DOMINO'S FRANCHISEE ASSOCIATION

October 28, 2022

By Email

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 205499–1090
rule-comments@sec.gov

Re: No. S7-21-21 Share Repurchase Disclosure Modernization

Ms. Countryman:

Investors & Franchise Community appreciates commenting on the U.S. Securities and Exchange Commission's (the "SEC" or "Commission") release on proposed Rule 13f-2 ("Proposal") under the Securities Exchange Act of 1934.

A corporate insider has filed a well-documented whistleblower report with the U.S. Securities and Exchange Commission (SEC) against Domino's Pizza, its top-level officers, and various staff members. The complaint states serious allegations against the franchisor related to the circumstances surrounding the company's misconduct. It lists, "Fraudulent investment scheme; general trading practices; manipulation of security; insider trading; material misstatement or omission in company's public filings or financial statements; and bribery."

Domino's Pizza [DPZ] filed 8K with the SEC, containing explicit terms placed under the Securitization Transaction "No Commingling: Misdirected Payments" "The Manager shall not commingle with its own assets and shall keep separate, segregated and appropriately marked and identified all Managed Assets" effectively DPZ violated and commingled Assets when "We [Domino's] are going forward with the amendment adding in the missing dollars from the three franchise owners" these Securitization Transactions Loans were used in conjunction with Share Repurchase and Dividend Issuance Programs.

The crux of the whistleblower report details how Domino's allegedly forced and orchestrated an unapproved advertising and promotion increase to franchisees in order to pay a $1.85 billion Securitization Transaction (March 25, 2007) with a new partially funded $1.67 billion Securitization (March 15, 2012) debt owed to Securitization entities (pg. 505). The report alleges that in return, Domino's Pizza's CEO, board members, officers, and employees "could enjoy higher stock prices and dividends through share repurchases and dividend payouts."

Domino's Pizza used a series of coercive actions "exit will be orchestrated a few pay grade above me. In the meantime his operations continue to be good." Domino's own public disclosure and notification to franchisee was a "100 percent of system participation" vote "unanimously" to increase in Domino's Pizza [DPZ] "Advertising Rate". As illustrated with Domino's deposition, testimonies, SEC filing, public disclosures and statements.

Prior to the "Exit will be orchestrated", DPZ Securitized all of its Assets, including those of "Advertising" Ad fees. Those Asset were "No Commingling" meaning when there was no "100 percent of system participation" "unanimous" vote, DPZ lack the necessary asset to Collateralize the Securitization Transactions. The Advertising Amendment funding which was in "segregated" account and "shall not commingle" basically was violated by "Manager" Domino's Pizza.

Domino's Pizza needed the Securitization funding to initiate "Share Repurchases" and "Dividends" which was already slated prior Advertising Amendment Vote. Essentially Domino's Pizza as "Managers" embezzled funds from "No Commingling" Assets "DPZ will fund the shortfall from the three "no" votes so the ad fund will 100 percent funded". This explicitly violated the SEC 8K Filing for the Securitization Transaction which specially states "No Commingling" & "shall keep separate, segregated and appropriately marked and identified all Managed Assets" The "Advertising" Asset which were Collateralized was ultimately used for advancement in funding for Share Repurchase & Dividend Issuance.

Conclusion

Franchise Investors appreciate the opportunity to respond and include an example to why the Proposal and ultimately rule is needed. Thank you for considering our comments and we would be happy to answer any questions or further explain any of the points.

Sincerely,

[Retail Franchise Investor]

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of The Securities Exchange Act of 1934

Date of Report (Date of Earliest Event Reported): March 15, 2012

DOMINO'S PIZZA, INC.
(Exact name of Registrant as specified in charter)

Delaware	**001-32242**	**38-2511577**
(State or other jurisdiction of incorporation)	(Commission File Number)	(I.R.S. Employer Identification Number)

30 Frank Lloyd Wright Drive
Ann Arbor, Michigan 48106
(Address of Principal Executive Offices)

(734) 930-3030
(Registrants' telephone number, including area code)

(g) Collection of Payments; Remittances; Collection Account. The Manager shall cause the collection of all amounts owing under the terms and provisions of each Managed Document in accordance with the Management Standard.

(h) Collections. The Manager shall use commercially reasonable efforts to cause all Collections due and to become due to any Securitization Entity to be deposited into a Concentration Account or the Collection Account, as the case may be, in accordance with Section 5.10 of the Base Indenture.

(i) Deposit of Misdirected Funds; No Commingling; Misdirected Payments. The Manager shall promptly deposit into any Concentration Account, as determined by the Manager, by the second Business Day immediately following actual knowledge of the receipt thereof by the Manager or any of its Affiliates and in the form received or in cash, all payments received by the Manager or any of its Affiliates in respect of the Managed Assets incorrectly sent to the Manager or any of its Affiliates. The Manager shall not commingle with its own assets and shall keep separate, segregated and appropriately marked and identified all Managed Assets and any other property comprising any part of the Collateral, and for such time, if any, as such Managed Assets or such other property are in the possession or control of the Manager to the extent such Managed Assets or such other property is Collateral, the Manager shall hold the same in trust for the benefit of the Trustee and the Secured Parties (or, following termination of the Indenture, the applicable Securitization Entity). Additionally, the Manager shall notify the Trustee in writing of any amounts incorrectly deposited into the Collection Account, and arrange for the prompt remittance by the Trustee of such funds from the Collection Account to the Manager. The Trustee shall have no obligation to verify any information provided to it by the Manager hereunder and shall remit such funds to the Manager based solely on the notification it receives from the Manager.

(j) Other Amounts Received. The Manager shall cause all amounts received, other than Collections, to be deposited directly into an account maintained by Domino's Pizza LLC or its Affiliates (other than the Securitization Entities) and not subject to the Lien of the Trustee pursuant to the Related Documents.

(k) Asset Management Services. In connection with the Asset Management Services, the Manager shall use commercially reasonable efforts to renew real property leases and equipment leases related to the distribution, manufacturing and supply chain solely in the name of the relevant Securitization Entity and to remove any Non-Securitization Entity that is a co-obligor on any such lease.

(l) Supplied Products and Services. The Product Supply Entities hereby engage and authorize DPL, and DPL hereby accepts such

From: Gerald Carpenter (FRAN - EFranRegn)
To: Sandy Jamerson (FRAN - EFranRegn)
Sent: 1/28/2013 2:56:53 PM
Subject: RE: F Fran Update

Franchisee Name	2012 Grade	Current Store Ct excl. Pizzazz	Assigned Area Leader	**2013 Field Proposed Grade**	Notes
Huth, Bobby	B	29	Carpenter,Gerald	F	**Huth's exit will be orchestrated a few pay grades above me. In the meantime his operations continue to be good.**
Ivey,Chris	B	3	Carpenter,Gerald	**F**	Chris has an offer on the table and is working on that one and working to get more offers.
Johnson,Tammy W.	F	1	Carpenter,Gerald	**F**	Kenny Cobbs has expressed interest in this store.
Mak,Conan	F	1	Carpenter,Gerald	**F**	Tied up in legal conf call happened 1-28-13 tro discuss next steps. A plan is in motion here.

2013 Amendment

DPZ Communications <Dominos.Communications@dominos.com> Thu, Jan 10, 2013 at 6:41 PM
To: "noreply@dominos.com" <noreply@dominos.com>

We have taken a big step forward in the Domino's Pizza system. We asked the system to support a 0.5 percent shift of advertising spend from local to national. We believe our recommended advertising shifts out of local will provide an extra $25 million of system wide incremental profit, or an average of $5,000 to the bottom line of each store. A strong case was presented to shift dollars from inefficient local print to national TV and digital and we're happy to see that many of you have already changed your local print buys for 2013. In exchange for your support and amendment of existing standard franchise agreements (SFA), we have agreed to extend standard profit sharing agreements by 5 years.

Going forward, all new SFA's will contain the rolled-up 6 percent national advertising rate.

