



## THE STATE BAR OF CALIFORNIA Business Law Section

### Franchise Law e-Bulletin

#### **NASAA Issues New Commentary on Financial Performance Representations in Franchise Disclosure Documents**

On May 8, 2017, the North American Securities Administrators Association (NASAA) adopted the Financial Performance Representation ("FPR") Commentary proposed by the NASAA Franchise Project Group.

A copy of the final Commentary can be found at the following link:

<http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2017/05/Financial-Performance-Representation-Commentary.pdf>

The guidelines in the Commentary will be enforced in California by the California Department of Business Oversight with respect to franchise registration applications, as well as renewals starting as of November 8, 2017 (180 days of NASAA's adoption). Franchisors will need to comply with the commentary at the later of November 8, 2017 or if they already have an effective franchise disclosure document, 120 days after the franchisor's next fiscal year end.

Note: The FPR Commentary contains guidance only, and is not the actual compliance instructions. Some DBO Counsel are already looking to the Commentary now for guidance in reviewing current FPRs. It is advisable to implement the standards in the Commentary as soon as practicable.

The Commentary requires a number of new disclosures, including new requirements when using "averages" or "medians". Specifically, the new guidelines require disclosure of medians when using averages and disclosures of averages when providing medians as well as high and low outlet results to identify outliers. In addition, the new guidelines impose limits on the use of company and affiliate owned outlet financial information alone when franchised outlets exist and prohibitions against the use of disclaimers and waivers.

The Commentary further specifies the use of a mandatory admonition to prospective franchisees as well as disclosure of information concerning closed outlets whose data is not included in the FPR.

The guidelines in the Commentary will likely require substantial re-working of existing FPRs for many franchisors.

For more information, contact Gerry Davey at [gdavey@daveylaw.com](mailto:gdavey@daveylaw.com) or Tal Grinblat at [tgrinblat@lewithhackman.com](mailto:tgrinblat@lewithhackman.com).

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