Volume 62 | Issue 1 Article 1

5-13-2017

Are Disclosures Really Standardized? An Empirical Analysis

Uri Benoliel

VILLANOVA LAW REVIEW

VOLUME 62 2017 NUMBER 1

Articles

ARE DISCLOSURES REALLY STANDARDIZED? AN EMPIRICAL ANALYSIS

URI BENOLIEL*

I. INTRODUCTION

A major goal of federal disclosure laws is to ensure that pre-contractual disclosure documents, in each industry, are *standardized*.[1] Disclosure standardization has the potential to produce several important social benefits. To begin with, standardized disclosures may help disclosees make effective "apples-to-apples" comparisons between competing products and services.[2] The ability to conduct effective comparisons enables disclosees

* Faculty of Law, College of Law & Business. J.S.D., U.C. Berkeley; LL.M., Columbia University. I am grateful to Oren Bar-Gill, Rupert Barkoff, Lisa Bernstein, Christopher Drahozal, Alon Harel, Gideon Parchomovsky, Renana Peres, Ariel Porat, Arie Reichel, Eyal Zamir, and Tal Zarsky for invaluable comments on earlier drafts of this Article.

1. *See, e.g.*, Truth in Savings Act, 12 U.S.C. § 4301 (2012) ("It is the purpose of this chapter [12 U.S.C. §§ 4301 et seq.] to require the clear and *uniform* disclosure of [ ] (1) the rates of interest which are payable on deposit accounts by depository institutions; and (2) the fees that are assessable against deposit accounts . . . ." (emphasis added)); Fair Credit and Charge Card Disclosure Act of 1988, Pub. L. No. 100-583, 102 Stat. 2960 (codified at 15 U.S.C. §§ 1610–1646 (2012)) ("An Act [t]o provide for more detailed and *uniform* disclosure by credit and charge card issuers . . . ." (emphasis added)); Statement of Basis and Purpose Relating to Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 Fed. Reg. 59,621, 59,638 (Dec. 21, 1978) ("[B]y establishing a *uniform*, minimal set of required information, disclosure requirements enhance the efficiency of markets . . . ." (emphasis added)). Similarly, in 2009, the Securities and Exchange Commission (SEC) issued amendments to Form N-1A, the registration form used by mutual funds, in order to enhance the disclosures that are provided to mutual fund investors. The amendments require key information "to appear . . . in a standardized order." *See* U.S. SEC. & EXCH. COMM'N, *Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-end Management Investment Companies*, https://www.sec.gov/rules/final/2009/33-8998-secg.htm [https://perma.cc/XNP2-HYVF] (last updated Feb. 24, 2009).

2. *See* FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 303 (1991); Stephen M. Bainbridge, *Mandatory Disclosure: A Behavioral Analysis*, 68 U. CIN. L. REV. 1023, 1032 (2000) (citing Uri Geiger, *Harmonization of Securities Disclosure Rules in the Global Market—A Proposal*, 66 FORDHAM L.

to choose a product or service more easily "with the best combination of price [and] features [ ] to meet their individual needs."[3] In addition, disclosure standardization has the potential to reduce the reading and learning costs for disclosees and third-party intermediaries by enabling them to read and learn a basic structure of a single, uniform disclosure format, rather than multiple diverse formats.[4] Standardized disclosures may thus assist third-party intermediaries to "establish easy-to-use mechanisms," with which disclosees could "compare data quickly across several different [disclosers]."[5] Examples of such tools include comparison-shopping websites and mobile applications designed to assist people in comparing between

REV. 1785, 1795 (1998)); Stephen Choi, *Market Lessons for Gatekeepers*, 92 NW. U. L. REV. 916, 950 (1998); Frank H. Easterbrook & Daniel R. Fischel, *Mandatory Disclosure and the Protection of Investors*, 70 VA. L. REV. 669, 700 (1984); Geiger, *supra*, at 1795; Marcel Kahan & Michael Klausner, *Standardization and Innovation in Corporate Contracting (or "The Economics of Boilerplate")*, 83 VA. L. REV. 713, 723 (1997); George Loewenstein et al., *Disclosure: Psychology Changes Everything*, 6 ANN. REV. ECON. 391, 406 (2014); William M. Sage, *Regulating Through Information: Disclosure Laws and American Health Care*, 99 COLUM. L. REV. 1701, 1741 (1999) (citing Charles P. Kindleberger, *Standards as Public, Collective and Private Goods*, 36 KYKLOS 377, 378, 384 (1983)); Daniel Schwarcz, *Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection*, 61 UCLA L. REV. 394, 404–05 (2014); Steven L. Schwarcz, *The Use and Abuse of Special-Purpose Entities in Public Finance*, 97 MINN. L. REV. 369, 397 (2012); Alan Schwartz & Louis L. Wilde, *Imperfect Information in Markets for Contract Terms: The Examples of Warranties and Security Interests*, 69 VA. L. REV. 1387, 1460 (1983); Note, *Consumer Protection and Payment Systems: Regulatory Policy for the Technological Era*, 98 HARV. L. REV. 1870, 1889 (1985); Memorandum from Cass R. Sunstein, Admin., Office of Info. & Regulatory Affairs, to Heads of Executive Departments & Agencies 5 (Sept. 8, 2011), https://www.whitehouse.gov/sites/default/files/omb/inforeg/for-agencies/informing-consumers-through-smart-disclosure.pdf [https://perma.cc/D6YN-Q5ZB].

3. *See Businessperson's Guide to Federal Warranty Law*, FED. TRADE COMM'N, https://www.ftc.gov/tips-advice/business-center/guidance/businesspersons-guide-federal-warranty-law [https://perma.cc/G6JU-7DKS] (last updated May 2015); *Magnuson-Moss Warranty Act*, STATE OF CONN., DEP'T OF CONSUMER PROT., http://ct.gov/dcp/cwp/view.asp?a=1629&q=431058 [https://perma.cc/9HD9-VLF4] (last updated Apr. 6, 2010, 12:08 PM); *see also* Zachary E. Davies, Comment, *Rescuing the Rescued: Stemming the Tide of Foreclosure Rescue Scams in Washington*, 31 SEATTLE U. L. REV. 353, 374 (2008).

4. *See* Bainbridge, *supra* note 2, at 1032 ("Investors and managers only need [to] learn how to deal with a single set of disclosure standards . . . . Individual firms, however, may lack incentives to develop or comply with such standards."); Kurt Eggert, *Truth in Gaming: Toward Consumer Protection in the Gambling Industry*, 63 MD. L. REV. 217, 263 (2004); Joseph A. Franco, *Why Antifraud Prohibitions Are Not Enough: The Significance of Opportunism, Candor and Signaling in the Economic Case for Mandatory Securities Disclosure*, 2002 COLUM. BUS. L. REV. 223, 288 n.137; Geiger, *supra* note 2, at 1795; Schwartz & Wilde, *supra* note 2, at 1460.

5. *See* Stephen J. Choi, *Assessing Regulatory Responses to Securities Market Globalization*, 2 THEORETICAL INQUIRIES L. 613, 632 (2001); *see also* Choi, *supra* note 2, at 950; Sunstein, *supra* note 2, at 5; Natali Helberger, *Forms Matter: Informing Consumers Effectively*, BEUC 34 (Sept. 2013), http://www.beuc.eu/publications/x2013_089_upa_form_matters_september_2013.pdf [https://perma.cc/UDU7-AN5N]; OFCOM, *A Review of Consumer Information Remedies* 3, 40 (Mar. 12, 2013), https://www.ofcom.org.uk/__data/assets/pdf_file/0033/91698/information-remedies.pdf [https://perma.cc/G3UP-HSNB].

various providers of services and goods.[6] By facilitating comparison shopping, standardization has the potential to increase competition among disclosers hoping to attract well-informed disclosees.[7]

Given both the federal government's goal of ensuring that disclosure documents are standardized and the multiple potential social benefits of disclosure standardization, an important question arises: are disclosure documents, in reality, standardized? To my knowledge, there has been no empirical research-based examination of this question to date. The purpose of this Article is to address this research gap. This article examines, as a case study, a collection of 109 financial performance disclosures, provided by franchisors to prospective franchisees, in the quick service restaurant industry.[8]

The quick service franchise industry plays a dominant role in the U.S. economy. It has approximately 157,000 franchise establishments;[9] employs approximately 3,340,000 employees;[10] and has a yearly nominal output of approximately of $233 billion.[11] This industry is governed by a federal disclosure law known as the Franchise Rule (Rule).[12] The Rule was enacted by the Federal Trade Commission (FTC),[13] an agency that aims, *inter alia*, to "enhance informed consumer choice."[14] The Rule requires each franchisor, in each industry, to provide potential franchisees

6. See, for example, CreditCards.com, for a website that compares credit cards' key factors such as interest rates, annual fees, and other important features.

7. *See* 12 U.S.C. § 4301(a) (2012) ("The Congress hereby finds that . . . competition between depository institutions would be improved . . . if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts."); Labeling and Advertising of Home Insulation: Trade Regulation Rule, 70 Fed. Reg. 31258, 31270 (May 31, 2005) (to be codified at 16 C.F.R. pt. 460) (citing comment submitted by Insulation Contractors Association of America (ICAA) arguing that consumers' comparison between various home insulation standardized disclosures will "enhance competition in the market"); Jason Ross Penzer, Note, *Grading the Report Card: Lessons from Cognitive Psychology, Marketing, and the Law of Information Disclosure for Quality Assessment in Health Care Reform*, 12 YALE J. ON REG. 207, 248 (1995) (citing George S. Day & William K. Brandt, *Consumer Research and the Evaluation of Information Disclosure Requirements: The Case of Truth in Lending*, 1 J. CONSUMER RES. 21, 21–32 (1974)).