As you know, we set a goal of 100 percent participation to move forward. As of today, three franchise owners have declined to participate and not extend their profit sharing agreements. The right target was 100 percent to ensure that all franchise owners participate. We are at 99.7 percent "yes" votes and, with the overwhelming support of the system, it is in the best interest of the franchise system to move forward by rounding to 100 percent. This means, of course, that profit sharing agreements will be extended for 5 years. For the good of the system, Domino's Pizza LLC (DPZ) will contribute its own money (i.e., money totally outside of the national ad fund) to the national ad fund the dollars missing from those three franchise owners (84 stores) who have chosen so far not to support this amendment. We estimate those payments to be well in excess of $250,000 and will satisfy our commitment to you that the contributions from 100 percent of eligible franchisees will be funded into the national advertising fund. Further, 100 percent of the available incremental dollars received by the national ad fund will be used for working media in 2013.

During this process, we received feedback that certain franchise owners wanted a performance criterion for this 6 percent rate to remain permanent. Based on this feedback, we have added a performance measure, total positive cumulative same store sales over 2013 and 2014. If we achieve this level of performance, then the rolled-up 6 percent national advertising rate in the amendment will become permanent. If not achieved, we will follow the voting procedures outlined in the 2010 "roll-up" that 100 percent of you approved, and rates would then go back to pre-amendment levels if 65 percent of franchised stores under pre-2013 SFA's in good standing vote to do so. Regardless of whether we hit this performance measure, your five year profit sharing extensions will remain in place.

We are going forward with the amendment, adding in the missing dollars from the three franchise owners, and even adding in this new performance requirement (leaving your profit sharing extensions in place regardless of whether we beat this new requirement) because this amendment is yet another important step on our Road to #1. We have great momentum as a system with average store EBITDA and AWUS at all-time highs. In order to become the #1 pizza company in the world, we cannot get complacent and be satisfied that we have led the QSR segment over the last several years. We must continue to work together as a system to feed the momentum we have collectively created.

Please send an email to Jim Stansik (jim.stansik@dominos.com) by January 17, 2013 if you have concerns with this approach. If we cannot resolve those concerns, those franchise owners will be considered "no" votes, their profit sharing will not be extended, their rolled-up rate will remain 5.5% until renewal, and Domino's will not fund their shortfall in the ad fund. Otherwise, we will conclude that you continue to agree to and support the amendment and, of course, the extension of your profit sharing agreement. All renewals will be at 6 percent. Assuming sufficient support, the new advertising rate will begin January 28, 2013.

To summarize:

- Target was 100 percent of system participation and we are moving forward at 99.7 percent.
- DPZ will fund the shortfall from the three "no" votes so the ad fund will be 100 percent funded.
- DPZ will provide a performance criterion of two-year total positive cumulative same stores sales for 2013 and 2014.
- If cumulative same store sales are not positive for 2013 and 2014, you can call for a vote and 65 percent of pre-2013 contracts would have to vote "yes" to revert to pre-amendment ad rate.
- 100 percent of the incremental contribution in 2013 will go to working media.
- DPZ will extend all standard SCS profit sharing agreements five years for all "yes" voters, regardless of DPZ performance.
- Any franchise owners with a concern email Jim Stansik (jim.stansik@dominos.com)
- Assuming sufficient support, the new advertising rate will begin January 28, 2013.

We appreciate your support of this important initiative and we look forward to continued success for our franchise system.

We are on a mission; we will be the number #1 Pizza Company in the World.

This message was sent to all U.S. franchisees and all corporate above-store team members.

1/2% Advertising Amendment Survey Results

I am sending this email to provide an executive summary of the DFA survey, which was sent to Franchisees earlier this week, and as a follow up to the DFA email we sent yesterday announcing our support of DPZ's new ½% advertising amendment proposal.

1/2% Amendment Survey

The results reflect the individual opinions of more than 33% of the 999 Franchisees currently in the Domino's system and are not weighted by the number of stores each Franchisee has.

1 and 2 store Franchisees = 49% of the respondents
3 and 4 store Franchisees = 21% of the respondents
5 to 9 store Franchisees = 18% of the respondents
10 to 20 store Franchisees = 7% of the respondents
21+ store Franchisees = 5% of the respondents

The overall results on the surveys reflected the following...

>50% felt their vote was not voluntary
>80% felt the amendment required 100% support of every Franchisee to pass
>80% felt the amendment had a 12-31-12 or before deadline in order to pass
>70% of all respondents felt the amendment should move forward regardless if it was voluntary or if the parameters were met.

Revised 1/2% Amendment Supported By DFA

This issue was very polarizing and had very few Franchisees on the fence trying to decide whether to support or not. Even though the significant majority of Franchisees surveyed thought DPLLC did not

Seeking Alpha

Domino's Pizza Management Discusses Q4 2012 Results - Earnings Call Transcript

Feb. 28, 2013 3:20 PM ET
by: SA Transcripts

Domino's Pizza (NYSE:DPZ)

Q4 2012 Earnings Call

February 28, 2013 11:00 am ET

Executives

Lynn M. Liddle - Executive Vice President of Communications, Legislative Affairs & Investor Relations

Michael T. Lawton - Chief Financial Officer, Principal Accounting Officer and Executive Vice President of Finance

J. Patrick Doyle - Chief Executive Officer, President and Director

Analysts

Brian J. Bittner - Oppenheimer & Co. Inc., Research Division

Michael Kelter - Goldman Sachs Group Inc., Research Division

Jeffrey Andrew Bernstein - Barclays Capital, Research Division

John S. Glass - Morgan Stanley, Research Division

Mitchell J. Speiser - The Buckingham Research Group Incorporated

John W. Ivankoe - JP Morgan Chase & Co, Research Division

Mark E. Smith - Feltl and Company, Inc., Research Division

Peter Saleh - Telsey Advisory Group LLC

Operator

Good morning. My name is LaShondra, and I will be your conference operator today. At this time, I would like to welcome everyone to the Q4 and Year End Financial Results

In closing, our strong fourth quarter continued our consistent performance throughout 2012. Our focus remains on improving our operating performance, growing our global store base and utilizing our free cash flow to drive shareholder value.

Thanks for your time today. And now, I'll turn it over to Patrick.

J. Patrick Doyle

Thanks, Mike, and good morning, everyone. Nothing makes me happier than reporting another great quarter and another terrific year. Really, everything went our way in the fourth quarter, and it capped off a very successful 2012. We maintained our store growth and sales momentum, we grew market share in the U.S. and in international markets, we increased EPS by 20%, and we reached 10,000 stores worldwide, putting us in a league with only a select few restaurant peers.

We also hit over $2 billion in digital sales globally, making us a top technology brand around the world. And as Mike just mentioned, we're proud to have also just announced the initiation of a regular quarterly dividend.

Domestically in the fourth quarter, we launched our Handmade Pan Pizza, a very high-quality, fresh-dough product that we believed would be a hit with consumers, and we were right. We helped drive higher sales as well as increase traffic into our stores, something that's a key metric for us. Early indications are that online customers were some of our best pan pizza customers, engaging strongly with this new product. Consumer feedback on the product has been very positive, and our theory is that consumers prefer a fresh-dough product over frozen alternatives. We now have a product competing nicely in this category, and we're gaining a meaningful foothold with lots of opportunity for future growth.

Meanwhile, the net domestic unit growth we recorded in the fourth quarter means that we ended the year up 21 net new stores. Modest growth, but we consider it a hopeful sign for continued U.S. store development in the years to come. Promotions that increased store-level profits at our successful Pan Pizza launch, coupled with tame commodities, all led to a strong year for franchisee store profits, which ultimately leads to an energized franchise base.

In fact, our franchisees recently voted to increase our national advertising spend going forward, upping it to 6% of top line sales from 5.5%. Through extensive market research and media modeling, we were able to make an informed and thoughtful recommendation for increased national advertising toward domestic franchise owners. This is expected to

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be a shift from local advertising into national advertising, and we think this is a positive vote of confidence from our franchisees.

Our franchisees in the U.S. have a lot to feel good about, including our strong technology focus, which we believe is giving us the edge over smaller pizza players and garnering market share increases. Our best information so far indicates that our growth in 2012 was higher than the overall category and that our ability to continue to gain market share in the U.S. grows with our continued innovation around technology and the consumer experience. From store operations to direct marketing, technology was an important focus for us in 2012 and will remain an area of investment and leadership for us in 2013.

