

BEFORE THE
FEDERAL TRADE COMMISSION

COMMENTS OF
THE DIRECT SELLING ASSOCIATION
ON THE
NOTICE OF PROPOSED RULEMAKING FOR THE BUSINESS
OPPORTUNITY RULE

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EXECUTIVE SUMMARY

The following is a summary of the key points raised by the Direct Selling Association (DSA) in our submission, points supported by surveys, data, experience, interviews and legal analysis. DSA is the non-profit national trade association of the leading firms that manufacture and distribute goods and services sold directly to consumers by personal presentation and demonstration, primarily in the home. More than 200 companies are members of the association, including many well-known brand names, doing approximately 95 percent of the industry's U.S. sales. There are also over 1,300 direct selling companies that are not members of the association.

Legitimate direct sellers play an important role in the national economy. For example, they permit providers of new products and services to enter the market more economically, offer a flexible, part-time opportunity for individuals to supplement their income, and broaden the array of product and service choices available to consumers. Unfortunately, fraudulent and unscrupulous businesses have often either passed themselves off as, or been confused with, the many legitimate companies that use the direct selling business model. DSA understands that the proposed business opportunity rule is intended to protect the public from the unfair and deceptive practices of these fraudulent operators, particularly those that operate work at home and pyramid schemes. Any meaningful and effective business opportunity regulation must recognize the fundamental differences between such business opportunity frauds and legitimate direct selling activities. However, the rule proposed by the FTC fails to do so and as a result of that failure would unnecessarily subject legitimate direct sellers to onerous requirements that would impose significant financial and administrative burdens while at the same time reducing the attractiveness and therefore success of direct selling.

There are several ways that the FTC could revise the proposed rule to ensure that legitimate direct selling companies are excluded. For example, the FTC might:

- Exclude from the rule's provisions those business opportunity sellers whose opportunities carry minimal (or no) cost or risk.
- Retain the definition of business opportunity contained in the Franchise Rule, which does not include most or all direct sellers.
- Better define "business opportunity" to cover to work at home, vending machine, and similar schemes, and not include direct sellers.
- Exempt companies that adopt and adhere to a set of industry best practices, including, for example, requirements relating to who lesale inventory purchases protected by buyback policies and/or a "cooling-off" right for salespeople.
- Exempt companies that are subject to a self-regulation process such as that offered by DSA.

DSA cannot overstate the harm to legitimate direct sellers that would result from the proposed rule. The rule presents two potential costs to legitimate direct sellers – the expenses associated with compliance and the impact of decreased business activities. With respect to compliance, the FTC has dramatically underestimated the time, effort, and expense necessary to collect information and provide disclosures for the array of issues addressed in the proposed rule. One company alone estimates that it would be faced with the responsibility to print and distribute some 15 million pieces of paper over a three year period as a result of the proposal. The FTC has also failed to acknowledge the significant harm to legitimate direct sellers, i.e., the loss of business that would occur if they were subjected to the requirements of the proposed Rule. Several of the most problematic requirements are addressed below.

The waiting period requirement in the proposed Rule is impractical and will fundamentally and adversely alter the way in which direct selling operates. The proposed rule requires that individuals wait at least seven days after they first express interest before they can sign up as a direct seller. Much legitimate direct selling recruiting takes place in personal, social meetings, often in a customer’s home and often in a group. Interested recruits are ordinarily signed up on the spot. Imposing a waiting period would significantly increase the amount of time direct salespeople, most of whom work part time, would have to devote to recruiting activities, would divorce the transaction from the social interaction to which it relates, and would delay the earning opportunity for the prospective direct salesperson. Moreover, because one of the hallmarks of the direct selling business model is its ease of entry, this change would certainly result in the loss of interest by many recruits. Indeed, a recent survey of the general public indicated that the level of interest in direct selling by a prospective direct seller would drop at least 33 percent if a waiting period were instituted, and among those expressing the greatest likelihood of entering direct selling, the interest level would drop 57 percent. If the FTC continues to pursue a business opportunity rule, DSA urges the FTC not to include any waiting period, but instead to consider more realistic and less burdensome alternatives such as providing “cooling off periods” in which direct salespeople have an opportunity to cancel their relationship and receive a full refund.