8. *See infra* Part III.

9. *See* IHS ECONOMICS, *Franchise Business Economic Outlook for 2015* 15 (2015), http://emarket.franchise.org/FranchiseBizOutlook2015.pdf [hereinafter *Outlook for 2015*].

10. *See id.* at 17.

11. *See id.* at 18. "Nominal output is the gross value of goods and services produced—a concept that is comparable with 'sales' for most industries." *Id.* at 5 n.4.

12. *See* 16 C.F.R. §§ 436–437 (2016).

13. The Rule "went into effect on October 21, 1979" and was amended in 2007. *See* FED. TRADE COMM'N, *Franchise Rule Compliance Guide* i (May 2008), https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf [https://perma.cc/RC4M-YXEC].

14. *See About the FTC*, FED. TRADE COMM'N, https://www.ftc.gov/about-ftc [https://perma.cc/AL6G-6H3D] (last visited Jan. 12, 2017).

with a franchise disclosure document (FDD) "containing . . . information about the offered franchise, its officers, and other franchisees."[15] The FDD, the subject of this Article's empirical analysis, is intended to allow potential franchisees "to weigh the [expected] risks and benefits" of the offered franchise before making a purchasing decision.[16]

This Article is structured as follows: Part II will provide context by reviewing the federal government's efforts to ensure that disclosure documents are standardized. Part III will present data and discuss the methodology for empirically testing whether disclosure documents in the quick service restaurant franchise industry are standardized. Part IV will discuss normative implications of the empirical results.

II. THE FEDERAL GOAL OF STANDARDIZATION

A. *Disclosure Laws*

A major goal of federal disclosure laws is to ensure that disclosure documents, in each industry, are *standardized*.[17] Through standardization, disclosure laws aim to assist disclosees in making effective comparisons between competing products and services, thereby increasing competition among disclosers hoping to attract well-informed disclosees.[18]

---

15. *See Franchise Rule*, FED. TRADE COMMISSION, https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule [https://perma.cc/W765-X4AF] (last visited Jan. 12, 2017); *see also* 16 C.F.R. §§ 436.2(a), 436.5.

16. *See Franchise Rule*, *supra* note 15.

17. *See supra* note 1.

18. *See, e.g.*, Consumer Credit Protection Act (CCPA), Pub. L. No. 90-321, § 102, 82 Stat. 146, 146 (1968) (codified at 15 U.S.C. § 1601(a) (2012)) ("It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms . . . ."); Truth in Savings (Regulation DD), 12 C.F.R. § 1030.1(b) (2016) ("This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions."); Agency Information Collection Activities, 79 Fed. Reg. 41,284, 41,284 (July 15, 2014) [hereinafter Agency Information] ("The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision provided in a format that facilitates comparisons of different franchise offerings."); Energy and Water Use Labeling for Consumer Products Under the Energy Policy and Conservation Act (Energy Labeling Rule), 78 Fed. Reg. 43,974, 43,974 (July 23, 2013) [hereinafter Energy Labeling Rule] (to be codified at 16 C.F.R. pt. 305) ("The Rule requires energy labeling for major home appliances and other consumer products, to help consumers compare competing models."); Disclosure of Mutual Fund After-Tax Returns, 66 Fed. Reg. 9002, 9014 (Feb. 5, 2001) (to be codified at 17 C.F.R. pts. 230, 239, 270, and 274) ("[I]nvestors would not be able to easily compare each fund when making an investment decision if there were no uniform disclosure standards for after-tax performance information applicable to all funds."); *Businessperson's Guide to Federal Warranty Law*, *supra* note 3 ("Congress wanted to ensure that consumers could compare warranty coverage before buying."); OFFICE OF INFO. & REGULATORY AFF., Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation, REGINFO.GOV (Spring 2015), http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201504&RIN=3084-AB40 [https://perma.cc/F6CF-N9T8] ("The

For example, a central goal of the Franchise Rule is to ensure that franchise disclosure documents are standardized. As the FTC's Coordinator of the Franchise Rule, Craig Tregillus, stated: "The Franchise Rule is designed to ensure that prospective franchisees receive the information they need to make an informed investment decision, and to make that information available in a *uniform format that facilitates comparison shopping* among different franchise offerings."[19]

In order to achieve the goal of disclosure standardization, the Franchise Rule requires that an FDD, provided by each franchisor, *uniformly* include the same 23 prescribed items.[20] For example, item three focuses on the disclosure of litigation involving the franchisor.[21] Item 7, as another example, concerns the disclosure of the franchisee's "[e]stimated initial investment[s]," such as "[t]he initial franchise fee" and "[t]raining expenses."[22] Item ten, as another illustration, deals with disclosure of the financing arrangement that the franchisor offers to the franchisee.[23] In addition, a central item, item 19, the focus of the empirical test of this article,[24] concerns the disclosure of the financial performance of franchise outlets.[25]

Another example of a disclosure law that aims to standardize disclosure documents is the Truth in Savings Act (TISA).[26] TISA requires de-

Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products . . . ."); *see also* Truth in Savings Act, 12 U.S.C. § 4301(a) (2012) ("The Congress hereby finds that . . . competition between depository institutions would be improved . . . if there was uniformity in the disclosure of terms and conditions on which interest is paid and fees are assessed in connection with such accounts."); 15 U.S.C. § 2302(a) (2012) ("In order to . . . improve competition in the marketing of consumer products, any warrantor warranting a consumer product to a consumer . . . shall . . . disclose in simple and readily understood language the terms and conditions of such warranty.").

19. *See* Don Sniegowski, *An Interview with the FTC About the New Franchise Rule*, BLUE MAUMAU (June 2, 2008, 11:59 AM), http://www.bluemaumau.org/5648/an_interview_with_ftc_about_new_franchise_rule [https://perma.cc/V4GY-9GMF] (emphasis added); *see also* Agency Information, 79 Fed. Reg. at 41,284 ("The Franchise Rule ensures that consumers who are considering a franchise investment have access to the material information they need to make an informed investment decision provided in a format that facilitates comparisons of different franchise offerings."); Statement of Basis and Purpose Relating to Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures, 43 Fed. Reg. 59,621, 59,638 (Dec. 21, 1978) ("[B]y establishing a uniform, minimal set of required information, disclosure requirements enhance the efficiency of markets by facilitating comparison of competing franchise offerings.").

20. *See* 16 C.F.R. §§ 436.5(a)–(w) (2016).

21. *See id.* § 436.5(c).

22. *See, e.g., id.* § 436.5(g)(1)(i)(A)–(B).

23. *See id.* § 436.5(j).

24. *See infra* Part III.

25. *See* 16 C.F.R. § 436.5(s). For more information about item 19, see *infra* Part II.B.

26. 12 U.S.C. §§ 4301–4313 (2012).

pository institutions to disclose "the rates of interest which are payable on deposit accounts by depository institutions[ ] and the fees that are assessable against deposit accounts."[27] A central underlying goal of the Act is to standardize the terms and conditions of depository institutions' disclosure.[28] Accordingly, Regulation DD, which implements TISA,[29] requires that each disclosure document uniformly includes seven prescribed items, which incorporate detailed data about the account's interest rate and fees.[30] By requiring a uniform disclosure of seven prescribed items, TISA aims to allow consumers to "make a meaningful comparison between the competing claims of depository institutions with regard to deposit accounts."[31] Through promoting effective comparison shopping, the TISA aims to increase competition among depository institutions hoping to attract well-informed consumers.[32]

Likewise, the Magnuson-Moss Warranty Act[33] requires "any warrantor warranting a consumer product . . . by means of a written warranty" to disclose uniformly nine prescribed items that embody the central terms and conditions of the warranty.[34] By standardizing the disclosure format, this Act aims to "ensure consumers could compare warranty coverage before [purchasing a product]."[35] The Act's central purpose is to "improve competition in the marketing of consumer products" by facilitating the consumers' ability to compare products efficiently.[36]

Other prominent examples of federal disclosure laws that aim to promote consumer-comparison shopping through standardized disclosures include the FTC's Rule Concerning the Labeling and Advertising of Home Insulation,[37] the Securities and Exchange Commission's (SEC) dis-

27. *Id.* §§ 4301(b)(1)–(2).

28. *See id.* § 4301.

29. *See* 12 C.F.R. § 1030.1 (2016) ("This part, known as Regulation DD, is issued by the Bureau of Consumer Financial Protection to implement the Truth in Savings Act . . . .").

30. *See id.* § 1030.4(b).

31. *See* 12 U.S.C. § 4301(b).

32. *See id.* § 4301(a); *see also Understanding the Effects of Certain Deposit Regulations on Financial Institutions' Operations*, CONSUMER FIN. PROTECTION BUREAU (Nov. 2013), http://files.consumerfinance.gov/f/201311_cfpb_report_findings-relative-costs.pdf [https://perma.cc/S38T-M4KY] ("Many consumer financial protection regulations require disclosures that facilitate informed product choice and comparison shopping and that reduce consumer search costs.").

33. 15 U.S.C. §§ 2301–2312 (2012).

34. *See id.* § 2302(a); 16 C.F.R. § 701.3(a) (2016).