Another area of leadership for our brand is in our international division, where we have once again produced excellent results. International store growth was robust all year, and the fourth quarter was no exception, as we ended the year up a net 492 stores, our best year ever for international store growth. That dynamic store count growth was matched by another remarkable year for same-store sales, up 5.2% in the quarter and for the year. For those keeping score, that is 76 consecutive quarters of positive same-store sales, which is 19 years of positive growth from this division. And the international franchisees did this in a year when the macroeconomic picture wasn't all rosy. But again, we drove good, steady results from a wide mix of countries. In large countries, small ones, new markets or established markets, our geographic diversity and long runway for growth has helped keep our international business vigorous. Our international business continues to be a growth engine for Domino's Pizza.

Notable markets with good sales growth in the quarter included South Korea, Turkey and Brazil, and even an economically troubled market, like Spain, managed to have positive sales results in the quarter.

Continued success in store growth in our international business has resulted in the change in our long-term outlook, as communicated in January. We now believe that we will drive 4% to 6% global net unit growth, which is an increase over our previous range of 350 to 400 net new units. This also led to an increase in our global retail sales range, which we now believe will fall in the plus 6% to plus 10% range. This change reflects the confidence we have in our international business and the tremendous growth potential that this division can drive growing forward.

We believe investors have good reason to be happy with their investment in Domino's in 2012. We increased adjusted EPS 23% in the fourth quarter and nearly 20% for the full year. We used $88 million of cash to repurchase shares, we paid a $3 special dividend,,

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different ways people use your brand?

J. Patrick Doyle

Yes. So carryout has grown a little bit faster than delivery over the last few years, but we're getting growth from both sides of the business. But in the overall category, particularly going back even a little bit longer term, carryout has clearly been a little stronger than delivery, if you go back kind of 3 to 5 years. From a profitability standpoint, the ticket on a carryout customer is lower than the ticket on a delivery customer, but your costs are also lower because you're not delivering to them. So net-net, we're relatively agnostic between -- from a profit standpoint on carryout or delivery. They're both nicely incremental for us when we pick up new orders on either side. So -- but yes, I think the one thing in there is carryout has definitely been a little healthier than delivery over the last few years.

Jeffrey Andrew Bernstein - Barclays Capital, Research Division

Got it. And then just in the advertising spend that you talked about. Just to clarify, I know you had said it's going up from 5.5% to 6%. But you're saying the -- so what does the franchisee spend in total? Presumably it's well above that major shifting in their -- first, I want to figure out what the franchisee paid in total, because it sounds like you're saying they're not going to increase their spend, it's just moving 50 basis points to you.

J. Patrick Doyle

Yes, typical is that they're spending a couple of percent more. So they've got 2% or so more that they're spending on -- mostly on print. So the coupons that you're seeing showing up in the Sunday papers and in your mailbox. And we're simply seeing a better ROI on the activities that we're doing at a national level than we've seen on some of the local. We did a lot of research around it, kind of media mix modeling, and went back to them with a recommendation and said, "We think you should keep your overall spend consistent with what it's been, but the shift 0.5% out of your local into the national."

Jeffrey Andrew Bernstein - Barclays Capital, Research Division

And that was approved across the board? So now everybody does the same thing?

J. Patrick Doyle

Yes.

000010

Mark E. Smith - Feltl and Company, Inc., Research Division

Okay. And then secondly, it's maybe too anecdotal. But yesterday, I was in California, bought gas for $4.69. Can you just walk us through, historically, with gas price spikes, what you've seen from the consumer? Also the impact on distribution and at the store level from delivery?

Michael T. Lawton

Historically, we have not seen a lot of change in the consumer behaviors as gas price spiked. And we also haven't had -- when you think of the gas prices going up and you think of us as a delivery company, typically, the first thought is, well, that means a lot more reimbursement to drivers, that means expenses go under a lot of pressure. There is more reimbursement to drivers, but it's not a huge additional cost at the stores. And when we see the gas price spikes, we typically have, from our history, a little more concern about how, over time, that can feed into the overall cost of the food supply, our ingredient cost. We've been -- we just provided information earlier in my comments that with what we see out there right now, it's still looking at 3% to 4% for the year, and we aren't seeing a change to that at this point based on the ag economists and the people that we use for inputs into our estimates.

J. Patrick Doyle

So, yes, that's the big deal. I mean, we saw that in 2007 when gas prices spiked up a lot, it started to flow through into -- into commodities. And that's honestly where our biggest concern is when you look at gas prices. Consumer behavior, reimbursements, they're just -- we just haven't seen that much in the past that it's -- that's that material. The bigger issue is if it starts to flow through commodities.

Operator

Your next question comes from the line of Peter Saleh of Telsey Advisory Group.

Peter Saleh - Telsey Advisory Group LLC

I just wanted to ask if you guys could just take us back a step. I believe in 2010 there was a shift as well on the advertising from more local to national. So if you could remind us what that shift was and kind of just relate it to what's going on today?

J. Patrick Doyle

000011

Yes. In 2010, we went from 4% to 5.5% nationally. There was -- there had been, at that point, kind of a 2% minimum required local co-op spend. So it was money that was being collected at DMA by DMA and would be spent largely on kind of local television and some radio. So in 2010, what we did was we eliminated that 2% requirement on DMA-level spend or co-op spend, as we called it. So there were kind of 3 buckets then, and we went from 3 buckets to 2 buckets. We eliminated the 2% requirement. They could still do it if they chose, but we've eliminated the 2% requirement and added 1.5% to the national level. So the requirement for them actually went from 4% plus 2% down to 5.5%. So it was actually a reduction in the requirement of 0.5%. We were comfortable doing that then because we could see the efficiencies that we were going to get by making that shift, and we saw those. And 2010 was a clearly a very, very strong year for us with the relaunch at the same time. But yes, you've got that exactly right. So we had to shift back then. It increased the national at that time from 4% to 5.5%, offset by the 2% requirement going away at the co-op level. What we've just done is moved from 5.5% to 6%. So actually, the requirement was returning to kind of where it had been then, but with the recommendation to them that they'd probably fund that by a commensurate reduction in their local spend.

Operator

That was the last question. Are there any closing remarks?

J. Patrick Doyle

No. I just want to thank you for joining us today, and we look forward to reporting our first quarter results to you on April 30. Thank you, everyone.

Operator

This concludes today's conference call. You may now disconnect.

three positions similar to mine, to one position, and I held that position. I worked for Patrick Doyle who was the EVP of Team USA, which is company owned stores and I was his right-hand vice president. So Patrick and I 2004 leading the company stores.
Q. How many company stores were there at that time?
A. About 750 or so.
Q. Have, just in terms of corporate stores do you still have that many in today's market or?
A. No.
Q. How many corporate stores are there right now?
A. I believe about 345.
Q. Quite slimmed down?
A. Yeah.
Q. What's the reasoning behind that; can you tell me?
A. Well, there was some markets that were challenging to operate, states that made it pretty complex, states like California that weren't real business friendly. We had a good number of stores. Same thing it goes with New York, particularly New York City, and we just found that it's, you know, better for owner operators, people who live in the market, to operate those stores. Just better them for maneuver and they frankly do a better job.

Q. So, in other words, a lot of the corporate stores, you didn't close them necessarily you sold them to franchisees?
A. We did.
Q. I think this came up with Buddy and he couldn't answer it necessarily. Have you ever heard of franchisees selling their stores back to corporate, has that ever happened?
A. Yes.
Q. How often does that happen?
A. Not very often.
Q. But it does happen?
A. It does.
Q. What are the circumstances usually when that happens where corporate decides to go ahead and buy back a franchisee's store?
A. If the geography makes sense and a center of operation and the span of control is appropriate and they're continuous, you know, if it makes good business sense, we would look to do that.
Q. Let's get back to your jobs. Back in Ann Arbor at this point in time?
A. Yes, sir.
Q. What was your title then; you were working with Patrick Doyle as a...

A. Vice president of corporate operations.
Q. Okay. And that was with Team USA?
A. Correct.
Q. And you said Team USA is?
A. Corporate operations.
Q. Corporate operations?
A. Yeah.
Q. So you didn't have anything at that point in time to do with franchisees at all necessarily?
A. No.
Q. And then after that where did you go?
A. In 2007 I was promoted to executive vice president. I replaced Patrick Doyle who was promoted to president. Still in Michigan, Ann Arbor, Team USA.
Q. Still the same type of duties and responsibilities that you were doing just you were in charge basically, right?
A. Yes.
Q. Okay. And then you reported directly to Patrick Doyle, correct?
A. Correct.
Q. Was Jim Stansik at that point in time reporting to you or what was his position?
A. It could have been a number of positions but he did not report to me. I believe he reported to the CEO.

