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**Sent:** Tuesday, January 4, 2022 9:46 AM  
**To:** NASAA Comments  
**Cc:** andrea.seidt@com.state.oh.us; Dale Cantone  
**Subject:** [EXTERNAL]Questionnaire commentary

I believe that the Statement of Policy regarding franchisee questionnaires should go into effect. When I speak to franchisee clients about these questionnaires, I often say something like: "These are intended to prevent you from asserting a claim of fraud against a franchisor. They amount to: (a) we did not say anything to you outside of the FDD (even if we did); (b) if we did say anything to you outside of the FDD (which we did not), you did not rely on it; (c) if we did say something outside of the FDD and you did rely on it, it was your fault for relying on it (if we said anything outside of the FDD, it's not our fault that you unreasonably relied on it).

These questionnaire disclaimers are everywhere - it is rare I see a franchise agreement without one these days. These are particularly problematic when an executive for the franchisor made misrepresentations. In many cases, the person that made the financial performance representations, for example, outside of the FDD is the same person that a franchisee is supposed to report FPRs to as set forth in Item 19. These questionnaires make it easier for franchisors to make misrepresentations (even from CEOs and other executives) and blame the franchisee for believing them, and courts will often throw out a common law fraud claim in such scenarios. If a franchisee receives and relies on misrepresentations outside of the FDD, the franchisee received them - a questionnaire does not change that fact but for legal purposes, a questionnaire often does just that.

Thank you!



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