35. *See Businessperson's Guide to Federal Warranty Law*, *supra* note 3; *Magnuson-Moss Warranty Act*, *supra* note 3 ("[T]he law ensures that consumers get an opportunity to compare warranty coverage before buying.").

36. *See* 15 U.S.C. § 2302(a).

37. 16 C.F.R. § 460.12; OFFICE OF INFO. & REGULATORY AFF., *supra* note 18.

closure rule of Mutual Fund After-Tax Returns,[38] the FTC's Energy Labeling Rule,[39] and the Fair Credit and Charge Card Disclosure Act.[40]

B. *The Smart Disclosure Policy*

The federal goal of standardizing disclosure documents is reflected not only in existing disclosure laws, but also in the federal "smart disclosure" policy.[41] In 2011, the Office of Information and Regulatory Affairs (OIRA), "a well-established institution within the Executive Office of the President,"[42] issued an important memorandum for the heads of executive departments and agencies.[43] "The purpose of this memorandum [was] to set out guidance for agencies to inform and facilitate the use of disclosures . . . ."[44] Agencies were instructed to "give careful consideration to whether and how best to promote smart disclosure."[45] According to the memorandum, "the term 'smart disclosure' refers to the "timely release of complex information and data in *standardized* . . . *formats* in ways that enable consumers to make informed decisions."[46] The memorandum also

38. *See* Disclosure of Mutual Fund After-Tax Returns, 66 Fed. Reg. 9002 (Feb. 5, 2001) (to be codified at 17 C.F.R. pts. 230, 239, 270, and 274).

39. 16 C.F.R. § 305.11(a); Energy Labeling Rule, 78 Fed. Reg. 43,974, 43,974–44,011 (July 23, 2013) (to be codified at 16 C.F.R. pt. 305).

40. 15 U.S.C. § 1601(a) (2012) ("It is the purpose of this subchapter to assure . . . disclosure of credit terms so that the consumer will be able to compare . . . various [credit] terms . . . ."); Fair Credit and Charge Card Disclosure Act of 1988, Pub. L. No. 100-583, 102 Stat. 2960 (codified at 15 U.S.C. §§ 1610–1646 (2012)) (setting forth "[a]n Act to provide for more detailed and uniform disclosure by credit and charge card issuers").

41. The term "smart disclosure" refers, *inter alia*, to the release of information in a standardized format "in ways that enable consumers to make informed decisions." *See* Sunstein, *supra* note 2, at 2, 5. For a further discussion of resources relating to federal smart disclosure policy, see *Federal Smart Disclosure Resources*, DATA.GOV, https://www.data.gov/consumer/smart-disclosure-policy-resources [https://perma.cc/D5K6-PCEZ] (last visited Jan. 13, 2016). For academic literature on the term smart disclosure, see CASS R. SUNSTEIN, SIMPLER: THE FUTURE OF GOVERNMENT 98–99 (2013); Oren Bar-Gill, *Defending (Smart) Disclosure: A Comment on More Than You Wanted to Know*, 11 JERUSALEM REV. LEGAL STUD. 75, 75 (2015); Daniel E. Ho, *Fudging the Nudge: Information Disclosure and Restaurant Grading*, 122 YALE L.J. 574, 580 (2012); Ariel Porat & Lior Jacob Strahilevitz, *Personalizing Default Rules and Disclosure with Big Data*, 112 MICH. L. REV. 1417, 1472 (2014); Karen Bradshaw Schulz, *Information Flooding*, 48 IND. L. REV. 755, 781 (2015); Richard H. Thaler & Will Tucker, *Smarter Information, Smarter Consumers*, HARV. BUS. REV., Jan.–Feb. 2013, at 44, 49–50, https://hbr.org/2013/01/smarter-information-smarter-consumers [https://perma.cc/C563-9ERR]; Djoko Sigit Sayogo, Ctr. for Tech. in Gov't, & Theresa A. Pardo, Ctr. for Tech. in Gov't, Understanding Smart Data Disclosure Policy Success: The Case of Green Button, Proceedings of the 14th Annual International Conference on Digital Government Research 72 (2013).

42. Cass R. Sunstein, *The Office of Information and Regulatory Affairs: Myths and Realities*, 126 HARV. L. REV. 1838, 1838 (2013).

43. *See* Sunstein, *supra* note 2.

44. *Id.* at 2.

45. *Id.*

46. *Id.* (emphasis added).

instructed federal agencies that standardization of disclosures should be implemented "[t]o the extent feasible and appropriate . . . in a way that promotes useful comparisons."[47] Agencies were instructed further to "consider mechanisms to combat [disclosers'] attempts to evade standards" through means such as "categorizing [fees] under misleading headings" or other "attempts to conceal" fees.[48]

In the same vein, the National Science and Technology Council (NSTC), an organization chaired by the President,[49] established the "Task Force on Smart Disclosure" (Task Force) in 2011.[50] The purpose of the Task Force was to "recommend approaches that [f]ederal entities can take to facilitate the 'smart disclosure' of data about consumer markets."[51] In May 2013, the Task Force published a report, which provided important "recommendations for expanding the use of smart disclosure and promoting effective smart disclosure policies across the [f]ederal [g]overnment."[52] The recommendations included that (1) "agencies should incorporate smart disclosure into all . . . policymaking related to . . . consumer issues" and (2) a governmental "forum for agencies to share smart disclosure strategies and tools" should be established.[53]

Given the federal goal of disclosure standardization, as reflected by disclosure laws and the smart disclosure policy, an important question arises as to whether disclosure documents are, in reality, standardized. The purpose of the next Part of this Article is to address this question by empirically examining, as a case study, a collection of financial performance disclosures in the quick service restaurant franchise industry.

47. *Id.* at 5.

48. *See id.*

49. *See* OFFICE OF SCI. & TECH. POLICY, *National Science and Technology Council*, WHITE HOUSE, https://www.whitehouse.gov/administration/eop/ostp/nstc [https://perma.cc/SSL3-W9LM] (last visited Dec. 28, 2016). "A primary objective of the NSTC is the establishment of clear national goals for Federal science and technology investments in a broad array of areas spanning virtually all the mission areas of the executive branch." *Id.*

50. *See* COMM. ON TECH., NAT'L SCI. & TECH. COUNCIL, *Task Force on Smart Disclosure: Information and Efficiency in Consumer Markets* 1, https://www.whitehouse.gov/sites/default/files/microsites/ostp/tfsd_charter_signed.pdf [https://perma.cc/H3T7-Y4RC] (last visited Jan. 13, 2016).

51. *Id.*

52. *See* NAT'L SCI. & TECH. COUNCIL, *Smart Disclosure and Consumer Decision Making: Report of the Task Force on Smart Disclosure* (May 30, 2013), https://www.whitehouse.gov/sites/default/files/microsites/ostp/report_of_the_task_force_on_smart_disclosure.pdf [https://perma.cc/W4TX-8LPA].

53. *See id.* at 30–31.

III. THE EMPIRICAL TEST: ARE FRANCHISE DISCLOSURES STANDARDIZED?

A. *The Quick Service Restaurant Franchise Industry*

The franchising business model plays a vital role in the U.S. economy. It includes around 780,000 establishments.[54] These establishments, in turn, provide approximately 8.8 million jobs.[55] Furthermore, they annually produce goods and services worth about $890 billion and contribute approximately $500 billion to the GDP.[56]

This Article focuses on a sub-sector of the business model of franchising, the quick service restaurant industry. A quick service restaurant is defined as an "establishment[ ] primarily engaged in providing foodservice where patrons generally order or select items and pay before eating."[57] Typical examples of quick service restaurants "[i]nclude limited-service eating places, cafeterias, fast-food restaurants, beverage bars, ice cream parlors, pizza-delivery establishments, carryout sandwich shops, and carryout service shops with on-premises baking of donuts, cookies, and bagels."[58] Famous examples of quick service restaurants include Subway,[59] McDonald's,[60] and KFC.[61]

The quick service restaurant franchise industry is the focus of this paper for two central reasons. First, this industry consistently leads among all other franchise industries in a number of important categories.[62] To begin, the quick service restaurant franchise industry regularly has the highest share of franchise establishments, which stands at around "20% of all franchise establishments" today.[63] In addition, the industry frequently has the highest share of employees, which currently comprises around 38% of all franchise employees.[64] Finally, this industry consistently has

54. *See Outlook for 2015*, *supra* note 9, at 2. "An establishment is a single physical location at which business is conducted or services or industrial operations are performed . . . . An establishment may be owned by the franchisor or the franchisee." *Id.* at 5 n.2.

55. *See id.* at 2.

56. *See id.*

57. NAT'L RESTAURANT ASSOC., FOUNDATIONS OF RESTAURANT MANAGEMENT & CULINARY ARTS: LEVEL ONE 8 tbl.1.1 (2011).

58. *See Outlook for 2015*, *supra* note 9, at 23.

59. *See 2015 Top Franchises from* Entrepreneur*'s Franchise 500 List*, ENTREPRENEUR, https://www.entrepreneur.com/franchises/500/2015/ [https://perma.cc/BA2V-L8CP] (last visited Jan. 14, 2017) [hereinafter *Franchise 500*].

60. *See id.*

61. *See id.*

62. Other franchise industries include automotive, business services, commercial and residential services, lodging, personal services, and real estate. *See Outlook for 2015*, *supra* note 9, at 5.

