



STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

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**Notice Regarding Historical Financial Performance Representations
During the COVID-19 Pandemic**

June 17, 2020

The Securities Division is issuing this notice to inform franchisors and their counsel that the Division will be following the guidance recently issued by the NASAA Franchise Project Group regarding historical financial performance representations (“FPRs”) in light of the fact that the COVID-19 pandemic has significantly impacted many franchise systems.

On June 17, 2020, the NASAA Franchise Project Group posted guidance (“NASAA Guidance”) titled “Disclosing Financial Performance Representations in the time of COVID-19” on NASAA’s website (<https://www.nasaa.org/wp-content/uploads/2020/06/FPRs-in-the-time-of-COVID-19.pdf>). The NASAA Guidance explores the question of whether franchisors can include an FPR based on historical data from franchisee or company-owned outlets from fiscal year 2019 and previous periods that predate the impact of the COVID-19 pandemic. The NASAA Guidance notes that state anti-fraud provisions impose certain disclosure requirements on franchisors. In Washington, RCW 19.100.170(2) makes it unlawful for any person to sell or offer to sell a franchise using a Franchise Disclosure Document (“FDD”) that contains “an untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made in light of the circumstances under which they were made not misleading.”

As the NASAA Guidance advises, those franchisors that submit FDDs that make historical FPRs based on data that predates the COVID-19 pandemic should be prepared to receive a comment from the Securities Division that asks for an explanation of why the FPR complies with federal and Washington requirements.

The Division also echoes the NASAA Guidance’s reminder that franchisors have an affirmative obligation under state franchise disclosure laws to continue to update all material disclosures they include in their FDDs, including FPRs. In Washington, RCW 19.100.070(3) requires that franchisors amend their registration on file with the director if “any material change in the information contained in its disclosure document should occur.” This amendment should be filed with the Securities Division “as soon as reasonably possible and in any case, before the further sale of any franchise.”