On December 12, 1978, the Federal Trade Commission first promulgated a Rule titled “Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures.” This followed the explosive growth of franchising as a method of distributing products and services during the 1950s and 1960s. After conducting numerous hearings and comment periods beginning when the original draft was issued in 1971, the FTC adopted the FTC Rule in response to its findings. Those findings included a determination that marketing of franchises was rife with:

- misrepresentations of material facts relevant to the franchise;
- unsubstantiated claims of potential sales, income, and profit;
- refusal by franchisors to honor refund requirements; and
- failure to disclose material facts about the franchise offering.

The Commission concluded that these practices were unfair and deceptive acts in violation of section 5 of the Federal Trade Commission Act, and that the disclosure requirements and prohibitions in the FTC Rule were necessary to prevent future unlawful behavior. The pre-sale disclosure requirements were an effort to address the imbalance of information between the franchisor and franchisee so that the franchisee could make an informed decision about acquiring a franchise.

Beginning with a Request for Comments in 1995, the Commission conducted a nearly 12-year review of the FTC Rule which again included hearings and comment periods on successive drafts of amendments. Overwhelmingly, the record indicated the continuing need for the Rule. As reasons, commenters cited fraud prevention, the effectiveness of pre-sale disclosure in communicating material facts to prospective franchisees, and the benefits to franchisors of having a uniform national disclosure requirement.

All of this culminated in an amended FTC Rule that became effective on July 1, 2007. The amended Rule overhauled the disclosure requirements of the original Rule and separated the regulation of franchising from the regulation of business opportunities. The amended Rule also addressed the applicability of the disclosure requirements in an international transaction and addressed technology developments. The Commission declined to mandate financial performance representations or to address ongoing relationship issues that occur during the life of the franchisor-franchisee relationship.

In its continuing efforts to promote pre-sale disclosure as a means of addressing unfair and deceptive practices, the Commission has continued to issue FAQs on the Rule in addition to numerous Staff Opinions that have issued since the original Rule’s adoption. In addition, the North American Securities Administrators Association has issued guidance, supplementing the Commission’s efforts. NASAA adopted the Franchise Guidelines in 2008, the Commentary in 2009, the Multi-Unit Commentary in 2014, and the FPR Commentary in 2017.
In order to properly prepare Franchise Disclosure Documents that comply with the pre-sale disclosure requirements of the FTC Rule, franchise law practitioners must synthesize the Rule with each of these interpretative documents. This book is intended to provide practitioners with the background information and tools necessary to do so. Each of the chapters features in-depth analysis on different aspects of the Rule, culminating in *The Franchise Rule Toolkit*, which presents the various commentaries in a novel, user-friendly manner.