Q. And then, so what was your title again in 2007 when...
A. Executive vice president Team USA.
Q. How long did you hold that position for?
A. Six months.
Q. Not very long?
A. Not very long.
Q. Where were you promoted to after that?
A. Executive vice president of franchisee operations and development. January 2008.
Q. And is that your current position at Domino's?
A. Correct.
Q. So you've held that since approximately 2007, 2008?
A. 2008, 12 years.
Q. Any promotions on the horizon?
A. I don't believe so. I think I'm good. Yep.
Q. And you said you've worked for Domino's how many years now?
A. 33 and a half years.
Q. Looking at retirement?
A. No. No.
Q. Got too many kids to go to college still?
A. Yes, there's plenty of work to be done.
Q. All right. So now your current title is what

Page 2

APPEARANCES:

MR. JAMES C. STEVENS
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Appearing on behalf of the Respondents.

ALSO PRESENT:
Robert Huth

Page 3

TABLE OF CONTENTS

E X A M I N A T I O N S

E X H I B I T S

Page 4

EXHIBITS CONTINUED:

(Exhibits attached to transcript.)

Page 5

Ann Arbor, Michigan
January 9, 2020
About 9:30 a.m.

SCOTT HINSHAW,

having first been duly sworn, was examined and testified on his oath as follows:

EXAMINATION BY MR. STEVENS:

Q. This is the deposition of Scott Hinshaw in the case of Robert W. Huth and Holiday Delta, Inc versus Domino's Pizza, LLC, et al. Case number 1-19-3102. It's a case pending in arbitration with the American Arbitration Association. Today's date is January 7th -- January 9th. We're taking this deposition at the court reporting service Huron Reporting. You can put that address in. And if I could have people identify themselves for the record in the case. Norman?

MR. LEON: Norman Leon, counsel for the Domino's respondents.

MR. HUTH: Robert Huth.

THE WITNESS: Scott Hinshaw.

EXAMINATION BY MR. STEVENS:

Q. And Scott, if you could spell your last name for the record, please.

A. H-I-N-S-H-A-W.

Q. All right. And Scott, have you ever given a

Page 78

Q. So you only remember having the discussion with Jim about it?
A. Yes.
Q. Okay. Was there a discussion at all in terms of Bob Huth's operations as a franchisee in terms of whether he was a good operator or a bad operator?
MR. LEON: At what point in time? Establish context.
MR. STEVENS: During this time that you were making a decision to terminate his franchise agreement for store number 5683.
THE WITNESS: No.
BY MR. STEVENS:
Q. Did you know whether or not Bob was a good operator at the point in time in 2013?
A. How do you define good?
Q. Most of his stores were doing very well, making profits for himself as well as Domino's.
A. My perspective is Bob was above average. Difficult to say good. Above average.
Q. Okay. But you were aware of the fact that he had actually gotten awards for some of the stores like the Camp Lejeune store, right? Am I pronouncing that right?
A. Lejeune. Yes.
Q. But overall you said that he was a very good

Page 79

operator or a good operator?
A. Above average.
Q. Okay.
DEPOSITION EXHIBIT NO. 12
Notice of Rejection of Mutual Termination Request
And Notice of Unilateral Termination
WAS MARKED FOR IDENTIFICATION
BY MR. STEVENS:
Q. Scott, I'm showing you what's been marked as number 12 for today's deposition. Have you ever seen this document before?
A. I believe so.
Q. When did you first see this document?
A. I can't recall.
Q. Okay. Would you have seen it approximately about the date of the document January 14th, 2013?
A. I can't recollect. I can't recall.
Q. But this is, you know, referenced to a certain degree with the previous memo that we went over, the interoffice memo, that there would be a termination so this just is the actual document being sent to Bob terminating his agreement; is that correct?
A. Correct.
Q. And this is something that's sent out, it's entitled notice of rejection of mutual termination

Page 80

request and notice of unilateral termination. Is this a form letter that's typically sent out?
A. No.
Q. For these type of situations; no?
A. No.
Q. So there is no such form?
A. We don't have many situations like this so I don't believe that we have a form letter.
Q. Gotcha. This was kind of aberrant in your mind that this didn't happen very often?
A. Yes.
Q. Do you remember ever having a discussion other than Jim Stansik about what would go into this letter?
A. No.
Q. So nobody ever sent this to you prior to it being sent out for your approval?
A. No.
Q. Okay. And you weren't necessarily cc'd on this so you weren't actually given this document as it went out necessarily, right?
A. No.
Q. Okay. But if you look on the last page in term's of the cc'd individuals I think some of the individuals that you said that were underneath you, Scott McLeod, Randy Hough, Beth Richmond, Belinda Kaeser and Kim

Page 81

Ridge, all these people that ultimately report to you; is that correct?
A. Scott McLeod was a direct report to me. Kim Ridge was a direct report to me. Randy Hough reported to Scott McLeod. Belinda Kaeser reported to Scott McLeod and Beth Richmond reports to Scott McLeod.
Q. Okay. Why would Kim Ridge be on the cc then if Belinda and Scott were the ones ultimately --
A. As I stated before I believe that Bob owned stores in both the east and the south regions. I'm assuming that that's why.
DEPOSITION EXHIBIT NO. 13
Grade table
WAS MARKED FOR IDENTIFICATION
BY MR. STEVENS:
Q. Scott, I'm showing you what I've marked as Exhibit Number 13 for today's deposition. Have you ever seen this document before?
A. I don't believe so, no.
Q. Okay. In this document it's a document from Gerald, sometimes known as Buddy Carpenter, to Sandy Jamerson and it's discussing grades, field grades and grades themselves. Are you aware of the grading system for franchisee owners?
A. Yes, I am.

Q. Now when I talked with Buddy about this he said he'd get this document and it already had the grades on it. Where would these grades come from, if you know?
A. Yeah, so the ABF system so I can't speculate on where Buddy said the grades came from but the process starts with numbers. There's objective and subjective look at the franchisees and their performance and their standings within the brand. From the regional offices they send out a template, only numbers; sales, sales growth, service, operations, only the operational metrics and numbers. And they compare the franchisees to other franchisees in their market in their state, in their region and benchmark their sales and operational performance against those other franchisees. That's the starting point of the template, which will bucket franchisees directionally but that's ultimately or potentially not where the grade may end up. So comes from the region and it kind of forecasts before we get into other areas of the business where a franchisee may fall out in the grades.
Q. How long has this system been in place, do you know?
A. Since 2008.
Q. Okay. Who put the system into place?
A. The person who's in charge prior to me. It was

implemented and started by Mike Soignet who was EVP of franchise operations for a number of years prior to me.
Q. So what's the purpose of this ABF system typically? Is it something that is used within corporate to determine what should be done to franchisees that are not performing well?
A. No, not specifically.
Q. Okay. So it's done globally for all franchisees; is that correct?
A. No.
Q. No? Is it done just regionally?
A. US. I'm not sure globally what we do with our franchisees.
Q. Okay. But in the US all franchisees are put into a system of A, B and F?
A. Yes.
Q. Now if you looking at the document itself it has, you know, four people on the first part Bob Huth, Chris Ivey, Tammy Johnson and Conan Mak. And Bob's got a B grade in 2012 as well as Chris has got a B grade in 2012 but there's an F for Tammy Johnson and F for Mak Conan. Can you explain to me the difference between a 2012 grade would be and then the 2013 field proposed grade? Is there something that's done internally that you're aware of where they look at what's happened with the

statistics that you just referenced and come up with a proposed field grade?
A. Yeah, it's more than statistics. Like I said there's the objective and then there's subjective components to the evaluation of the franchisees. I can't speak to Chris Ivey, Tammy or Conan.
Q. But as to Bob do you know how he came up with a 2012 field proposed grade F?
A. I believe there are a number of indicators and this is not specifically to Bob. This is about franchisees across the system. And I want to be clear we have franchisees that operate fantastic stores; their sales are good, their profits are good, their service is good and they are F franchisees. We take a look at more than the physical operation of the store and the performance of the store and evaluate that franchisees. Are they an advocate of the brand? Do they participate in regional, local and national initiatives? Are the things that we implement and roll out are they always pushing back on those? Are they with us or are they against us? Do they believe that, you know, the resources that we bring are they working or they don't work? And as I stated we have people who may run average or above average operations but they aren't aligned with the brand and other franchisees and those

