

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING ) Order Number S-07-469-07-SO01  
Whether there has been a violation of the )  
Franchise Investment Protection Act of ) STATEMENT OF CHARGES AND NOTICE  
Washington by: ) OF INTENT TO ENTER STOP ORDER  
) REVOKING REGISTRATION  
)  
Day-By-Day Gourmet, LLC, )  
)  
Respondent )

THE STATE OF WASHINGTON TO: Day-By-Day Gourmet, LLC  
100 Second Avenue South, Suite 360  
Edmonds, WA 98020

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that Respondent, Day-By-Day Gourmet, LLC, has violated the Franchise Investment Protection Act of Washington, Chapter 19.100 RCW, and that its violation justifies the entry of an order of the Securities Administrator under RCW 19.100.120 to revoke the franchise registration of Respondent. The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

**RESPONDENT**

1. Day-By-Day Gourmet, LLC, is a Washington limited liability company with a principal business address of 100 Second Avenue South, Suite 360, Edmonds, Washington. Day-By-Day Gourmet, LLC is the seller of franchises that entail the retail sale of delicatessen items as well as pre-assembled meals and other items for customers to take home to finish preparing.

1 FRANCHISE REGISTRATION BY THE RESPONDENT

2 2. On December 19, 2006, Day-By-Day Gourmet, LLC filed or caused to be filed an  
3 application for franchise registration (Securities Division File # 70013655). An offering  
4 document (otherwise known as a Uniform Franchise Offering Circular or UFOC) accompanied  
5 the application and was proposed for use in the offer and sale of franchises in the state of  
6 Washington. The UFOC contained the following disclosure (in Item 2) concerning the business  
7 experience of Brad Vorhees, identified as the company's Managing Member and CEO (Chief  
8 Executive Officer):  
9

10 Mr. Vorhees is Our founder, Managing Member and CEO, a position he has held  
11 since January 26, 2006. Previously, Mr. Vorhees was a founder of Dinners  
12 Ready, Inc., of Mukilteo, Washington and was its CEO from January 1, 2004  
13 through January 25, 2006. From May 1, 2000 through December 31, 2004, he  
14 was the Managing Member of Alternative Capital, LLC in Mukilteo, Washington,  
15 where he managed a private investment fund.

16 3. The following disclosure concerning litigation (in Item 3) was included in the  
17 UFOC:

18 No litigation is required to be disclosed in this offering circular.

19 4. On January 2, 2007, the Securities Division issued a registration permit to Day-  
20 By-Day Gourmet, LLC which granted the authority to the company to offer and sell franchises in  
21 the state of Washington.

22 5. The UFOC disclosure for Day-By-Day Gourmet, LLC on file with the Securities  
23 Division regarding Mr. Vorhees was unchanged in a subsequent registration filing made on April  
24 13, 2007, but, in an amendment filed on October 26, 2007, the language in Item 2 regarding his  
25 business experience was altered:

1 Mr. Vorhees is Our founder, Managing Member and CEO, a position he has held  
2 since *March 15, 2006*. *From January 26, 2005 until March 15, 2006, he was*  
3 *involved in developing Our concept and organizing Us...*(emphasis added).

4 6. Although changes were made in the text relating to the business experience of Mr.  
5 Vorhees, he has always been identified as a founder, managing member and CEO of Day-By-  
6 Day Gourmet, LLC in documents on file with the Securities Division. The language regarding  
7 litigation contained in Item 3 of Day-By-Day Gourmet, LLC's UFOC on file with the Securities  
8 Division has remained unchanged, stating that "No litigation is required to be disclosed in this  
9 offering circular."

10 ALTERNATIVE CAPITAL, LLC AND BRADFORD VORHEES STATE ACTION  
11

12 7. On November 13, 2006, the Securities Division entered into a Consent Order with  
13 Alternative Capital, LLC and Bradford Vorhees (as Managing Member of the company and  
14 individually) (collectively "Respondents") in Case Number S-05-236. That order was in  
15 settlement of a Statement of Charges and Notice of Intent to Enter an Order to Cease and Desist,  
16 Impose Fines and Costs, and to Deny Registration against Respondents that was entered on June  
17 19, 2006. In the Consent Order, the Respondents and the Securities Division agreed that  
18 Respondents would, among other things, cease and desist from violations of RCW 21.20.040 and  
19 RCW 21.20.110, the investment adviser and investment adviser representative registration  
20 requirement provisions. Respondents agreed to pay a fine of \$1,000 and costs, fees, and other  
21 expenses of \$500. Respondents waived their right to a hearing and judicial review of the matter.  
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23  
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1 OMISSION OF UFOC DISCLOSURE BY RESPONDENT

