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April 19, 2023

In the Matter of the Commissioner's ) **INTERPRETIVE ORDER NO. 2023-1**  
Interpretive Opinion/No Action )  
Position Allowing Franchisor )  
Financial Statements to be Current )  
Within 120 Days of a Franchise )  
Application )  
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The Hawaii Commissioner of Securities ("Commissioner") issues this interpretive opinion/no action position regarding Section 16-37-3(b)(2), Hawaii Administrative Rules, that prescribes the financial statements a franchisor must include in a Franchise Disclosure Document required under the Hawaii Franchise Investment Law, Chapter 482E, Hawaii Revised Statutes.

**Background**

Under Section 482E-3(a), Hawaii Revised Statutes and Section 16-37-3(b)(2), Hawaii Administrative Rules, financial statements must accompany a franchisor's application for filing under the Hawaii Franchise Investment Law. In addition, the statements must be dated no later than 90 days before the date of the franchisor's application. As a result, if the date of a franchisor's most recent audited financial statement precedes the date of the application by more than 90 days, the franchisor also must include an interim financial statement, which may be unaudited, as of a date within 90 days of the date of the registration application. Under Section 482E-3(e), Hawaii Revised Statutes, franchise offering circulars meeting requirements of a federal agency may be accepted for filing.

Effective July 1, 2007, the Federal Trade Commission ("FTC") adopted an amended franchise rule, 16 C.F.R. Part 436 (the "FTC Franchise Rule") with updated federal disclosure requirements for all franchisors offering franchises in the United States. Under the FTC Franchise Rule, the FTC extended its longstanding deadline for franchisors to prepare annual updates to franchise disclosure documents from 90 to 120 days after the close of the franchisor's fiscal year end. This extension allowed franchisors an additional 30 days in which to prepare and include audited financial statements in franchise disclosure documents required under federal law.

In its Statement of Basis and Purpose supporting the FTC Franchise Rule, the FTC quoted public comments stating that many franchisors had difficulty obtaining annual audited financial statements from auditors within the previously required 90-day period. The FTC noted that, because most franchisors use a calendar fiscal year, company auditors are usually overwhelmed at the beginning of the fiscal year, given the busy tax season. In addition, many state franchise regulators allow franchisors 120 days to prepare updated disclosures. The FTC concluded that revising the updating requirement from 90 to 120 days had the potential to reduce franchisor's compliance burdens while reducing inconsistencies with state updating policies. See Federal Trade Commission, Disclosure Requirements and Prohibitions Concerning Franchising, Statement of Basis and Purpose, 72 Fed. Reg. 15444, 15518 (March 30, 2007).

The Commissioner finds good cause to extend the updating requirement for franchise financial statements required under the Hawaii Franchise Law from 90 days to 120 days. Allowing an additional 30-day period in which to prepare and include financial statements reduces compliance burdens on franchisors and their auditors. Many franchisors file financial statements that are dated more than 90 days before the date of the franchise registration application, but less than the 120 days allowed under the FTC Franchise Rule and the franchise laws of several states. Requiring additional updates to financial statements in those circumstances causes delays in registration, especially in March and April when the majority of franchisors file renewal applications. Adopting a 120-day requirement promotes greater uniformity with federal and state franchise disclosure requirements. The expansion of the requirement from 90 to 120 days is not inconsistent with the purposes of the Hawaii Franchise Law or contrary to the public interest or the protection of prospective franchisees.

### **Interpretive Opinion/No Action Position**

Based on the foregoing, and under the authority granted under Section 482E-3(e), Hawaii Revised Statutes, the Commissioner will take no action to require franchisors to include financial statements otherwise required under Section 16-37-3(b)(2), to be current within 90 days of the date of an application for franchise registration, provided those financial statements are current within 120 days of the date of the application for franchise registration. This INTERPRETIVE ORDER shall be effective as of the date specified below and shall remain in effect until subsequently amended or rescinded by another INTERPRETIVE ORDER or rule by the Commissioner.

DATED: April 19, 2023

/s/ Ty Y. Nohara  
Ty Y. Nohara  
Acting Commissioner of Securities