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BLOGS

Practice of Franchise Law

NASAA Issues Proposed Commentary on Financial Performance Representations

On October 1, 2015, the North American Securities Administrators Association (“NASAA”)—the franchise examiners—issued a “Proposed Franchise Commentary on Financial Performance Representations.” NASAA is seeking to create new interpretations and guidelines for financial performance representations (“FPRs”), including (a) when franchisors can and cannot use data from company-owned or affiliate-owned outlets; (b) when franchisors can and cannot use a subset of the entire pool of franchised or company-owned outlets; and (c) the types of disclaimers, notes and explanations that may be used in FPRs. This commentary, if adopted, may have a far reaching impact on FPRs in FDDs, and may affect franchisee-franchisor disputes over FPRs. Gray Plant Mooty submitted comments to the proposed commentary, and the comment period ended on November 2, 2015. [Our comment letter is linked here.](#) We anticipate that NASAA and its industry advisory committee will review the public comments in the next few months, and will issue the final commentary shortly thereafter. Whatever is eventually adopted, however, will not become effective until six months after it is finalized.

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