

A decorative graphic consisting of a yellow triangle pointing downwards and a tilde symbol (~) to its right.

~ 2023 Trends Impacting Franchisors

Increased Activity of State Agencies

In September 2022, the North American Securities Administrators Association (NASAA) adopted a Statement of Policy banning many acknowledgments and compliance questionnaires used by franchisors in the franchise sales closing process.

Franchisors should assume and expect that state regulators in many of the 14 registration states will implement the guidelines and interpretations in the Policy. California has already passed a law prohibiting these types of acknowledgements. Illinois, Maryland, Minnesota, and Virginia have implemented the Policy, and Washington will likely implement it as well.

Other federal and regulatory trends to watch in these states include:

- Attempt to increase oversight by non-elected councils, as seen in California's Fast Food
- Accountability and Standards Recovery (FAST) Act passed in August 2022
- FTC's NPRM seeks to ban noncompetes and is reviewing application to franchising
- NLRB proposed rule on joint employers

Increased Focus on Diversity

Consumers and investors increasingly expect franchisors to show action and accountability to increase ethnic and racial diversity throughout their systems in senior leadership, franchisee ownership, and vendors. We see this expectation continuing through 2023 and beyond.

In October 2021, Lathrop GPM launched the [Increasing Diversity in Franchising webinar series](#) designed to encourage and educate on ways to promote diversity in franchise systems.

- 5 sessions
- Over 450 registrants
- 16 guest speakers from leading brands and organizations



In August 2022, Dallas Mayor Eric Johnson announced a franchise initiative to help grow business in southern Dallas with a particular emphasis on historically underserved and overlooked communities. Lathrop GPM Partner **Carlos White** was selected to lead this initiative as the Franchise Impact Ambassador. **Learn more.**

Franchise M&A

While there remains strong interest in franchise brands and multi-unit portfolios, we expect that buyers may be hesitant to offer the high multiples we saw in 2021-2022 due to the cost of lending, and many founders may choose to hold off on selling. Even if some founders, or investment backed brands, receive high multiples, there may not be as many deals in 2023 due to fewer prospective buyers willing to pay the high multiples. For these reasons, the red-hot deal phenomenon of 2021-2022 will likely cool in 2023.

Our lawyers regularly represent buyers and sellers of franchises, including private equity and financial sponsors, explore options, negotiate price, analyze tax consequences, address government regulations, and successfully execute complex transactions. And we represent franchisors preparing for sales to, or investments by, private equity firms and strategic buyers, including dealing with the myriad pre- and post- deal issues which arise when there is an acquisition of a competing or complementary brand. We use a variety of tactics and perspectives, while providing the franchisor, seller, or buyer, with unified representation. We pride ourselves on staffing franchise M&A matters efficiently and effectively, bringing our clients the best value in legal advice for franchise M&A transactions. **Learn more.**

Franchise Litigation

Lathrop GPM understands franchising and only represents franchisors and their interests. Our litigators have developed a national reputation as zealous advocates for their franchisor clients and will not take a position in court that is adverse to franchisors. **Learn more.**

Increased Franchise Consolidation

Over the past few years, consolidation among franchisors has been on the rise. We expect this trend to continue in 2023, despite an anticipated decrease in overall M&A activity, as franchisors look to create platforms where they can increase efficiencies and streamline operations, and mitigate expected higher labor costs.

Continued Focus on Data Privacy

Multiple states continue to implement privacy laws, including the CA Privacy Rights Act (eff. Jan. 1), VA's Consumer Data Protection Act (eff. Jan. 1), CO Privacy Act (eff. July 1), and UT's Consumer Privacy Act (eff. Dec. 31). Franchisors should review their privacy policies, cookies, tracking mechanisms and other aspects of their privacy program in light of these new legal obligations. **Learnmore.**

2023 TRENDS IMPACTING FRANCHISORS

INCREASED ACTIVITY OF STATE AGENCIES

Through new laws,
power, and interpretive
opinions

In September 2022, the North American Securities Administrators Association (NASAA) adopted a Statement of Policy banning many acknowledgments and compliance questionnaires used by franchisors in the franchise sales closing process.