63. *See id.* at 15, 19.

64. *See id.* at 17, 19.

the largest share of nominal output among all franchise industries; its output has been estimated to comprise 26% of total output.[65]

This Article focuses on only a single franchise industry, namely the quick service industry, for a second reason. By using a single industry, this study controlled for industry-specific disclosure characteristics. The type of financial information contained in a franchise disclosure document may vary by industry.[66] For example, franchisors in the lodging industry prepare financial performance disclosures based on industry indicators of success, "such as average room rates . . . average occupancy percentage and 'RevPar' (revenues per available room)."[67] In the quick service restaurant industry, however, financial performance disclosures are often based on indicators such as monthly or annual dollar sales volume or profit.[68]

---

65. *See id.* at 18, 19. Specifically, "[t]his business line [was] expected to contribute 26% of total output in 2015." *Id.* at 19.

66. *See* Stuart Hershman & Joyce G. Mazero, *Historical Development of Earnings Claims (Now Financial Performance Representations) Regulations*, *in* FINANCIAL PERFORMANCE REPRESENTATIONS 1, 16–17 (Stuart Hershman & Joyce Mazero eds., 2008) ("[I]ndustries involved in franchising vary widely and one form of disclosure (e.g., gross sales) might not be relevant or applicable to all industries (e.g., the lodging industry, which is concerned with occupancy rates)."); Debra M. Bollinger, S.D. Div. of Sec., et al., Earnings Claims—The Disclosure Most Franchisors Do Not Want to Make—And a Report from NASAA, Presentation at the International Franchise Association's 29th Annual Legal Symposium, 8 (May 1996) ("[The] [t]ype of information useful to a franchisee varies by industry."); Brian B. Schnell, Faegre & Benson LLP, et al., Financial Performance Representations—Shield or Sword?, Presentation at the American Bar Association's 31st Annual Forum on Franchising 33 (Oct. 2008) ("The type of financial information contained in a financial performance representation varies by industry.").

67. *See* Gary R. Batenhorst, Cline Williams Wright Johnson & Oldfather, LLP, & Charles S. Modell, Larkin Hoffman Daly & Lindgren Ltd., Tips, Techniques and Traps for Drafting and Using Financial Performance Representations, Presentation at the American Bar Association's 35th Annual Forum on Franchising 16 (Oct. 2012); *see also* Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities, 72 Fed. Reg. 15,444, 15,456 n.97 (Mar. 30, 2007); Hershman & Mazero, *supra* note 66, at 13; Rupert M. Barkoff et al., *How to Prepare, Read, and Use a Financial Performance Representation*, *in* FINANCIAL PERFORMANCE REPRESENTATIONS 69, 76 (Stuart Hershman & Joyce Mazero eds., 2008); F. Joseph Dunn et al., FisherZucker, LLC, Beyond Gross Sales: Creative Approaches to Earnings Claims, Presentation at the International Franchise Association's 40th Annual Legal Symposium 11 (May, 2014); Stuart Hershman, DLA Piper Rudnick Gary Cary, & Marc P. Seidler, Seidler & McErlean, Earnings Claims—A Practitioner's Approach, Presentation at the International Franchise Association's 38th Annual Legal Symposium 6 (May 2005); H. Bret Lowell, Brownstein Zeidman and Lore, & Leonard N. Swartz, Arthur Andersen LLP, Preparing and Reviewing Earnings Claims, Presentation at the American Bar Association Forum on Franchising 10-11 (Oct. 1995); Schnell et al., *supra* note 66, at 33.

68. *See* Schnell et el., *supra* note at 66, at 31, 47; Andrew A. Caffey, *The Importance of Item 19 in the Franchise Disclosure Document*, ALL BUS., http://www.allbusiness.com/the-importance-of-item-19-in-the-franchise-disclosure-document-13425632-1.html [https://perma.cc/A9EG-RZEM].

B. *Methodology*

In order to ascertain the level of standardization among financial performance disclosures in the quick service restaurant industry, this study took four steps. *First*, the author located, via the 2015 *Entrepreneur* magazine's dataset,[69] a list of 179 quick service restaurant franchisors.[70] It should be noted that previous studies have estimated that the *Entrepreneur*'s annual datasets capture, on average, around a third to a half of all franchisors.[71] Importantly, some studies have also estimated that *Entrepreneur* datasets are representative "of the population of . . . franchisors operating in the United States."[72] Therefore, *Entrepreneur* datasets are widely used as a source of data for empirical legal research on franchising.[73]

Second, the author excluded from the list of the 179 quick service franchisors thirty-six new franchisors that began franchising after 2010.

69. *See Franchise 500*, *supra* note 59.

70. The entire dataset covers 927 franchisors from various industries, of which 179 are quick service franchisors. *See Franchise 500*, *supra* note 59; 2016 Top Franchises from Entrepreneur's *Franchise 500 List*, ENTREPRENEUR, https://www.entrepreneur.com/franchise500 [https://perma.cc/Q3Z3-L44W] (last visited Dec. 29, 2016) (located under "Understanding the Rankings"). Notably, since 1980, *Entrepreneur Magazine* has published the annual dataset of North American franchisors, known also as "The Annual Franchise 500." *See ,e.g.*, John E. Clarkin & Robert B. Hasbrouck, *The Franchise 500*reg; As a Research Tool: How Objective and Reliable Is It?*, 14 J. SMALL BUS. & ENTER. DEV. 144, 144–45 (2007). Each annual dataset includes, *inter alia*, the following facts: how long a franchisor has been in business, how long the franchisor has been franchising, how many units are owned by the franchisor, how many units are owned by franchisees, and what are the total startup costs needed to open a franchise. *See ,e.g.*, *Franchise 500*, *supra* note 59.

71. *See* Francine Lafontaine, *A Critical Appraisal of Data Sources on Franchising*, 4 J. MKTG. CHANNELS 5, 20 (1995); Scott Shane & Maw-Der Foo, *New Firm Survival: Institutional Explanations for New Franchisor Mortality*, 45 MGMT. SCI. 142, 146 (1999) (noting "[*Entrepeneur*'s] list includes only information from firms which choose to respond to the survey"); *see also* Scott Shane et al., *The Effects of New Franchisor Partnering Strategies on Franchise System Size*, 52 MGMT. SCI 773, 778 (2006) ("According to previous researchers, the *Entrepreneur Magazine* records capture most franchise systems." (citing Francine LaFontaine, *Contractual Agreements as Signaling Devices: Evidence from Franchising*, 9 J.L., ECON. ORG. 256 (1993))).

72. *See* Shane & Foo, *supra* note 71, at 146 ("*Entrepreneur Magazine*'s list is representative of the population of business format franchisors operating in the United States."); *see also* Shane et al., *supra* note 71, at 778.

73. *See, e.g.*, Bruce H. Kobayashi & Larry E. Ribstein, *Contract and Jurisdictional Freedom*, *in* THE FALL AND RISE OF FREEDOM OF CONTRACT 325, 344 (F.H. Buckley ed., 1999); Christopher R. Drahozal, *"Unfair" Arbitration Clauses*, 2001 U. ILL. L. REV. 695, 723–24; Christopher R. Drahozal & Keith N. Hylton, *The Economics of Litigation and Arbitration: An Application to Franchise Contracts*, 32 J. LEGAL STUD. 549, 562 (2003) (citing 1999 version of Franchise 500 list); Christopher R. Drahozal & Erin O'Hara O'Connor, *Unbundling Procedure: Carve-Outs from Arbitration Clauses*, 66 FLA. L. REV. 1945, 1979–80 (2014) (citing 1999 and 2011 versions of Franchise 500 list); Christopher R. Drahozal & Quentin R. Wittrock, *Is There a Flight from Arbitration?*, 37 HOFSTRA L. REV. 71, 90 (2008) (citing 1999 version of Franchise 500 list); Peter B. Rutledge & Christopher R. Drahozal, *"Sticky" Arbitration Clauses? The Use of Arbitration Clauses After* Concepcion *and* Amex, 67 VAND. L. REV. 955, 988 (2014).

These new franchisors have relatively few franchisee-owned units.[74] Therefore, these franchisors may find it difficult, as opposed to older franchisors, to disclose meaningful information about their units' financial performance to potential franchisees.[75]

Third, for each of the remaining 143 franchisors, attempts were made to locate its publicly-available 2015 FDD, via three major FDDs governmental databases[76]: the Wisconsin Department of Financial Institutions,[77] the Minnesota Department of Commerce,[78] and the California Department of Business Oversight.[79] Through these databases, this study located the FDDs of 109 quick service restaurant franchisors. These franchisors serve as the final sample of this empirical study and are listed in Appendix I.

Fourth, among all the FDDs of the franchisors in the sample, the author compared a disclosure item, entitled "*Item 19: Financial Performance Representations*" (Item 19). It should be noted that, under Item 19, each franchisor is entitled, according to the Franchise Rule, "to provide information about the actual or potential financial performance of its franchised [or] franchisor-owned outlets."[80] The purpose of Item 19 is to assist prospective franchisees in assessing the potential profitability of the franchise they may open.[81]

---

74. Each of the new thirty-six franchisors has, on average, about eleven franchisee-owned units. Conversely, each of the remaining 143 franchisors has, on average, 1,227 franchisee-owned units. *See* Schnell et al., *supra* note 66, at 36 ("New franchisors will not have any franchisee information to include in a FPR . . . .").

