN
COMMERCE COMMISSION

In the Matter of Proposed)
Rules Relating to Franchises)
Under Minn. Stat., 1973 Supp.,) ORDER ADOPTING RULES
Chapter 80C)

The above-entitled matter came on for hearing before the Securities Commissioner of the State of Minnesota on the 26th day of July, 1974, at 9:00 A.M. in the Hearing Room of the Department of Commerce, Fifth Floor, Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota, after proper notice required by Minn. Stat., § 15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Minnesota Regulations S.Div. 80C.01 through 80C.22 are adopted this 20th day of December, 1974, pursuant to authority vested in me by Minn. Stat., § 80C.18 (Supp. 1973).

STATE OF MINNESOTA
SECURITIES DIVISION

EDWARD J. DRISCOLL
STATE COMMERCE COMMISSIONER