

BY KENNETH R. COSTELLO

Franchise Compliance: Can You Pass this Quiz?

IN JANUARY 2007, THE FTC released the amended FTC Rule on Franchising and made compliance mandatory by July 1, 2008.

Since then, many of the states with franchise registration laws have also amended their laws to conform to the FTC's changes. Violations of the FTC Rule and state franchise laws can have a profound negative impact on a franchisor, its officers, directors, and sales staff, and can even lead to jail time. We thought we would take this opportunity, more than three years after the release date, to offer you a short quiz to gauge how well you remember some of the important current requirements. (Answers at bottom of page 6.) Let's get started.

1. True or false? The new FTC rule no longer requires franchisors to deliver an FDD at the first "personal" or "face-to-face" meeting with the prospective franchisee.

2. Which franchise registration states still have a "first personal meeting" requirement?

- a. none
- b. California and Maryland
- c. Maryland, New York, and Rhode Island
- d. all registration states still have this requirement

3. Under the old FTC Rule, a franchisor had to deliver the FDD at least 10 business days before the franchisee signed any binding agreement or made any payment. Under the new FTC Rule, how soon after the day you deliver the FDD may you sign the franchise agreement and accept payment of the franchise fee?

- a. 7 calendar days

- b. 14 calendar days
- c. 14 business days
- d. 15 calendar days

4. Yes or No: If you sell in California under the "large franchisor" exemption, is your answer to question 3 the same?

5. Under the new FTC Rule, how soon after its fiscal year-end must the franchisor update the FDD to include year-end audited financial statements and other material information?

- a. 60 days after fiscal year-end
- b. 90 days after fiscal year-end
- c. 120 days after fiscal year-end
- d. as soon as reasonably possible after year-end

6. Under the old FTC Rule, a copy of the fully completed franchise and other agreements, with all blanks filled in, had to be delivered at least five business days before the agreements were signed. Under the new FTC Rule, this requirement applies only if the franchisor makes unilateral and material changes to the agreements attached to the FDD (i.e., not when the only changes are those negotiated by the franchisee), and a new waiting period applies. Now, if this requirement applies, how soon after the day the completed contracts are delivered may they be signed under the new FTC Rule?

- a. 7 business days
- b. 7 calendar days
- c. 8 business days
- d. 8 calendar days

7. True or false? Under the new FTC Rule, the FDD may be delivered by email as a PDF together with a separate copy of the acknowledgment of receipt for the franchisee to sign and return.

8. True or false? Under the new FTC Rule, a franchisor may make "financial performance representations" (formerly "earnings claims") without including them in Item 19 if they are limited to the actual operating results of a specific outlet being offered for sale, provided that the franchisor also provides the names and addresses of all owners of the business during the past three years.

9. If a franchisor with a calendar fiscal year completed its annual update on April 30, 2010, and replaces its CEO and CFO on May 5, 2010, how soon must the franchisor amend the FDD to disclose this new information, under the new FTC Rule?

- a. immediately, before any new franchise sales are closed
- b. by May 31, 2010
- c. by June 30, 2010
- d. within a reasonable time after June 30, 2010

10. A Texas-based franchisor sells a franchise to a Nevada resident to operate a franchise in Malaysia. What disclosure document(s) must be delivered?

- a. none
- b. FTC only
- c. FTC and Malaysia disclosure documents
- d. Malaysia only

We hope you enjoyed the quiz. If you scored 10 correct, we have an opening for you; 7 to 9 correct, very good, but you have a little homework to do; 4 to 6 correct, you have a lot of homework to do; and 3 or less, go directly to jail, do not pass go. (Answers on page 6.) ■

Kenneth R. Costello, a partner in the Los Angeles office of Bryan Cave LLP, has represented franchisors for 30 years, has spoken and written extensively on franchising including "Franchising Law: Practice and Forms," a leading 3-volume franchise guide. Contact him at 310-576-2132 or kenneth.costello@bryancave.com.