75. *See* Leslie D. Curran, Plave Koch PLC, et al., Current Hot Topics in Franchise Registration and Disclosure, Presentation at the International Franchise Association's 47th Annual Legal Symposium 1 (May 2014) ("But complying with the FTC Rule's disclosure requirements for an FPR may be complicated, time consuming, and a bit tricky for new and start-up franchisors who do not have a long operational history of large source of financial data from which to pull."); *see also* Bollinger et al., *supra* note 66, at 7 ("Start up franchisors do not have sufficient history/information."); Hershman & Seidler, *supra* note 67, at 7 ("[I]n new or small franchise systems, franchisors often do not have sufficient data to compile a meaningful earnings claim."); Lowell & Swartz, *supra* note 67, at 15 ("[S]tart up franchisors may lack the data to provide [earning] claims.").

76. For a brief comparison between these three databases, see Tom Pitegoff, *How to Get Free Franchise Disclosure Documents*, FRANCHISE ALCHEMY (Sept. 22, 2014), http://franchisealchemy.com/how-to-get-free-fdds/ [https://perma.cc/Z89P-B9T6].

77. *See Franchising*, STATE OF WIS., DEP'T OF FIN. INST., https://www.wdfi.org/fi/securities/franchise/ [https://perma.cc/2JCU-LT9F] (last visited Jan. 15, 2016).

78. *See CARDS*, MINN. DEP'T OF COMMERCE, https://www.cards.commerce.state.mn.us/CARDS/security/search.do?method=ShowSearchParameters&searchType=new [https://perma.cc/6YXX-HXS8] (last visited Jan. 15, 2016).

79. *See California Electronic Access to Securities and Franchise Information*, CAL. DEP'T OF BUS. OVERSIGHT, http://www.dbo.ca.gov/CalEASI/CalEASI.asp [https://perma.cc/CGM6-Q3TU] (last visited Jan. 15, 2016).

80. *See* 16 C.F.R. § 436.5(s) (2016).

81. *See* Marisa D. Faunce, Plave Koch PLC, & Jan S. Gilbert, Haynes and Boone, LLP, Weighing the Risks and Benefits of Financial Performance Representations, Presentation at the International Franchise Association's 45th Annual Legal Symposium 1 (May. 2012) ("Prospective franchisees often request this

Out of the twenty-three disclosure items contained in each FDD, this study focuses solely on Item 19 as a comparative benchmark for two central reasons.[82] To begin, comparing each of the 23 FDD items across all 109 disclosure documents in the sample would be too complex and time-consuming a task. Each FDD, including its 23 disclosure items, is generally more than 150 pages long, and many exceed 350 pages in length.[83] In addition, the financial performance disclosure provided under Item 19 is one of the most significant pieces of information for prospective franchisees.[84] "Most franchisees buy a franchise either as the start of a new career or as an investment opportunity."[85] Unsurprisingly therefore, one of pro-

---

information in order to develop their business plans and to assess the potential profitability of the franchise."); W. Michael Garner, W. Michael Garner, P.A., & Earsa R. Jackson, Strasburger & Price, LLP, Litigating Unlawful FPR's and Practical Tips for Doing So, Presentation at the American Bar Association's 33rd Annual Forum on Franchising 14 (Oct. 2010) ("The goal of an FPR is to assist a prospective franchisee with making an informed decision regarding purchase of the franchise.").

82. The FDD's 23 items are regulated in 16 C.F.R. §§ 436.5(a)–(w).

83. *See The Most Important Parts of the Franchise Disclosure Document,* BUS. OPPORTUNITIES (May 13, 2015), http://www.business-opportunities.biz/2015/05/13/important-parts-franchise-disclosure-document/ [https://perma.cc/QBP8-FSVE]; Redazione, *What to Consider When Buying Your Franchise,* AZ FRANCHISING (Oct. 30, 2014), http://www.azfranchising.com/what-to-consider-when-buying-your-franchise/ [https://perma.cc/8RLX-AN4N]*; see also FDD Structure?*, FRANCHISE DISCLOSURES, http://www.franchisedisclosures.com/fdd-structure/ [https://perma.cc/4VTN-YDAE] (last visited Jan. 15, 2016); Joel Libava, *4 Reasons Why You Need to Hire a Franchise Attorney*, ENTREPRENEUR (Sept. 20, 2013), http://www.entrepreneur.com/article/228432 [https://perma.cc/VS4B-5VBM].

84. *See* Hershman & Mazero, *supra* note 66, at 12 ("The franchise investment's potential financial performance is the critical piece of information for any sensible investor."); Hershman & Seidler, *supra* note 68, at 5 ("[T]he franchise investment's potential financial performance is *the* critical piece of information for any sensible investor."); David L. Cahn & Will K. Woods, *Item 19 Earnings Claims—A Disclosure Most Franchisors Should Try to Make*, 20 FRANCHISE L.J. 122, 124 (2001) (stating Item 19 "provides the information that every sensible person wants when deciding whether to purchase a franchise"); *Thirty Years of Franchising*, 27 FRANCHISE L.J. 85, 100 (2007) ("[E]arnings information [in Item 19] is not only critical to an informed investment decision but also the single most important piece of information that prospective franchisees need to make a truly informed purchasing decision."); Dale Cantone, Md. Att'y Gen. Office, et al., Mandatory Earnings Claims—What, When and How?, Presentation at the International Franchise Association's 31st Annual Legal Symposium 15 (May 1998) ("State franchise regulators, franchisees, and franchisee representatives . . . believe that earnings information is the most material information prospective franchisees need to make an informed investment decision."); Lowell & Swartz, *supra* note 67, at 15 (stating "[o]ne of the most important disclosures for a franchisee is an earnings claim"); Schnell et al., *supra* note 66, at 2 ("For prospective franchisees, financial performance information often is critical . . . ."); Don Sniegowski, *The Elusive Earnings Claims*, BLUE MAUMAU (Sept. 8, 2009, 5:42 PM), http://www.bluemaumau.org/7899/elusive_earnings_claim [https://perma.cc/3GKC-AA5G] ("[A] track record of financial results . . . is the [ ] most vital item of information a potential investor needs to have." (internal quotation marks omitted) (quoting Susan Kezios, President of American Franchisee Association)).

85. Cahn & Woods, *supra* note 84, at 124.

spective franchisees' most basic and frequent questions is "how much can I reasonably expect to earn if I buy the franchise?"[86] Item 19 deals with this important question.

C. *Data*

Tables 1 and 2 show, by percentage, some basic characteristics of the franchisors in the sample. Table 1 summarizes the products offered by the franchisors studied. Those products are varied. The most common type of product studied is sandwiches. The sample, however, does include other products, such as pizza, frozen desserts, baked goods, hamburgers, chicken, Mexican food, and smoothies.

TABLE 1 PRODUCTS PROVIDED

Sandwiches	16.51%
Pizza	15.6%
Frozen Deserts	15.6%
Baked Goods	11.01%
Hamburgers	7.34%
Chicken	7.34%
Mexican Food	6.42%
Smoothies	5.5%
Coffee	4.59%
Miscellaneous Products	10.09%

86. *See* Peter C. Lagarias, *How to Attack a Financial Performance Representation*, *in* FINANCIAL PERFORMANCE REPRESENTATIONS 101, 102 (Stuart Hershman & Joyce Mazero eds., 2008) ("Prospective franchisees universally want to know 'How much will I make?'"); Rupert M. Barkoff, Kilpatrick & Cody, & Andrew C. Selden, Briggs and Morgan, P.A., Thou Shalt Disclose Earnings Information! NASAA's Final Frontier—Where No Regulator Has Gone Before, Presentation at the American Bar Association's Forum on Franchising 1 (Oct. 1994) ("The question *always* asked by a prospective franchisee is how much can he or she expect to earn as a result of the franchise acquisition."); Batenhorst & Modell, *supra* note 67, at 32; Garner & Jackson, *supra* note 81, at 47 ("On the mind of every prospective franchise is 'How much money can I make?'"); Faunce & Gilbert, *supra* note 81, at 1 ("[O]ne of the first questions a franchise seller will field from a prospective franchisee is 'How much money can I earn if I buy your franchise?'" (footnote omitted)); Rick Bisio, *How Much Will I Make with a Franchise? (Item 19 of the FDD)*, FRANCHISE GATOR (Apr. 17, 2014, 3:20 PM), https://www.franchisegator.com/articles/how-much-money-fdd-item-19-11779/ [https://perma.cc/2Y7Y-AM2X] ("At the core of every potential Franchisee is the age-old question: How much money can I make?"); Mark C. Siebert, *Should Franchisors Use Financial Performance Representations in the Franchise Sales Process?*, FRANCHISE CHAT, http://www.franchise-chat.com/resources/should_franchisors_use_financial_performance_representations.htm (last visited Jan. 15, 2017) [https://perma.cc/PV6P-TX8Z] ("[T]he single most frequently asked question in franchising is 'How much can I make?'").

Table 2 summarizes the year in which the franchisor began franchising. It illustrates that the franchisors studied are normally long-standing, well-established franchisors. Most franchisors have been franchising for more than twenty-three years. The newest franchisors in the sample are Orange Leaf Frozen Yogurt, Fuzzy's Taco Shop, and Fresh Healthy Café, which began franchising in 2009. The oldest franchisor in the sample is Dairy Queen, which began franchising in 1944. The 1990s and the 2000s were the most common decades for the franchisors in the sample to begin franchising, with 27.52% of franchisors each, followed by the 1980s with 22.94% and the 1970s with 8.26%.