The legal action disclosure requirement in the proposed rule is overbroad and unmanageable and will likely produce significant unintended consequences. The proposed rule requires that sellers of business opportunities disclose a list of civil or criminal legal actions for misrepresentation, fraud, securities law violations or unfair or deceptive practices involving the seller, its affiliates, officers, directors, sales managers or potentially, the millions of individuals who sell for them dating back ten years. Much of the legal action required to be disclosed by the proposed rule will be irrelevant to a prospective purchaser, most notably those actions which are unrelated to business opportunity sales. Moreover, while it is not clear, the proposed rule could be interpreted to require a direct selling company to disclose litigation involving any member of its independent contractor sales force. Many DSA members, some of whom have sales forces of hundreds of thousands, would have no feasible way to comply with such a requirement. Also, requiring direct selling companies to disclose legal actions to recruits encourages unscrupulous competitors to file more suits to gain a competitive advantage. The overall effects will again be to unnecessarily discourage recruits from pursuing legitimate direct selling activities and to harm the businesses of current direct

salespeople. The mere listing of legal actions, including ones won by the company, would have a chilling effect on potential recruits, 90 percent of whom are seeking modest goals from their involvement in direct selling. A recent survey indicated that the level of interest in direct selling by a prospective direct seller would drop at least 29 percent if this burdensome disclosure was instituted, and among those expressing the greatest likelihood of entering direct selling, the interest level would drop 43 percent. If the FTC continues to pursue a business opportunity rule, DSA urges the FTC not to include any legal action disclosure requirement.

The cancellation and refund disclosure requirement in the proposed rule would be difficult to comply with and would provide prospects with little useful information.

The proposed Rule requires direct selling companies to record and track all opportunity sales transactions. Because of the sheer number of transactions (a function of, among other things, the ease of entry into and exit from the industry, recording and tracking that information would impose a significant, new burden on direct sellers. At the same time, that information would likely be of relatively little use to recruits because even a high turnover rate likely is a reflection of the nature of the industry, instead of an indication of a problematic seller. If the FTC continues to pursue a business opportunity rule, DSA urges the FTC not to include disclosures about direct selling cancellations and refunds, as they are not indicators of fraud or deceit in our industry. On the contrary, our high turnover rate is a sign of the vitality of our industry and the ease of entry and egress.

The references requirement in the proposed rule disregards the privacy and property rights of recruits and sellers, respectively, and is simply not workable.

The proposed rule would require direct sellers to disclose the names and contact information of current members of their sales forces without those members' authorization, and to disclose such information for future salespersons based on a simple disclaimer in the proposed disclosure document. This requirement provides woefully inadequate protection for direct salespeople's personal information and flies in the face of the FTC's commitment to protecting privacy. In addition, the names and contact information of their salespersons constitute a direct selling company's most valued trade secret and therefore should not be subject to compulsory disclosure. Finally, the option in the proposed rule to disclose the ten closest prior "purchasers," while arguably appropriate for business opportunities as historically understood is simply unworkable for direct sellers, at least for those direct selling companies with sizeable sales forces. Not surprisingly, the references requirement would significantly harm direct selling. A recent survey indicated that the level of interest in direct selling by a prospective direct salesperson would drop at least 38 percent if this reference requirement were instituted, and among those expressing the greatest likelihood of entering direct selling, the interest level would drop 71 percent. If the FTC continues to pursue a business opportunity rule, DSA urges the FTC not to include any references disclosure requirement.

Finally, the earnings claims disclosure requirement is too complicated and not useful *vis a vis* direct sellers. For example, the proposed rule requires disclosure of "[a]ny characteristics of the purchasers who have achieved at least the represented level of earnings, such as their location, that may differ materially from characteristics of the prospective purchasers being offered the business opportunity...." Because it is impossible to know with any degree of certainty what demographic/geographic and other

factors might affect the earnings of direct sellers, and what impact they might have, direct sellers will have no practical way to comply with this provision. The Commission should allow greater flexibility in the form and substance of any earnings disclosures. If the FTC continues to pursue a business opportunity rule, it should consider allowing multiple forms of earnings disclosures and substantiation, including the prominent use of disclaimers in connection with earnings claims. DSA also urges the FTC to adopt a narrower more and specific definition of “earnings claims” than the one that has been proposed.

Conclusion

DSA supports and shares the FTC’s goal of ridding the marketplace of fraudulent business opportunities. The proposed rule, however, would cast far too wide a net and in doing so would harm and possibly destroy many legitimate, lawful direct sellers. The proposed rule would also likely unnecessarily discourage many prospects from pursuing beneficial direct selling activities. Therefore, if the FTC continues to pursue a separate business opportunity rule, DSA urges the FTC to exclude from its requirements those legitimate, lawful companies that use the direct selling business model. DSA also urges the FTC to remove and/or limit many of the onerous or misguided requirements in the proposed rule, including those relating to a waiting period, legal action disclosures, cancellation and refund disclosures, references, and earnings claims. Direct selling companies are not sellers of business opportunities and should be exempted from any business opportunity fraud rule. DSA looks forward to continued participation in the rulemaking process.