2 8. WAC 460-80-315 provides that in order to implement the disclosure requirements  
3 of RCW 19.100.040 for franchise registrations, the Securities Division has adopted the UFOC  
4 promulgated by the North American Securities Administrators Association (NASAA). The  
5 UFOC mandates certain disclosures for principal officers and other executives of a franchisor  
6 who will have management responsibility relating to the franchises offered. The term “principal  
7 officer” includes a chief executive officer. Disclosure is required if a principal officer is subject  
8 to a currently effective state order or decree brought under, among other things, state securities  
9 law resulting from a concluded or pending action or proceeding brought by a public agency.  
10

11 9. RCW 19.100.120 (1) provides that a stop order may be entered denying  
12 effectiveness to or suspending or revoking the effectiveness of any registration statement if he  
13 finds that the order is in the public interest and that the registration statement as of its effective  
14 date, or as of any earlier date in the case of an order denying effectiveness, is incomplete in any  
15 material respect or contains any statement which was in the light of the circumstances under  
16 which it was made false or misleading with respect to any material fact.  
17

18 10. The versions of the UFOC disclosure documents filed or caused to be filed by  
19 Day-By-Day Gourmet, LLC with the Securities Division fail to disclose that principal officer  
20 Bradford Vorhees (on behalf of Alternative Capital, LLC and individually) entered into a  
21 Consent Order on November 13, 2006 with the Securities Division in the matter of Alternative  
22 Capital, LLC and Bradford Vorhees (collectively “Respondents”) in Case Number S-05-236 as  
23 required by RCW 19.100.040 and WAC 460-80-315. The versions that were filed were  
24  
25

1 materially deficient in failing to disclose the order and should not have had a negative disclosure  
2 such as “No litigation is required to be disclosed in this offering circular.”

3 Based upon the Tentative Findings of Fact, the following Conclusions of Law are made:

4 **CONCLUSIONS OF LAW**

5  
6 1. As described in the above Tentative Findings of Fact, Day-By-Day Gourmet,  
7 LLC’s registration statements filed with the Securities Division were incomplete in a material  
8 respect or contains a statement which was in the light of the circumstances under which it was  
9 made false or misleading with respect to any material fact which constitutes grounds for the  
10 entry of a stop order revoking the effectiveness of its registration pursuant to RCW 19.100.120.  
11

12 2. Day-By-Day Gourmet, LLC violated WAC 460-80-315 because it failed to  
13 disclose, as it was required to do in its UFOC filed with the Securities Division, that principal  
14 officer Bradford Vorhees (on behalf of Alternative Capital, LLC and individually) entered into a  
15 Consent Order on November 13, 2006 with the Securities Division in the matter of Alternative  
16 Capital, LLC and Bradford Vorhees as described in the above Tentative Findings of Fact.  
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18 **NOTICE OF INTENT TO ENTER STOP ORDER REVOKING REGISTRATION**

19  
20 The Securities Administrator finds that an offering of franchises by Day-By-Day  
21 Gourmet, LLC in the manner described in the above Tentative Finding of Fact and Conclusions  
22 of Law, presents a threat to the investing public and that revocation of the franchise registration  
23 is in the public interest. Pursuant to RCW 19.100.120, the Securities Administrator intends to  
24 order that the registration of Respondent Day-By-Day Gourmet, LLC, be revoked.  
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1 **AUTHORITY AND PROCEDURE**

2 This Statement of Charges is entered pursuant to the provisions of RCW 19.100.130 and  
3 is also subject to the provisions of RCW 34.05. The Respondent may make a written request for  
4 a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY  
5 FOR HEARING accompanying this Statement of Charges.

6 If the Respondent does not request a hearing, the Securities Administrator intends to  
7 adopt the above Tentative Findings of Fact and Conclusions of Law as final and enter a  
8 permanent order revoking the franchise registration of the Respondent.  
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11 Dated and Entered this 31st day of December, 2007.


12 

13 \_\_\_\_\_  
14 Michael E. Stevenson  
15 Securities Administrator

16 Approved by:

Presented by:

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18 \_\_\_\_\_  
19 Martin Cordell  
20 Chief of Enforcement

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22 \_\_\_\_\_  
23 Brad Ferber  
24 Financial Legal Examiner  
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