people at times are categorized as F franchisees.
Q. So, if you're aware, with the fact that Bob was one of the three individuals that was not agreeing to sign on to the 2013 amendment that we saw earlier, was that one of the bases for determining he had a grade F?
A. Yeah, I can't say specifically that that was one but Bob through our system has been known historically as a franchisee who thought that he had better ideas, knew more about advertising or the business or operations or marketing or new product launches than people that were more than technically qualified to provide those insights and recommendations for, you know, a six billion dollar company; and often spent a great deal of time, based upon what I heard from the regional vice presidents and Jim Stansik, debating what it is a national brand should do and often disputed or didn't want to line with the majority; majority, you know, of the system.
Q. And when you say of the system majority of other franchisee owners?
A. Franchisees.
Q. And you said earlier that you had had meetings sometimes with franchise owners. You'd go to like, you know, on an annualized basis you'd have franchise owners comes in and discuss things with you and/or Jim Stansik.

Page 42

when you'd have a regular team meeting?
A. The CEO typically, yeah.
Q. Okay. Were there minutes made of any of those meetings?
A. No.
Q. Anybody take notes that would be later distributed?
A. Not usually. No.
Q. Okay. I forgot to ask Jim Stansik's position before he retired was what, do you remember?
A. Executive vice president of franchise relations.
Q. Now does anybody currently have that position?
A. We have a vice president of franchise relations, not an executive vice president; so we have same position but it's just not an executive vice president position. Her name is Debbie Sweeney.
Q. So she doesn't necessarily sit on the team meetings that we were just talking about, right?
A. No. To date she's certainly not part of the senior leadership team.
Q. And after Jim left and retired did you take over any of his responsibilities?
A. No.
Q. No? They were all given to did you say Ms. Sweeney?

Page 43

A. There was somebody in between but yes.
Q. Who was in between?
A. Tom Curtis.
Q. Tom Curtis. How long did Tom Curtis have that position?
A. One year.
Q. And he wasn't executive level either, though, right?
A. Not then. He is today.
Q. He is today?
A. Yes.
Q. Okay. What was he promoted to?
A. Executive vice president of Team USA.
Q. Your old job?
A. My old job; yes, sir. Yep.
Q. So you guys talk to each other? Does he still look to you for information?
A. Every day.
Q. Yeah?
A. Yeah. Or just about every day.
Q. All right. You're not necessarily in charge of the profit sharing agreement but you know about it, right?
A. I do.
Q. Do you remember when they started this profit

Page 44

sharing program? Were you with Domino's at the time that the profit sharing program started to the best of your knowledge?
A. Yes.
Q. Okay. Who started the profit sharing program; was that Tom Monaghan?
A. I'm sure he was, you know, in charge of the business at that point in time.
Q. And just for my edification could you explain generally what the profit sharing program is just generally?
A. As it sits today?
Q. No, back when it first started.
A. I was in corporate operations then and unaware and didn't have exposure to what that was about.
Q. Okay. Do you remember approximately what year it might have started?
A. In the '90s.
Q. And profit sharing still exists today?
A. Correct.
Q. With the franchisees, okay. And if you know I know you said you couldn't describe what it was back when it first started but in terms of a general explanation just for the record what is a profit sharing agreement with the franchisees currently, if you know?

Page 45

MR. LEON: Just object to the form to the extent it calls for the witness to characterize the profit sharing agreement, which is the best evidence of its terms. You can give your understanding.
THE WITNESS: That our franchisees purchase their food from Domino's Pizza supply chain and the profits that are made at the individual supply chain centers are split 50/50 with the franchisees.
BY MR. STEVENS:
Q. Okay. And by split 50/50 what do you mean?
A. Exactly what I said.
Q. Right. So they do an accounting on like a, what, a quarterly basis, a monthly basis for 50/50?
A. I'm not sure.
Q. Okay. But in any event franchisees get a check based on the amount of purchases that they've made from Domino's with that 50/50 split, correct?
A. Yes.
Q. Yes?
A. Yeah.
Q. I forgot to ask earlier you know Bob Huth, correct?
A. Not well but yes.
Q. But you've met him prior to today, correct?
A. Yes. Yes.

objection to form but you can answer the question.
THE WITNESS: I wasn't involved in this. This is signed by David Mounts who ran the supply chain business and the roll-up was around advertising, which Russell Weiner was involved in. So I can't specifically answer the question.
MR. STEVENS: Okay.
DEPOSITION EXHIBIT NO. 2
3/25/2009 E-mail to Mr. Huth from Ms. Frisk
WAS MARKED FOR IDENTIFICATION
BY MR. STEVENS:
Q. I'm just going to ask you a couple questions about it in general. Scott, I'm showing you what's been marked as Exhibit Number 2 for purposes of today's deposition. It's an e-mail chain involving a number of people from Domino's as well as Bob Huth. Had you ever seen this e-mail chain before?
A. No.
Q. And feeding off of the Exhibit Number 1 we were talking about Bob voting yes for the roll-up and him being given a five-year extension and this is about the same time, it's slightly after that we're talking about the extension being given and at the point in time in 2009 what was your position again?
A. Executive vice president of franchise operations

and development.
Q. So you knew of the fact that individual franchisees who were participating in the roll-up, as we talked about, were given extensions; I think we had already established that, correct?
A. Okay, yes.
Q. So was it something that was typically done when somebody voted yes that they would get an extension to their existing profit sharing agreement if there were franchisees voting yes?
A. I was unaware of how the details of the process worked.
Q. So this was something that you were not necessarily involved in giving individual franchisees extensions on profit sharing?
A. Correct.
Q. Who would have been involved doing that?
A. I believe the notice came from David Mounts who was the executive vice president of supply chain services and this is coming from Franchise Services.
Q. And also from legal, correct?
A. That's, yes, that's Franchise Services.
Q. Okay. So legal and Franchise Services work together quite often?
A. It's within the same division. Franchise

Services tucks up within the legal division.
Q. Okay. And is that currently the same...
A. Yes.
Q. Division, okay.
DEPOSITION EXHIBIT NO. 3
2/24/2009 Profit Sharing Agreement
WAS MARKED FOR IDENTIFICATION
BY MR. STEVENS:
Q. Scott, I'm showing you what's been marked as Exhibit Number 3 for the deposition today. And I know the first is just a, looks like a fax transmittal cover sheet sent to Bob and it sort of feeds into what we've been talking about in Exhibits 1 and 2 about the same time February of 2009 Bob is just getting his profit sharing agreement it seems like from Denise Frisk. This is pretty -- a standard extension if you're looking at it, the addendum to requirements on page two on profit sharing agreement it's a pretty standard extension as far as you're aware of?
A. I'm unaware. I don't deal with these -- this.
Q. So you didn't deal at all with profit sharing at all in your position?
A. No.
Q. Okay. Who would have been the person that would have been in charge of profit sharing at this point in

time in 2009?
A. I would believe it's John Macksood who signed this who was the executive vice president of supply chain.
Q. And was John part of a team that would have meetings with you on a regular basis?
A. Yes.
Q. Yeah? Back in the time that this took place and I know -- if you remember, who did you meet with on a regular basis as far as the team?
A. All the direct reports to Patrick Doyle, Dave Brandon. It would be general counsel, supply chain services, corporate operations, franchise operations, investor relations, build the brand or advertising, legal, if I didn't say that, franchise relations, Stansik.
Q. Okay.
A. Yeah.
Q. So these people would meet as a team, all these people you just referred to, and have a meeting with whatever agenda was on that meeting that day, correct?
A. Correct.
Q. Okay. So and I think I asked Jim this before, you know, you get the agenda before the meeting and then you come in and who would conduct the meeting typically

000018

eat or something like that, let me know.

