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5 KEY TAKEAWAYS

Perspectives on Non-Traditional Franchise Ownership Structures

Kilpatrick Townsend Partner Marc Lieberstein recently spoke with Bret Lowell, Esq. of DLA Piper LLP and Susan Metcalfe, Esq. of Potomac Law Group PLLC at the American Bar Association's 41st Forum on Franchising in Nashville. Their presentation was titled "Perspectives on Non-Traditional Franchise Ownership Structures," where Marc focused on non-profit and joint venture franchise relationships.

Key takeaways include:

1 There are several alternative non-traditional structures that franchisors should consider for potentially faster, more efficient and profitable growth of their franchises — private equity; trusts; non-profit organizations; publicly held companies; ESOP entities; and joint ventures, among others.

2 There are advantages and disadvantages to each non-traditional structure. Private equity, publicly held companies, and trusts all offer unique opportunities to work with sophisticated and experienced entities who generally and likely have large amounts of capital to invest in the franchise. But the trade-off maybe less franchisor control. With non-profits, ESOPs and joint ventures, the franchisor may be in a better position to decide the level of control it wants. But, these latter franchisee partners may have less capital to invest and/or less sophistication with franchising and may require more franchisor involvement/investment to achieve success.

3 In any franchise transaction with a non-traditional corporate entity, the franchisor must be prepared to make changes to its franchise agreement terms to protect the franchise and the brand/IP, as well as to address issues like non-competition, transfers, exit strategies, and termination.

4 Franchisors who entertain "doing good" with a non-profit franchisee partner also stand to benefit from the goodwill associated with franchising to a non-profit and supporting its mission. Indeed, a 2015 Nielsen Global Corporate Sustainability Survey of 30,000 global consumer across 60 countries found that 66% of consumers are willing to pay more for sustainable brands. But, franchisors should be careful to ensure that their mission to "do good" aligns closely with the non-profit mission.

5 For the franchisor looking to expand outside their own region or internationally, the joint venture franchise relationship offers the benefit of a franchisee partner that likely has more experience on how to successfully implement and/or grow the franchise in the foreign market, including better knowledge on cost effective and efficient supply chain matters, human and capital resources, as well as local government practices and regulatory compliance.

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