TABLE 2 YEAR BEGAN FRANCHISING

2000s	27.52%
1990s	27.52%
1980s	22.94%
1970s	8.26%
1960s	5.5%
1950s	4.59%
1940s	3.67%

D. *Results*

The empirical results of this study show that the financial performance disclosures in the quick service restaurant industry are far from being standardized. To begin with, the disclosures are not standardized in terms of the existence of any financial performance data. While 82.57% of disclosures provide some information about the financial performance of the franchise units, 17.43% of disclosures explicitly state that they do not provide any financial performance information whatsoever.

More importantly, among the majority of disclosures that do provide some financial performance information, at least five major variations exist. *First*, while 72.22% disclosures include some data about the units' sales and costs, 27.78% of disclosures include data about only the units' sales. This variation is important for prospective franchisees. Disclosures that address only the units' sales and neglect to address their costs usually fail to "yield [meaningful information] on profitability."[87]

Second, while 75.56% of disclosures include *distinguished* data about the financial performance of units which are owned by *franchisees*, 24.44% of disclosures do not include such data. These latter disclosures either mix between the performance of franchisee-owned units and franchisor-owned units or provide data about only franchisor-owned units. This vari-

87. *See* Lowell & Swartz, *supra* note 66, at 10; *see also* David J. Kaufmann, *Mandatory Earnings Claim Disclosure: The Case Against*, 15 FRANCHISE L.J. 3, 6 (1995) ("Learning about average unit gross sales tells one nothing about average unit profitability . . . .").

ation between disclosures that include distinguished data about franchisees and those that do not is significant for potential franchisees because there are numerous prototypical differences between the financial performance of franchisee-owned and franchisor-owned units.[88] First, "franchisor-owned units may not pay royalties" to the franchisor, while franchisee-owned units do.[89] Moreover, franchisors, as opposed to franchisees, "may benefit from volume discounts" when purchasing goods or services made available to them due to their operation of multiple locations.[90] In addition, "[franchisor-owned] units may have a much larger territory in which to operate than what a franchisee will be offered" by their franchisors.[91] Furthermore, "[t]he franchisor may be more skilled and experienced at controlling costs and increasing revenues than the franchisee,"[92] and franchisor-owned units may count in their revenue Internet sales or other sources of revenue that a franchisee "may be restricted from pursuing" by their franchisor.[93]

Third, the disclosures differ in terms of the characteristics of the units that are included. While 2.22% of disclosures explicitly include co-branded units, 10% of disclosures explicitly exclude those units. Moreover, while 5.56% of disclosures explicitly include units who had multiple owners during their performance, 7.78% of disclosures explicitly exclude such units. Furthermore, 17.78% of disclosures exclude units that are located in certain types of locations, such as train stations and airports, while others do not. In addition, 21.11% of disclosures exclude certain types of units, such as express restaurants or kiosks. However, others do not. Additionally, 11.11% of disclosures exclude units at certain geographic locations in U.S. territories, while others do not. These disclosures also vary

88. *See* Hershman & Seidler, *supra* note 67, at 34 ("There may be differences in the data between franchised and company-owned businesses.").

89. *See* Cantone et al., *supra* note 84, at 11; Lowell & Swartz, *supra* note 67, at 11; Curran et al., *supra* note 75, at 12–13.

90. *See* Curran et al., *supra* note 75, at 13; *see also* Cantone et al., *supra* note 84, at 11; Hershman & Seidler, *supra* note 67, at 34; Lowell & Swartz, *supra* note 66, at 11. Relatedly, a franchisor may have a line of credit with "a lower interest rate than the rate available to franchisee." *See* Curran et al., *supra* note 75, at 14.

91. Curran et al., *supra* note 75, at 13.

92. Hershman & Seidler, *supra* note 67, at 34.

93. *See* Curran et al., *supra* note 75, at 13.

among themselves, and exclude different locations, such as Florida,[94] Hawaii,[95] Alaska,[96] Puerto Rico,[97] or regions with less than ten units.[98]

The disclosures differ in terms of the characteristics of the units in several other ways. For example, they are non-standardized regarding the length of the period in which the units performed. Eighty percent of disclosures explicitly state that they include information about units operated for a minimum of one year. However, 16.67% of disclosures explicitly state that they include data about units who operated for a minimum period other than a year. These disclosures also vary among themselves, and include minimum operating periods for their units ranging from twenty-six weeks to four years.[99]

Relatedly, the disclosures are non-standardized in terms of the end date of their fiscal year. In 51.11% of disclosures, the ending date of the

94. *See, e.g.*, Disclosure of Hungry Howie's Pizza & Subs (2016), at 45.

95. *See, e.g.*, Disclosure of Jack in the Box (2016), at 50.

96. *See, e.g.*, Franchise Disclosure Document of Baskin-Robbins 83, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612971&hash=886520883&search=external&type=GENERAL [https://perma.cc/KZ4S-5F37] (last visited Jan. 15, 2017) (available under "Download").

97. *See, e.g.*, Franchise Disclosure Document of Church's Chicken 45, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613605&hash=299615039&search=external&type=GENERAL [https://perma.cc/NRU4-SZF4] (last visited Jan. 15, 2017) [hereinafter Church's Chicken FDD] (available under "Download").

98. *See, e.g.*, Franchise Disclosure Document of Dunkin' Donuts 97, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612972&hash=444191223&search=external&type=GENERAL [https://perma.cc/MQY7-FETP] (last visited Jan. 15, 2017) [hereinafter Dunkin' Donuts FDD] (available under "Download").

99. *See, e.g.*, Franchise Disclosure Document of Biggby Coffee 38, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613456&hash=1855425324&search=external&type=GENERAL [https://perma.cc/KR59-YYSX] (last visited Jan. 15, 2017) (available under "Download") (thirteen months); Church's Chicken FDD, *supra* note 97, at 45 (twenty-six weeks); Franchise Disclosure Document of Jet's Pizza 33, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613314&hash=821479910&search=external&type=GENERAL [https://perma.cc/J9KA-QYUJ] (last visited Jan. 15, 2017) (available under "Download") (four years); Franchise Disclosure Document of Krispy Kreme Doughnuts 55, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613660&hash=1010957114&search=external&type=GENERAL [https://perma.cc/5MLF-G9JU] (last visited Jan. 15, 2017) [hereinafter Krispy Kreme FDD] (available under "Download") (eighteen months); Franchise Disclosure Document of Menchie's 37, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613226&hash=462757169&search=external&type=GENERAL [https://perma.cc/P2HA-UFLK] (last visited Jan. 15, 2017) (available under "Download") (fifty-three weeks); Franchise Disclosure Document of Moe's Southwest Grill 54, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612919&hash=1655665146&search=external&type=GENERAL [https://perma.cc/GD95-P4A2] (last visited Jan. 15, 2017) (available under "Download") (three years); Franchise Disclosure Document of Orange Leaf Frozen Yogurt 40, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613291&hash=304261745&search=external&type=GENERAL [https://perma.cc/U5SW-57J6] (last visited Jan. 15, 2017) (available under "Download") (360 days); Franchise Disclosure Document of Toppers Pizza 49, https://docqnet.dbo.ca.gov/search/SharepointDocuments/ [ ] (last visited Jan. 15, 2017) (available under "Franchise Disclosure Document") (two years).

franchisor's fiscal year is identical to the end date of the calendar year, namely, December 31. However, other disclosures include a different end date. The latter disclosures also vary and include different end dates ranging from January 31 to October 25.[100] Comparing financial performance disclosures among franchisors with varying fiscal-year periods can be difficult for prospective franchisees,[101] in that the dynamic economic conditions that exist in each fiscal year, such as inflation, recession, and unemployment, may vary.[102]

Fourth, the disclosures are non-standardized in their methods of grouping the financial performance data of their units. Approximately 14.44% of disclosures group the performance data by the units' location-type, such as mall, train station, gas station or airport. Further, 8.89% of disclosures group the performance information by the units' geographical region, such as Mid-Atlantic, Northeast and Southeast. In addition, 4.44% of disclosures group the performance data by the units' size, as reflected in the unit's square feet or number of seats. Moreover, 11.11% of disclosures group the performance facts by the type of unit, such as kiosk, drive thru, free standing and express. Additionally 3.33% of disclosures group the data by the units' age. Other disclosures either use a different grouping method or do not group the data at all.

Fifth, the disclosures are not standardized regarding the statistical data that they provide about the units' financial performance. Approximately 86.67% of disclosures provide data about the number or percentage of units that exceeded the average unit's financial performance. Further, 15.56% of disclosures divide the units' performance data by quartiles. Among these latter disclosures, 21.43% exclude the bottom quartile

100. *See, e.g.*, Franchise Disclosure Document of Carl's Jr. Restaurants 55, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613637&hash=646049066&search=external&type=GENERAL [https://perma.cc/Z9F2-DDVC] (last visited Jan. 15, 2017) [hereinafter Carl's Jr. FDD] (available under "Download") (Jan. 31); Dunkin' Donuts FDD, *supra* note 98, at 96 (Oct. 25); Franchise Disclosure Document of Jack in the Box, at 50 (on file with *Villanova Law Review*) [hereinafter Jack in the Box FDD); Krispy Kreme FDD, *supra* note 99, at 55 (Feb. 1); Franchise Disclosure Document of Sonic Drive-Ins 34, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=614343&hash=470458038&search=external&type=GENERAL [https://perma.cc/H4XM-SCG5] (last visited Jan. 15, 2017) (available under "Download") (Aug. 31).