A. I'm good thank you.

DEPOSITION EXHIBIT NO. 1
2/12/2009 Letter to Mr. Huth From Mr. Mounts
RE: 1% Roll-up
WAS MARKED FOR IDENTIFICATION

BY MR. STEVENS:

Q. I'm not going to ask you a whole lot of questions. I just wanted to pick your brain.

A. Okay.

Q. I'm showing you what's been marked as Exhibit Number 1 for today's deposition. Have you ever seen this document before?

A. Yes.

Q. Okay. But not necessarily the one addressed to Bob Huth but one that went out to a number of franchisees; is that correct?

A. Correct.

Q. So in the letter to Bob Huth who is a franchisee at the time and letter dated February 12th, 2009 there was a Domino's system proposal to do what was called a one percent roll-up of advertising contributions to national advertising for a total national advertising commitment of five percent. Do you remember when they did this roll-up?

A. Yes.

Q. Okay. Were you involved in this roll-up at all?

A. Indirectly.

Q. What do you mean by indirectly?

A. It was an advertising roll-up and I wasn't part of the marketing or build the brand, as we call them, division.

Q. Who was in charge of that at the time?

A. I think Russell Weiner.

Q. And Russell's still with the company, right?

A. Correct.

Q. What's his current title?

A. COO and president of the Americas.

Q. Back in 2009 what was his position if you can remember?

A. I believe chief marketing officer.

Q. So can you explain to me what this one percent roll-up that they were talking about doing, what that entailed? I know it's kind of an open-ended question but if you can just briefly explain to me, if you know, what the one percent roll-up meant to the franchisees?

A. Increased national advertising to purchase advertising on a national level versus purchasing at a local level.

Q. Okay. And I talked about that a little bit with

Jim Stansik. A lot of the franchisees also did their own local advertising; is that correct? At this time in 2009?

A. A lot?

Q. I mean, franchisees have the ability to, you know, buy radio time, buy television time in their regional area; is that correct?

A. They do.

Q. And do they still do that or is that something that is no longer?

A. Very infrequently. Very.

Q. And why is that?

MR. LEON: Calls for speculation. You can answer, if you know.

MR. STEVENS: If you know.

THE WITNESS: Because they're really busy and many of them don't need it.

BY MR. STEVENS:

Q. And I know this is calling for your opinion is it because they don't need it because Domino's does the job for them?

MR. LEON: Same objection, overbroad, calls for speculation. You can answer if you know.

THE WITNESS: I believe, yes.

BY MR. STEVENS:

Q. And as part of agreeing to this roll-up as they called it in 2009 Bob was given the opportunity for a five year extension of his standard supply complain profit sharing agreement. Is this something that was happening across the board if a person agreed to a roll-up then they would also, you know, give them an extension of their profit sharing agreement?

MR. LEON: Let me object to the form of the question to the extent your question was intended to incorporate a fact that Mr. Huth assented to the roll-up I'm going to object that as it misstates evidence and assumes facts not in evidence but you can answer the question. And I don't know if that was your intent but if it was, I just -- that's my objection.

THE WITNESS: Can you ask the question again?

BY MR. STEVENS:

Q. Yeah. And maybe in a different way. Maybe it will be a little clearer. I mean, the letter's pretty clear it says that, you know, he agreed to the roll-up, and because he was a yes voter they're going to give him a five-year extension. And if you have any knowledge of it, is this something that they did to everybody that voted yes for the roll-up?

MR. LEON: I'm going to make the same

FRANCHISES

Insider Files Whistleblower Report Against Domino's Pizza

Janet Sparks Former Contributor

Feb 15, 2019, 01:47pm EST

Domino's Pizza Shop in Camp Lejeune, North Carolina

A corporate insider has filed a well-documented whistleblower report with the U.S. Securities and Exchange Commission (SEC) against Domino's Pizza, its top-level officers, and various staff members. The complaint states serious allegations against the franchisor related to the circumstances surrounding the company's misconduct. It lists, "Fraudulent investment scheme; general trading practices; manipulation of security; insider trading; material misstatement or omission in company's public filings or financial statements; and bribery."

The crux of the whistleblower report details how Domino's allegedly forced and orchestrated an unapproved advertising and promotion increase to franchisees in order to pay a $1.85 billion Securitization Transaction (March 25, 2007) with a new partially funded $1.67 billion Securitization (March 15, 2012) debt owed to Securitization entities (pg. 505). The report alleges that in return, Domino's Pizza's CEO, board members, officers, and employees "could enjoy higher stock prices and dividends through share repurchases and dividend payouts."

Why should franchisors be concerned about SEC whistleblower reports? Mainly because the Commission repeatedly expresses that it takes these reported allegations seriously in hopes of finding corporate securities fraud. Especially, when it comes from a corporate insider.

The Securities and Exchange Commission states it clearly saying it regards whistleblower complaints by individuals who know of possible securities law violations as the "most powerful weapon in its law enforcement arsenal." SEC's website concedes that "through their knowledge of the circumstances and individuals involved, whistleblowers can help the Commission identify possible fraud and other violations much earlier than might otherwise have been possible." The filed complaints also "allows SEC to minimize the harm to investors, better preserve the integrity of the United States' capital markets, and more swiftly hold accountable those responsible for unlawful conduct."

As an introduction, the whistleblower's extensive report describes how Domino's Pizza began to "orchestrate" a new round of recapitalization on March 15, 2012 with the placement of certain subsidiaries for a $1.675 billion securitized debt facility. The CEO, officers, the board of directors, and employees increased the value of their stock options with stock repurchases and issued a $3 per share special dividend. This was achieved by Domino's Pizza's full involvement, as the manager of an "Advertising and Promotion Amendment," which was conveyed to franchisees and investors that would become effective and binding as of December 31, 2012, once 100% of franchisees in good standing agreed to the obligations set forth in the amendment.

But when Domino's and its subsidiaries failed to achieve 100% unanimous support from the franchisees by the December 31, 2012 deadline, Domino's then "orchestrated a scheme to exit franchisees and negate the requirements set forth by Domino's Pizza LLC, and prior Securitization Transactions established with the financial institutions." The report alleges the Advertising and Promotion Amendment "was the key component in achieving the necessary funding required to be in compliance with Securitization and Financial Institutions." The securitization of those assets, which the Advertising and Promotion Amendment was one such asset that was desperately needed by Domino's Pizza LLC.

To clarify, documents show that although Domino's was required to get 100% votes from franchisees on raising the advertising fee from 5.5% to 6% as part of the securitization, the franchisor fell short of the votes. However, the company publicly stated that they did get the 100% and moved forward with the transaction.

Highlighted below, is the key component in describing the whistleblower's claims that Domino's concocted a well-orchestrated plan to increase the value of its stock.

SEC Whistleblower Program Website HTTPS://SECWHISTLEBLOWERINFORMATION.COM/THE-SEC-WHISTLEBLOWER-PROGRAM/STATISTICS/3-SEC-WHISTLEBLOWER-PROGRAM/

Material Misrepresentation on Domino's National Advertising Fund and Domino's Advertising Increase Amendment

(Securities Exchange Commission, Federal Trade Commission, Investors, Shareholders, and Franchisees)

In a significant section of the extensive whistleblower report, the insider explains how Domino's communicated to all national franchisees in January 2013 that the company had taken a big step forward in asking the franchisee system to support a 0.5 percent shift of advertising from local to national. The franchisor believed that shift would provide an extra $25 million of systemwide incremental profit, or an average of $5,000 to the bottom line of each store. Domino's said in exchange for the franchisees support and amendment of the existing standard franchise agreements, the company agreed to extend standard profit-sharing agreements by five years.

That change was documented in Domino's **2013 Amendment** (attached to the report) that "going forward, all new standard franchise agreements will contain the rolled-up 6 percent national advertising rate."

DPZ Communications on January 10, 2013 regarding 2013 Amendment (to entire franchisee body) reads as follows:

To summarize, the Amendment states:

- Target was 100 percent of system participation and we are moving forward at 99.7 percent
- DPZ will fund the shortfall from the three "no" votes so the ad fund will be 100 percent funded...
- 100 percent of the incremental contribution in 2013 will go to working media
- DPZ will extend all standard SCS profit sharing agreements five years for all "yes" voters, regardless of DPZ performance...
- Assuming sufficient support, the new advertising rate will begin January 28, 2013.

