

**BLOGS**

Practice of Franchise Law

NASAA Adopts New State Cover Sheet Instructions for FDDs

On May 19, 2019, the North American Securities Administrators Association, Inc. (“NASAA”) adopted new franchise state cover sheet instructions that revise instructions in its 2008 Franchise Registration and Disclosure Guidelines (“NASAA Guidelines”) regarding the information provided in the state cover sheets to a franchise disclosure document. You can access a copy of the new instructions at: <https://www.nasaa.org/wp-content/uploads/2019/06/New-Franchise-State-Cover-Sheets-Instructions.pdf>. The new instructions are the result of a proposal prepared and released by NASAA’s Franchise Project Group on June 12, 2018, and the nine comments they received during the public comment period ending July 13, 2018. Gray Plant Mooty reported on the Proposal and its own comment letter in [Issue No. 233 of The GPMemorandum](#).

NASAA’s new instructions require that three new state cover sheets be included in an FDD. While the wording and content of these new cover sheets has changed somewhat from the original proposal, the important “Instructions for Preparing State Cover Sheets and State Effective Date Page,” is almost identical. The first two cover sheets — titled “How to Use this Franchise Disclosure Document” and “What You Need to Know About Franchising *Generally*” — are brand new cover sheets and must be located immediately following the federal cover page. The purpose of these new cover sheets is to provide prospective franchisees with clearer direction as to how to use the FDD and more general information about franchising and the franchise relationship.

The third new cover sheet — titled “Special Risk(s) to Consider about *This Franchise*” — replaces the current state cover page. It includes one standard risk factor relating to out-of-state dispute resolution (i.e., mediation, arbitration, and/or litigation), and allows states to require additional risk factors. However, to promote uniformity and reduce repetition, a franchisor or subfranchisor may be allowed to include nonuniform risk factors required by a particular state in a state addendum to the FDD, rather than on the cover sheet, if acceptable to the state. Risk factors also must be in lower case text, instead of ALL CAPS, to make them easier to read. Finally, the new instructions require franchisors and subfranchisors to move the current state effective dates page to the end of the FDD, immediately before the receipt pages, and to add some clarifying language to the page.

NASAA’s new instructions become effective January 1, 2020. However, according to Dale Cantone, Chair of the Franchise Project Group, existing franchisors and

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subfranchisors with FDDs registered with franchise registration states as of the effective date will have until their next amendment or renewal filing in these states after January 1, 2020, to comply with the new instructions.