

# 54TH ANNUAL IFA LEGAL SYMPOSIUM



# In the Public Eye — Unique Issues Facing Franchisors





























REVEALING BEAUTIFUL SKIN®













#### **RECENT IPOs**



















#### HILTON WORLDWIDE HOLDINGS INC.

- Founded in 1919
- Went public in 1946
- Taken private in 2007
- Went public in 2013 with \$2.4 billion IPO
- Current market cap: \$45.8 billion
- Spun off real estate and timeshare business in 2017
- 18 brands comprising more than 6,800 properties and more than 1 million rooms in 122 countries and territories
- Approximately 88% of Hilton-branded hotels are franchised





#### **GOING PUBLIC**

#### **Benefits**



- Access to U.S. public capital markets
  - Raising capital through offerings of equity or debt securities
- Allow securities to be traded
  - Shareholders can trade their equity with lowered transfer restrictions
  - Increases liquidity for investors





#### **GOING PUBLIC**

#### Why does a Franchisor go public?

- Brand exposure
- Credibility
- Opportunity for more rapid growth with capital raised in IPO
- Exit opportunity for owners





## GOING PUBLIC (con't)

#### **Burdens**

- Complex disclosure requirements
  - Includes obligations of certain shareholders
- Increased public scrutiny
- Stock exchange rules
- ESG requirements and pressures





#### PRIMARY SECURITIES LAWS

- Securities Act of 1933
  - Focuses on the issuance and registration of securities
    - Initial public offerings
    - Registration statements
    - Special purpose acquisition vehicles (SPACs)
  - Regulation FD
    - Press releases
    - "Material nonpublic information"
  - Proxy statements
    - Appointment of directors
    - Compensation disclosure
    - Shareholder proposals and voting







### PRIMARY SECURITIES LAWS (con't)

- Exchange Act of 1934
  - Governs transactions involving securities in the secondary market
  - Periodic reports
    - Annual reports
    - Quarterly reports
    - Current reports
- "Blue Sky" Laws
  - State by state securities laws
  - Location of the offering and potential investor





- Consistency of Disclosures
- Timing of Disclosures
  - FDD Renewals and Amendments
- "Material Change"
  - Reasonable investor standard
  - Reasonable prospective franchisee standard





Management Disclosures

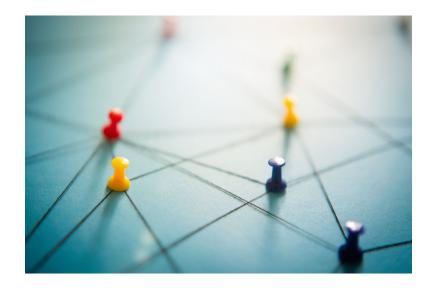
Securities Laws vs. Franchise Laws







- Litigation Disclosures
  - Securities Laws vs. Franchise Laws
    - Type of litigation
    - Whose litigation?
    - Look-back period







- Financial Statements
  - Time Periods Covered
  - Audited/ Unaudited Financials
  - Parent /Affiliate Financials
    - Parent commits to perform post-sale obligations/guarantees franchisor obligations
  - Net worth / Large Franchisor Exemption





• Financial Performance Representations



- Financial performance info in SEC filings not an FPR
- General Media FPRs
  - "specifically directed at prospective franchisees"
  - #/% of outlets that achieved the results; time period; prescribed disclaimer
  - Included in item 19
- Financial projections





#### ENVIRONMENTAL, SOCIAL, AND GOVERNANCE

- Heightened focus on ESG matters in the public eye
  - Shareholders are emphasizing ESG matters in investment decisions
  - Public companies seek to differentiate themselves from competitors with respect to ESG matters
- Current legal requirements regarding ESG reporting
- New SEC proposed rules on mandatory ESG disclosures
  - Primarily intended to enhance and standardize climate-related disclosures
  - Requires a new note to registrants' audited financial statements
  - Subject to audit by an independent registered public accounting firm











# Thank you!