Survey Results show a different scenario: Domino's Franchisee Association (DFA) 1/2% Amendment Survey Results on January 12, 2013, Page One states, "The overall results on the surveys reflected the following:

- 50% felt their vote was not voluntary
- 80% felt the amendment required 100% support of every Franchisee to pass
- 80% felt the amendment had a 12-31-12 or before deadline in order to pass"

Page Two of the survey results states, “To ensure the original commitments were honored, the DFA (Domino’s Franchisee Association) was very clear with DPLLC that moving forward on the original amendment was unacceptable since we believed 100% support from every franchisee was needed by December 31, 2012.”

During Domino's Pizza February 24, 2015 Quarter 4 conference call, J. Patrick Doyle Domino's Pizza CEO, states: “In fact, our franchisees recently voted to increase our national advertising spend going forward, upping it to 6% of top line sales from 5.5%. We think this is a positive vote of confidence from our franchisees. (Page 2)

Jeffrey Andrew Bernstein, Barclays Capital, Research Division, questioned*:* “And that was approved across the board? So now everybody does the same thing?” J. Patrick Doyle, Domino's Pizza CEO replies, “Yes.” (Page 3)

[Note: The Whistleblower Report’s comprehensive information with links related to Domino’s Pizza’s strategy in achieving its commitments to Securitization Entities will be published on Bluemaumau.org Janet Sparks, reporter.)

Janet Sparks

Janet Sparks is the former publisher of the Continental Franchise Review, an industry newsletter that covered the franchise... **Read More**

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Company Insider Files Whistleblower Complaint against Domino's Pizza

Janet Sparks | February 19th, 2019 | Legal claim & allegation

A corporate insider has filed a well-documented whistleblower report with the U.S. Securities and Exchange Commission (SEC) against Domino's Pizza, its top-level officers, and various staff members. The complaint states serious allegations against the franchisor related to the circumstances surrounding the company's misconduct. It lists, "Fraudulent investment scheme; general trading practices; manipulation of security; insider trading; material misstatement or omission in company's public filings or financial statements; and bribery."

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When Domino's and its subsidiaries failed to achieve 100% unanimous support from the franchisees by the December 31, 2012 deadline, Domino's then "orchestrated a scheme to exit franchisees and negate the requirements set forth by Domino's Pizza LLC, and prior Securitization Transactions established with the financial institutions." The report alleges the Advertising and Promotion Amendment "was the key component in achieving the necessary funding required to be in compliance with Securitization and Financial institutions (pg. 404-411)." The securitization of those assets, which the Advertising and Promotion Amendment was one such asset that was desperately needed by Domino's Pizza LLC (pg. 167-258).

To clarify, documents show that although Domino's was required to get 100% votes from franchisees on raising the advertising fee from 5.5% to 6% as part of the securitization, the franchisor fell short of the votes. However, the company publicly stated that they did get the 100% and moved forward with the transaction.

Highlighted below, are key components in describing the whistleblower's claims that Domino's concocted a well-orchestrated plan to increase the value of its stock, providing links to franchise and legal documents that show the complexities of the franchisor's securitization transaction.

Material Misrepresentation on Distribution and Supply Chain Agreements (Securities Exchange Commission, Federal Trade Commission, Investors, Shareholders, and Franchisees)

One segment that stands out in the whistleblower's report surrounds the pizza company's distribution and supply chain operation. While Domino's repeatedly stated in reports, and on earnings and investor calls that franchisees are not required to purchase food and supplies from Domino's commissary, documents show discrepancies in the franchisor's statements.

In its January 2013 Franchise Disclosure Document (FDD), Domino's states that prior to its securitization transaction (pgs. 14 & 15 of 235), its pizza distribution centers sold food and beverage products and equipment to franchisees. But looking back at the 2007 securitization transaction, Domino's Pizza Distribution assumed the function of selling food and products, which it purchases from Domino's Pizza LLC and other entities, for resale to franchisees. Although in the franchise disclosure document and SEC filings Domino's had an optional profit-sharing plan for franchisees from Domino's commissary for a period of ten years in exchange for a share of its profits of the product distribution center servicing their stores. In public disclosures, if franchisees wanted to terminate their participation, it said they must give one-year notice or immediately refund profit-sharing payments for the previous year. Under internal non-publicly disclosed requirements by Domino's, a franchisee must purchase food and products or will be terminated, which contradicts public statements and filings (pg. 469 & 470): Under internal non-publicly disclosed requirements by Domino's, a franchisee must purchase food and products or will be terminated, which contradicts public statements and filings (pg. 469 & 470):

Domino's Pizza LLC., as manager of the Advertising and Promotion Amendment, "has/have no contractual ability within the Securitization Transactions to effectuate "a material decrease in the amount of Collections." It further states:

"Except with the prior written consent of the Control Party [Midland Loan Services, a division of PNC Bank], the Manager [Domino's Pizza LLC] shall not (a) take any action (or omit to take any action) (or permit any such action or inaction) with respect to the Managed Assets or (b) permit the termination, amendment or waiver of any provision of any document governing the Managed Assets, other than in accordance with the Management Standard, and then only if the effect of such action, inaction, termination, amendment or waiver, together with the effect of all other previous actions, inactions, terminations, amendments and waivers, with respect to the Managed Asset or to such documents governing the Managed Assets, could not be reasonably expected to result in (i) a material decrease in the amount of Collections other than Excluded Amounts, taken as a whole, (ii) a material adverse change in the nature or quality of Collections other than Excluded Amounts, taken as a whole or (iii) a material alteration in the general assets categories generating Collections other than Excluded Amounts, taken as a whole, or the relative contribution of each such category; provided, however, that this Section 2.10 shall not permit the termination, amendment or waiver of, any provision of any Related Document other than in accordance with the terms of such Related Document."

Domino's Chief Financial Officer Michael T. Lawton stated on March 08, 2013 at a J.P. Morgan Forum (transcript): **"**We also operate a value-added supply chain. We think that it's great to have a commissary business and there are 18 centers spread across the U.S." Then, he states, ". . . Franchisees are not required to buy from us. We have to provide an alternative but virtually all of the stores buy all of their product from our U.S. supply chain"

Domino's Director of Franchise Operations Mark Rudd responded on October 25, 2013 in depositions in a lawsuit (transcript) to a question, "Are you aware of any circumstances amongst the more than 1,000 franchise stores you oversee, where franchisees don't purchase from the Domino's commissary?" He said, "Does a store occasionally go out and buy cherry tomatoes that go on a salad? Yes." Another question: But generally, the great majority of food products sold by Domino's franchisees are purchased from the commissary?" Rudd answers, "They are required to purchase them from the commissary."

Material Misrepresentation on Domino's National Advertising Fund and Domino's Advertising Increase Amendment (Securities Exchange Commission, Federal Trade Commission, Investors, Shareholders, and Franchisees)

Domino's also communicated to all national franchisees in January 2013 that the company had taken a big step forward in asking the franchisee system to support a 0.5 percent shift of advertising from local to national. The franchisor believed that shift would provide an extra $25 million of systemwide incremental profit, or an average of $5,000 to the bottom line of each store. Domino's said in exchange for the franchisees support and amendment of the existing standard franchise agreements, the company agreed to extend standard profit-sharing agreements by five years.

Domino's states in its **2013 Amendment** (attached to the report) that "going forward, all new standard franchise agreements will contain the rolled-up 6 percent national advertising rate."

DPZ Communications on January 10, 2013 regarding 2013 Amendment (to entire franchisee body) reads as follows:

To summarize:

- Target was 100 percent of system participation and we are moving forward at 99.7 percent
- DPZ will fund the shortfall from the three "no" votes so the ad fund will be 100 percent funded...
- 100 percent of the incremental contribution in 2013 will go to working media
- DPZ will extend all standard SCS profit sharing agreements five years for all "yes" voters, regardless of DPZ performance (contradicts Domino's Pizza SEC March 15, 2012 Form 8-K pg. 469 & 470)...
- Assuming sufficient support, the new advertising rate will begin January 28, 2013.