101. *See* Luke Arthur, *What Are the Limitations of a Company's Financial Statements?*, CHRON, http://smallbusiness.chron.com/limitations-companys-financial-statements-23764.html [https://perma.cc/HHW6-9RAU] (last visited Jan. 15, 2017) ("If the fiscal year is ending at a different time for two companies, it is tough to make an accurate comparison of those businesses.").

102. *Cf.* ROSS ET AL., FUNDAMENTALS OF CORPORATE FINANCE 76 (9th ed. 2010) ("[D]ifferent firms end their fiscal years at different times. For firms in seasonal businesses . . . this can lead to difficulties in comparing balance sheets because of fluctuations in accounts during the year."); *see also Fiscal Year-End*, INVESTINGANSWERS, http://www.investinganswers.com/financial-dictionary/businesses-corporations/fiscal-year-end-5772 [https://perma.cc/QS5T-M3NU] (last visited Jan. 15, 2017).

from their data. In addition, 18.89% of disclosures number franchises by sales class. These disclosures also vary amongst themselves and include different number of classes ranging from two to fourteen.[103] Furthermore, 30% of disclosures include longitudinal performance data spanning more than one year, which can assist potential franchisees in identifying performance trends. These disclosures also vary and include different numbers of years, ranging from three to twenty.[104]

103. *See, e.g.*, Franchise Disclosure Document of Auntie Anne's 69, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612918&hash=873676359&search=external&type=GENERAL [https://perma.cc/7LQR-KHSP] (last visited Jan. 15, 2017) (available under "Download") (five classes); Franchise Disclosure Document of Culver's Franchising System 36, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612937&hash=1221815067&search=external&type=GENERAL [https://perma.cc/F9C6-2J99] (last visited Jan. 15, 2017) (available under "Download") (fourteen classes); Franchise Disclosure Document of Haagen-Dazs Shoppe Company 55, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612821&hash=1415579177&search=external&type=GENERAL [https://perma.cc/43L2-WGLF] (last visited Jan. 15, 2017) (available under "Download") (ten classes); Franchise Disclosure Document of Marcos Franchising 85, https://www.cards.commerce.state.mn.us/CARDS/security/search.do?method=ShowPoup&documentId={4DEF442A-8A86-4D81-8691-5DC23F16CB86}&documentTitle=1630-201604-02&documentType=4 [https://perma.cc/3DWJ-4V7G] [hereinafter Marcos Franchising FDD] (seven classes); Franchise Disclosure Document of Pinkberry 46, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613808&hash=1956197054&search=external&type=GENERAL [https://perma.cc/QKL5-8PJA] (last visited Jan. 15, 2017) (available under "Download") (four classes); Franchise Disclosure Document of Pizza Hut 55–57, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613648&hash=663348508&search=external&type=GENERAL [https://perma.cc/MD56-QW9T] (last visited Jan. 15, 2017) (available under "Download") (three classes); Franchise Disclosure Document of Smoothie King 49, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613438&hash=1144336217&search=external&type=GENERAL [https://perma.cc/H5U3-B6BD] (last visited Jan. 15, 2017) (available under "Download") (two classes); Franchise Disclosure Document of Yogurtland Franchising 51, https://docqnet.dbo.ca.gov/search/SharepointDocuments/ (last visited Jan. 15, 2017) (available under "Franchise Disclosure Document") (six classes).

104. *See, e.g.*, Carl's Jr. FDD, *supra* note 100, at 57 (fifteen years); Franchise Disclosure Document of Happy Joe's 37, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612527&hash=888270444&search=external&type=GENERAL [https://perma.cc/LXA2-GWY5] (last visited Jan. 15, 2017) (available under "Download") (three years); Franchise Disclosure Document of Hurricane AMT 47, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613564&hash=910854518&search=external&type=GENERAL [https://perma.cc/ZK2J-VJFY] (last visited Jan. 15, 2017) (available under "Download") (six years); Marcos Franchising FDD, *supra* note 103, at 87 (five years); Franchise Disclosure Document of Pizza Ranch 45, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=612983&hash=885370219&search=external&type=GENERAL [https://perma.cc/NNG4-ZWPH] (last visited Jan. 15, 2017) (available under "Download") (twenty years); Franchise Disclosure Document of Zaxby's Franchising 43, https://www.wdfi.org/apps/FranchiseSearch/details.aspx?id=613471&hash=706991666&search=external&type=GENERAL [https://perma.cc/NB85-S2DE] (last visited Jan. 15, 2017) (available under "Download") (seven years).

IV. DISCUSSION AND NORMATIVE IMPLICATIONS

A major goal of the Franchise Rule, as stated by the FTC, is to ensure that franchise disclosure documents are standardized, thereby facilitating comparison shopping among competing franchise offerings.[105] At first glance, the Rule seems to have achieved this goal, in that it requires each disclosure document to be based on a uniform framework, which includes a set of twenty-three specified items.[106] However, a closer empirical examination of a central disclosure item, related to the franchisor's financial performance, reveals that the *substantive content* of the disclosures, as opposed to their general framework, is far from standardized.[107]

One possible explanation for this lack of standardization derives from the wording of the Franchise Rule. According to the FTC, because different industries—such as the quick service restaurant industry and the lodging industry—are governed by the same Franchise Rule, the Rule's language should not mandate a particular set of financial performance disclosures.[108] Accordingly, even franchisors within *the same industry,* such as those within the quick service restaurant industry, are governed by indecisive disclosure rules, which, in turn, undermine the Franchise Rule's ultimate goal of standardization in a number of ways. First, the Franchise Rule "permits" quick service restaurant franchisors to provide a financial

105. *See supra* Part II.A.

106. *See supra* Part II.A; *see also* James R. Cataland, *Disclosure Protection: Franchises and Food Court Leases*, 53 CLEV. ST. L. REV. 605, 615 (2006) ("The disclosure document provides a means for the prospective franchisee to comparison shop among [ ] thousands of franchises . . . ."); Peter Macrae Dillon, *The Case for the Use of Wrap-Around Disclosure Documents in Canada*, 24 FRANCHISE L.J. 73, 73 (2004) ("Its consistency of form permits users—both prospective franchisees and lawyers—to compare one disclosure document against another."); Byron E. Fox & Henry C. Su, *Franchise Regulation—Solutions in Search of Problems?*, 20 OKLA. CITY U. L. REV. 241, 278 (1995) ("[D]isclosure regulation serves to prescribe a uniform disclosure format that facilitates an item-by-item comparison of franchise systems . . . .").

107. *See supra* Part III.D.

108. *See* Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunities, 72 Fed. Reg. 15,444, 15,498 (Mar. 30, 2007) ("Given that many different industries are affected by part 436, what makes a financial performance disclosure reasonable, complete, and accurate is quite varied. Thus, the Commission will not mandate a particular set of financial performance disclosures."); *see also* Dale Cantone, Md. Att'y Gen. Office, et al., Walking the FPR Tightrope: Managing the Expectations of Prospective Franchisees, Lenders and Regulators in Preparing Financial Performance Representations, Presentation at the International Franchise Association's 48th Annual Legal Symposium 1 (May 2015) ("[D]isclosure of FPRs remains optional and unstructured . . . . [T]here still is relatively little guidance on how to prepare FPRs and what information to include."); Stuart Hershman, DLA Piper, LLP, et al., Advanced FPRs: Writing, Using, Attacking and Defending Financial Performance Representations, Presentation at the International Franchise Association's 46th Annual Legal Symposium 3 (May 2013) ("There are no set rules for the type of information that a franchisor may include in an FPR or the manner in which the franchisor presents that information within Item 19.").

performance disclosure only under Item 19.[109] Consequently, while the majority of franchisors provide financial performance disclosures, some franchisors do not.[110] Second, the Franchise Rule's definition of a financial performance disclosure is extremely flexible: A statement about the "sales, income, gross profits, *or* net profits."[111] Accordingly, some quick service restaurant disclosures include some data about the franchise sales and costs, while other disclosures include data only about the franchise sales.[112] Third, the Franchise Rule allows quick service franchisors to provide information about the "financial performance of its franchised *and/or* franchisor-owned outlets."[113] Hence, some disclosures include distinguished data about the financial performance of franchisee-owned units, while other disclosures fail to distinguish between the financial performance data of franchisee-owned units and franchisor-owned units, or provide data about only franchisor-owned units.[114] Fourth, the Franchise Rule does not specify what must be the standardized characteristics of the units that comprise the financial disclosures of a quick service franchisor.[115] The Rule thus allows each franchisor to choose the units' characteristics freely, including, for example, their geographic location (e.g., U.S. State) or type of location (e.g., airport or mall).[116] Unsurprisingly, the characteristics of the units that are included and excluded from the disclosure documents vary significantly.[117] Fifth, the Franchise Rule does not specify if and how disclosures in the quick service industry must group the units' financial performance data (e.g., by geographic location, unit type, or size).[118] Thus, disclosures significantly differ in their grouping method.[119] Sixth, the Franchise Rule does not specify which statistical data quick service franchisors must present in their disclosure document, beyond the "number and percent" of units "that actually attained or surpassed the stated [financial] results."[120] Accordingly, disclosures differ in the statistical data that they provide regarding the restaurants' financial performance (e.g., quartiles breakdown or sales breakdown).[121]

In order to achieve the FTC's central goal of standardization,[122] the language of the Franchise Rule, relating to each central industry, must be decisive. Particularly, the dominant quick service restaurant industry

109. *See* 16 C.F.R. § 436.5(s)(1) (2016).
110. *See supra* Part III.D.
111. *See* 16 C.F.R. § 436.1(e) (emphasis added).
112. *See supra* Part III.D.
113. *See* 16 C.F.R. § 436.5(s)(1).
114. *See supra* Part III.D.
115. *See* 16 C.F.R. § 436.5(s)(3)(ii)(A).
116. *See id.* § 436.5(s)(3)(ii)(A).
117. *See supra* Part III.D.
118. *See* 16 C.F.R. § 436.5(s).
119. *See supra* Part III.D.
120. *See* 16 C.F.R. § 436.5(s)(3)(ii)(E).
121. *See supra* Part III.D.
122. *See supra* Part II.

should be governed by a set of conclusive and standardized rules that promote uniformity among financial performance disclosures within this important industry.[123] Similarly, other major franchise industries, including business services,[124] personal services,[125] and lodging,[126] should be governed by particular sets of decisive disclosure rules, which promote standardization in each of these major industries.