Franchisors should assume and expect that state regulators in many of the 14 registration states will implement the guidelines and interpretations in the Policy. California has already passed a law prohibiting these types of acknowledgments. Illinois, Maryland, Minnesota, and Virginia have implemented the Policy, and Washington will likely implement it as well.

Other federal and regulatory trends to watch in these states include:

- Attempt to increase oversight by non-elected councils, as seen in California's Fast Food Accountability and Standards Recovery (FAST) Act passed in August 2022
- FTC's NPRM seeks to ban noncompetes and is reviewing application to franchising

INCREASED FOCUS ON DIVERSITY

Throughout senior leadership, franchisee ownership,
and vendors

Consumers and investors increasingly expect franchisors to show action and accountability to increase ethnic and racial diversity throughout their systems in senior leadership, franchisee ownership, and vendors. We see this expectation continuing through 2023 and beyond.

In October 2021, Lathrop GPM launched the Increasing Diversity in Franchising webinar series designed to encourage and educate on ways to promote diversity in franchise systems.

- 5 sessions
- Over 450 registrants
- 16 guest speakers from leading brands and organizations



LESS M&A ACTIVITY

Due to inflation and economic uncertainty, founders may be waiting for greener pastures

While there remains strong interest in franchise brands and multi-unit portfolios, we expect that buyers may be hesitant to offer the high multiples we saw in 2021-2022 due to the cost of lending, and many founders may choose to hold off on selling. Even if some founders, or investment backed brands, receive high multiples, there may not be as many deals in 2023 due to fewer prospective buyers willing to pay the high multiples. For these reasons, the red-hot deal phenomenon of 2021-2022 will likely cool in 2023.

INCREASED CONSOLIDATION

A good sign as franchisors look to increase efficiencies

Over the past few years, consolidation among franchisors has been on the rise. We expect this trend to continue in 2023, despite an anticipated decrease in overall M&A activity, as franchisors look to create platforms where they can increase efficiencies and streamline operations, and mitigate expected higher labor costs.

CONTINUED FOCUS ON DATA PRIVACY

New and revised privacy laws go into effect in 2023

Multiple states continue to implement privacy laws including the CA Privacy Act (eff. Jan. 1), VA's Consumer Data Protection Act (eff. Jan. 1), CO Privacy Act (eff. July 1), and UT's Consumer Privacy Act (Dec. 31). Franchisors should review their privacy policies, cookies, tracking mechanisms, and other aspects of their privacy program in light of these new legal obligations.

In the past five years, we have represented more than 500 franchise brands and have assisted with expansion into more than 140 countries. We also worked with over 200 brands on their FDDs in 2022.

LATHROP GPM THOUGHT LEADERSHIP

- Maisa Frank – Associate Editor, American Bar Association's Franchise Law Journal
- Justin Sallis – Associate Editor, American Bar Association's The Franchise Lawyer
- Mike Gray – Co-editor, "Covenants Against Competition in Franchise Agreements" for the 2022 American Bar Association Forum on Franchising
- Justin Sallis – Virginia Chapter Author, "Covenants Against Competition in Franchise Agreements" for the 2022 American Bar Association Forum on Franchising
- Michael Sturm – District of Columbia Chapter Author, "Covenants Against Competition in Franchise Agreements" for the 2022 American Bar Association Forum on Franchising
- Frank Sciremammano – American Bar Association's Forum on Franchising; Steering Committee member, and Litigation and Dispute Resolution Committee member
- Mark Kirsch – Global Editor, Franchise 2023 edition of Lexology Getting the Deal Through

In August 2022, Dallas Mayor Eric Johnson announced a franchise initiative to help small business in south Dallas with a particular emphasis on historically underserved and overlooked communities. Lathrop GPM Partner **Carlos White** was selected to lead the initiative as the Franchise Impact Ambassador.

LEARN MORE ABOUT LATHROP GPM