Survey Results: Domino's Franchisee Association (DFA) 1/2% Amendment Survey Results on January 12, 2013

Page one states, "The overall results on the surveys reflected the following:

- 50% felt their vote was not voluntary
- 80% felt the amendment required 100% support of every Franchisee to pass
- 80% felt the amendment had a 12-31-12 or before deadline in order to pass"

Page two states, "To ensure the original commitments were honored, the DFA (Domino's Franchisee Association) was very clear with DPLLC that moving forward on the original amendment was unacceptable since we believed 100% support from every franchisee was needed by December 31, 2012."

During Domino's Pizza February 24, 2015 Quarter 4 conference call, CEO J. Patrick Doyle stated, **"**In fact, our franchisees recently voted to increase our national advertising spend going forward, upping it to 6% of top line sales from 5.5%. We think this is a positive vote of confidence from our franchisees. (Page 2)

Jeffrey Andrew Bernstein, Barclays Capital, Research Division, questioned*:* **"**And that was approved across the board? So now everybody does the same thing?" J. Patrick Doyle, Domino's Pizza CEO replies, "Yes." (Page 3)

Material Misrepresentation on Audits, OER (Operation Evaluation Report) and A,B,F Grading (Securities Exchange Commission, Federal Trade Commission, Investors, Shareholders, and Franchisees)

In 2006, Domino's Pizza's CEO/chairman David Brandon, created a system "to coerce some franchisees out of the system via contrived or minimal 'defaults,' the whistleblower report states. Once defaulted by Domino's, these franchisees are terminated, but given a 'deadline to sell' the terminated location to a Domino's 'approved' purchaser to facilitate the exit of franchise."

In the April 29, 2008, Quarter 1 Earnings Call, then-CEO Brandon stated that Domino's had now identified 246 franchisees in the system that represent about 14 percent of stores that are categorized as "F" franchisees. "They are currently failing themselves and our brand and our system . . ." Brandon added, "Suffice to say there will be some 'shirring' over the next couple of years as we facilitate changes in ownership of many stores."

When John Glass, Morgan Stanley, questions Brandon, asking how Domino's facilitates the transition of F stores to new ownership, and how many F stores are there, Brandon replies, "600 stores are total F's, the F's represent, as I recall, 14%." The CEO said they would look it up to make sure. Regarding the facilitating of the sale, he said the franchise agreement affords the company the ability to have the first right of refusal on the sale of any store, so we're actively involved in those transaction . . ."

John Glass asks, "Just to clarify, does facilitate mean you buy and resell or are you a broker? Brandon replies that it isn't their intention to purchase these stores, it is their intention to broker these stores to "A" and "B" franchisees, and any of Domino's new external franchisee candidates.

In a transcript of CEO J. Patrick Doyle, explaining how stores are rated A, B, F, he tells how Domino's has a group of 15 to 18 people who are out auditing stores on an ongoing basis. They are in the stores 365 days a year doing unannounced audits, giving stores a grade. Doyle said that's the first part of grading, but the other is about the franchisees. That's being done by area leaders in charge of typically 25 to 30 franchisees, about 100 to 120 stores. Those reports go up the ladder to Scott Hinshaw, EVP franchise operations, to approve the list of franchisees who Domino's feels need to dramatically increase their commitment to the brand or exit the system and sell their stores.

In his transcript, Doyle also addressed how the groundwork for Domino's success actually began in 2006 when they were completing the process and establishing a single point of sales across their domestic system. That's when they established an accountability system for their franchisees and started rating them A, B, F. Doyle said that over the course of time, the system went from about 1,300 domestic franchisees to 800 today [2016]. He called it "part of the process of cleaning up the system."

In a lawsuit deposition on April 7, 2014 with a terminated "F" franchisee, Attorney Norman M. Leon, DLA Piper, stated, "If I could just clarify one point, Your Honor? Just briefly. In terms of the grading, we think it's an irrelevant issue. Franchisees graded an F automatically have been terminated. That's all the testimony, because they're always an F."

Domino's recruitment of external seasoned franchisees

In replacing terminated "F" franchisees, Chief Financial Officer Michael T. Lawton stated at Morgan Stanley presentation on November 20, 2013*,* **"**Our biggest competition for franchisees? We don't do a lot of recruiting of franchisees from outside of the Domino's system in the United States. Most of our franchisees started working for other franchisees or within our corporate stores came up through this system and decided that they wanted to invest in the business. So, we really don't have competitors in it."

CEO David A. Brandon countered that statement in a Domino's investor earnings call, 2008 Q1, saying, "We've launched an aggressive franchisee recruiting program designed to help us carefully select both internal and external franchise candidates. We're hosting what we call Discovery Days every month here in Ann Arbor and we plan to create a strong pipeline of franchise candidates to help us replace some of those F's with candidates who will bring new energy, new investment and new commitment to our brand and system"

In a QSR article on July 1, 2011, NRD Buys Out Florida Domino's Franchises, Scott Hinshaw, Domino's Pizza executive vice president of operations and development, acknowledged Aziz Hashim as one of Domino's external franchisee recruits. He said, "We're thrilled to have Aziz as part of the Domino's franchise system. His incredible track record of success, outstanding leadership, and commitment to his diverse portfolio of brands make him the best of the best in the franchising industry."

CNBC's article, The franchise king who wants to turn folks into millionaires*,* published on May 24, 2016, reaffirmed Hashim was welcomed into the Domino's system as an external multi-brand franchisee. It stated, "From that humble beginning, Aziz Hashim built an 80-unit franchise empire composed of 14 brands — including KFC, Domino's Pizza, Taco Bell, Moe's Southwest Grill, Pizza Hut and Popeye's, as well as PetValu in Canada."

The whistleblower alleges in his report that Domino's Pizza performed insider trading on non-public information given to direct competitors and indirect competitors when Domino's seeks disclosing the non-public information during and after Discovery Days with the full knowledge of the board of directors and the chief executive officer.

In a phone call last month to Chris Brandon, director of Investor relations, he told this reporter that Domino's is always looking at ways to bring external franchisees into the system. But he quickly added, "But it might be helpful to you to know we are mostly home grown where 90 percent of our franchisees in the U.S. started in our stores, like delivery drivers, pizza makers hourly workers." He said Discovery Days in recruiting prospective franchisees, internal and external, was not something he was involved in.

When asked about the franchisees in the Domino's system who operated multiple-brands, Chris Brandon said no, Domino's does not allow franchisees to own other concepts in the U.S. "Yes, we actually have a policy on that. Internationally, that's a little more lenient, we have a big master franchisee in India, with different brands. And another in Mexico that also has Starbucks and Burger King, or something."

SEC offers protections to whistleblowers against retaliation

On its website, SEC stresses that under the Dodd-Frank Wall Street Reform and Consumer Protection Act SEC can now offer more protection to whistleblowers when companies retaliate against them. The Commission Rule 21F-17(a) "prohibits any person from taking any action to prevent you from contacting the SEC directly to report a possible securities law violation." If a whistleblower feels he/she has been retaliated against because of their report, they may be able to sue the company in court.

Although SEC Whistleblower Program does not admit or deny it is conducting an investigation on a complaint, the whistleblower did receive an acknowledgment of the report submitted.

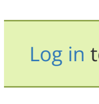
(Note: Below is a partial list of files that are included in the Whistleblower Report attachments for documentation of the facts in case.)

- ABF Grade Orchestration Exit of Franchisees
- Domino's Pizza Advertising & Securitization for $1.6 Billion
- Misrepresentation on Distribution & Profit Sharing
- Misrepresentation on Other Businesses

Note: A summary of this report was published on Forbes.com Leadership/Franchise by contributor Janet Sparks on February 15, 2019. Domino's photo above by Sparks.

Tags:

› whistleblower report › securitization transaction › distribution and supply chain › DPZ › Domino's Franchisee Association › 2013 Amendment › grading system for franchisees › CEO J. Patrick Doyle › NRD › Aziz Hashim › CFO Michael T. Lawton › Norman M. Leon › DLA Piper › misrepresentations in SEC filings › FDDs › profit sharing programs



Janet Sparks

Janet Sparks is a freelance reporter who writes about complex issues related to the franchise industry, including the litigation between franchisors and franchisees.She is the former publisher of Continental Franchise Review, an industry newsletter that covered the franchise community for over 30 years, and was an independent reporter/columnist for a leading franchise magazine for over 10 years. Sparks is also a Forbes.com contributor to its leadership/franchise section. She can be emailed at jsparks@bluemaumau.org.