In addition to the standardization of financial performance disclosures, the wording of the Franchise Rule demonstrates that the Rule should seek to promote another important goal: to allow potential franchisees to weigh the expected costs and benefits of a franchise offered to them effectively.[127] For example, Item 19 should require each franchisor to disclose information not only about potential sales of the franchise units, as some franchisors do, but also about the costs of these units.[128] Likewise, the Franchise Rule should prohibit franchisors to mix, in their disclosures, data about the financial performance of franchisee-owned units and franchisor-owned units. Such mixture risks blurring the potential costs and benefits of the unit offered to the potential franchisee.[129]

Importantly, while this Article has empirically shown that the central disclosure item, Item 19, is non-standardized, other items regulated by the Franchise Rule likely suffer from the same deficiency due to the Franchise Rule's indecisive language regarding other disclosure items. For example, under Item 3, each franchisor is required to disclose whether it was a party to any "*material* civil action involving the franchise relationship."[130] However, the Franchise Rule does not define the term "material."[131] Consequently, different franchisors might interpret the materiality requirement differently.[132] As a result, the substantive content of Item 3 in each franchise disclosure may vary, thereby undermining the Franchise Rule's goal of standardization.

---

123. *See supra* Part II.

124. The business services industry is the second-largest contributor to the value output in the franchise industry, following the quick service restaurant industry, with 19% of the total. *See Outlook for 2015*, *supra* note 9, at 21.

125. The personal services industry is the third largest contributor to the value output in the franchise industry, with 11% of the total. *See id.* It includes services such as health care and entertainment. *See id.* at 13.

126. The lodging industry is the fourth largest contributor to the value output in the franchise industry, with ten percent of the total. *See id.* at 21.

127. *See* 16 C.F.R. §§ 436.2(a), 436.5; *Franchise Rule*, *supra* note 15.

128. For empirical data about disclosures that include sales or costs, see *supra* Part III.D.

129. For the differences between the financial performance of franchisee and franchisor-owned units, see *supra* Part III.D.

130. *See* 16 C.F.R. § 436.5(c)(1)(ii) (emphasis added).

131. *See id.* § 436.1 (omitting definition of word "material").

132. *See* Christopher R. Drahozal, *Disclosure of Franchise Disputes*, 19 STAN. J.L. BUS. & FIN. 281, 288 (2014) (citing Edward Wood Dunham & David Geronemus, *Lessons from the Resolution of Franchise Disputes*, JAMS DISP. RESOL. ALERT, Summer 2003, at 1, 2).

Likewise, according to the Franchise Rule's wording, franchisors are required, under Item 7, to "disclose the franchisee's estimated initial investment" and "*may* include additional expenditure tables to show expenditure variations caused by differences such as in site location and premises size."[133] As a result of this wording, some disclosures may include additional expenditure tables, while others may not include this information. Standardization, again, is unlikely to be achieved.

Similarly, Item 10 of the Franchise Rule requires each franchisor to "[d]isclose the terms of each financing arrangement, including leases and installment contracts, that the franchisor . . . offer[s] . . . to the franchisee."[134] In addition, the Rule states that "[t]he franchisor *may* summarize the terms of each financing arrangement in tabular form, using footnotes to provide additional information."[135] As such, it is possible that only some franchisors may summarize the terms of each financing arrangement in accordance with the Rule. Here, too, standardization is unlikely to occur.

V. CONCLUSION

An important goal of the federal government, as reflected by disclosure laws and the smart disclosure policy, is to ensure that disclosure documents, in each regulated industry, are standardized.[136] Through standardization, the government aims to allow disclosees to conduct effective comparison shopping between competing disclosers.[137] Effective comparison shopping, in turn, has the potential to increase competition among disclosers hoping to attract well-informed disclosees.[138]

At first glance, federal disclosure laws, including the Franchise Rule, appear to achieve the standardization goal in that they require each disclosure document to be based on a uniform framework that consists of a set of specified items.[139] However, a deeper examination of disclosures tells a different story. As the empirical results of this case study show, the financial performance disclosures in the quick service restaurant franchise industry are far from being standardized.[140] One central reason for this lack of standardization is that the wording of the Franchise Rule is highly indecisive.[141] In order to promote the standardization goal, the language of the Franchise Rule must be much more conclusive and uniform.[142]

133. 16 C.F.R. § 436.5(g) (emphasis added).
134. *See id.* § 436.5(j)(1).
135. *Id.* (emphasis added).
136. *See supra* Part II.
137. *See supra* Part I.
138. *See supra* Part I.
139. *See supra* Part II.
140. *See supra* Part III.D.
141. *See supra* Part IV.
142. *See id.*

While this Article focuses on quick service restaurant franchise disclosures regulated by the Franchise Rule, its normative conclusions have broader implications. All federal disclosure laws that aim to ensure industry standardization and meaningful comparison shopping must be drafted in decisive and uniform language.[143] In order to achieve standardization, it is insufficient for disclosure laws to prescribe a uniform *general framework*, which includes a set of a specified number of items. It is essential that disclosure laws ensure that the *substantive content of each disclosure item* is standardized. Otherwise, as this empirical case study revealed, actual, substantive standardization is unlikely to occur.

143. For major examples of federal disclosure laws that aim to promote standardization, see *supra* Part II.

APPENDIX I: FRANCHISES STUDIED

Auntie Anne's Hand-Rolled Soft Pretzels	Fresh Healthy Café	Pizza Ranch
Baskin-Robbins	Fuzzy's Taco Shop	Pizza Schmizza
Ben & Jerry s	Gigi's Cupcakes	Pretzelmaker
Biggby Coffee	Great American Cookies	Qdoba Mexican Grill
Billy Sims BBQ	Great Harvest Franchising	Ritas Italian Ice
Blimpie Subs & Salads	Great Wraps	Robeks Fresh Juices & Smoothies
Bojangles' Restaurants	Happy Joe's	Rosati's Pizza
Breadsmith	Hardee's	Samurai Sam's Teriyaki Grill
Buffalo Wild Wings	House of Bread	Smoothie Factory
Capriotti's Sandwich Shop	Hungry Howie's Pizza & Subs	Smoothie King
Captain D's	Hurricane Grill & Wings	Sonic Drive-In Restaurants
Captain Tony's Pizza & Pasta Emporium	Jack in the Box	Steak Escape Sandwich Grill
Carl's Jr. Restaurants	Jersey Mike's Subs	Subway
Carvel	Jet's Pizza	Surf City Squeeze
Charleys Philly Steaks	Jimmy John's Gourmet Sandwiches	Taco Bell
Checkers and Rally's Restaurants	KFC	TacoTime
Chesters	Kolache Factory	TCBY and Mrs. Fields
Chronic Tacos Enterprises	Kona Ice	Teriyaki Madness
Church's Chicken	Krispy Kreme Doughnut	The Coffee Beanery
Cinnabon	Marble Slab Creamery	The Great Steak & Potato
Cold Stone Creamery	Marcos Franchising	The Haagen-Dazs Shoppe
Corner Bakery Cafe	Maui Wowi Hawaiian Coffees & Smoothies	The Original SoupMan
Cousins Subs	McAlisters Deli	Togo's Franchisor

Culver Franchising System	McDonald's	Toppers Pizza
D.P. Dough	Menchie's	Tropical Smoothie Cafe
Dairy Queen Treat Franchise	Moe's Southwest Grill	Villa Pizza
Del Taco	Nathan's Famous	Wayback Burgers
Deli Delicious Franchising	Nestle Toll House Cafe by Chip	Wetzel's Pretzels
Dippin' Dots Franchising	Nrgize Lifestyle Cafe	Which Wich Superior Sandwiches
Donatos Pizza	Orange Leaf Frozen Yogurt	Wingstop Restaurants
Dunkin' Donuts	Orion Food Systems (Hot Stuff Pizza)	Yogurtland Franchising
Dunn Bros Coffee	Papa John's International	Your Pie
Elevation Burger	Papa Murphys	Z Pizza
Erbert & Gerbert's Sandwich Shops	Penn Station East Coast Subs	Zaxby's Franchising
Figaro's Pizza	Pinkberry Ventures	Zoup! Systems
Firehouse Subs	Pita Pit	
Freddy's Frozen Custard	Pizza Hut	