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**BLOGS**

Practice of Franchise Law

## Update on NASAA's Proposed for Commentary

As reported in [Issue No. 199](#) of *The GPMemorandum*, the North American Securities Administrators Association ("NASAA")—the state franchise examiners—issued a "Proposed Franchise Commentary on Financial Performance Representations" on October 1, 2015. 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. Gray Plant Mooty submitted comments to the proposed commentary, and the comment period ended on November 2, 2015. Our comment letter is [linked here](#).

NASAA received approximately 13 public comments, which are currently under review. The proposed commentary is not expected to be finalized for at least several months, after the upcoming 2016 franchise registration renewal season. Accordingly, NASAA has advised the public that state examiners will continue to comment on FPRs based on previously adopted NASAA Commentaries, the FTC FAQs on Item 19, and the FTC Compliance Guide. In addition, NASAA has indicated that state examiners will utilize "their interpretation of what constitutes a 'reasonable basis' for making an FPR."

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