I. Introduction and General Background

The Direct Selling Association (DSA) is pleased to have this opportunity to provide comments on the Notice of Proposed Rulemaking for the Business Opportunity Rule to the Federal Trade Commission published in the Federal Register on April 12, 2006. DSA believes it critical to eliminate business opportunity fraud, as well as any confusion that might exist between legitimate direct selling activities and such frauds. In that spirit, the goal of our comments is to:

- Explain why legitimate direct sellers should not be covered by any new business opportunity rule,
- Describe the practical difficulties for direct sellers if subjected to the rule as drafted,
- Offer ways in which the rule might be more narrowly drafted to cover only those business opportunities that are truly likely to defraud potential purchasers, and
- Discuss the limitations of the proposal in reducing or eliminating true business opportunity fraud.

Founded in 1910, DSA is the non-profit national trade association of the leading companies that manufacture and distribute goods and services sold directly to consumers by personal presentation and demonstration, primarily in the home. More than 200 companies are members of the association, including many with well-known brand names. DSA's mission is "To protect, serve and promote the effectiveness of member companies and the independent business people they represent. To ensure that the marketing by member companies of products and/or the direct sales opportunity is conducted with the highest level of business ethics and service to consumers." DSA addresses federal and state legislative and regulatory issues, conducts an independently administered code of ethics program that protects both customers and salespeople, serves as a clearinghouse for information, develops executive educational seminars, conferences and workshops, conducts industry research, develops advocacy programs, and provides industry leadership in addressing issues of public concern. Over 13.6 million individuals sold for direct selling companies as independent contractors¹ with estimated retail sales

¹ Direct sellers are treated as independent contractors for federal income tax purposes under 26 U.S.C. Sec. 3508. The term "direct seller" means any person if - (A) such person - (i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, (ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment, or (iii) is engaged in the trade or business of the delivering or distribution of newspapers or shopping news (including any services directly related to such trade or business), (B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and (C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the

of \$29 billion in 2004.²

A. Direct Selling is Well-Known and Respected in the American Marketplace

DSA defines direct selling as:

The sale of a consumer product or service, in a face-to-face manner, away from a fixed retail location.

Direct selling is conducted in more than 150 countries, through some 58 million salespeople, with retail sales in excess of \$100 billion.³ The average age of our DSA member companies is more than 22 years. Many of our firms, both in the United States and abroad, are over 25, 50, 75 and even 100 years old. DSA itself will celebrate its 100th birthday year in 2010.

In addition, the industry enjoys solid growth, due both to new companies choosing the direct selling model, and established retailers finding direct selling to be an effective way to reach new consumers. Within the past several years, direct selling as a channel of consumer product distribution has been “discovered” by investment firms, venture capitalists, manufacturers, retailers and direct marketers, both foreign and domestic. The press has also shown increasing interest in our business from the business pages to the lifestyle section.⁴ During the last five years, we have seen dozens of the biggest firms in consumer product marketing enter our industry, expand their positions, or join DSA as subscriber members to seriously investigate entry into our ranks.

Every country that hosts a direct sales firm has indigenous direct sales firms as well, often in start-up modes or fairly young. These will be particularly and dramatically overburdened by many of the provisions of the Rule. The burdens applied to us here, must be calculated and weighed against the *de minimis* value to investors in business opportunities in the United States.

Nearly every culture shares a heritage of direct selling. In the United States, the earliest direct sellers were Yankee Peddlers who carried their wares across the prairie. They traveled by land primarily until rivers and lakes became connected by canals. Then, direct selling in early America branched out to the frontiers of the West and the Canadian territory in the north.

The selling tradition continued to thrive through the end of the 19th century and into the 1900s. The advent of the home party in the 1950s added a new dimension to direct selling as customers gathered at the homes of hostesses to see product demonstrations

services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

Similarly, direct sellers are considered independent contractors under other federal and state law.

² DSA 2005 Growth and Outlook Survey.

³ *Worldwide Direct Sales Data*, WFDSA, May 17, 2006.

⁴ See, Appendix J.

and socialize with friends. Direct selling offered opportunities for many who had previously run into barriers because of age, education, or gender. The growth of the industry allowed many to become successful where no opportunity had existed before.

i. Economic and Social Impact of Direct Selling

The direct selling industry's economic contributions can be measured in terms of income, sales and workforce impact, including independent contractor activity and employment. Based on a Social and Economic Impact Study conducted by Ernst & Young,⁵ it is estimated that the direct, indirect, and induced economic effects of the industry's activities in the United States totaled more than \$72 billion in 2004,⁶ highlighted by the following data:

a. Income

The industry's direct income impact of \$13.0 billion generated an estimated additional \$14.8 billion of indirect and induced United States personal income through indirect and induced effects. This means that, when combined with the direct income of \$13.0 billion, the total income impact is \$27.8 billion.⁷

b. Sales

While direct selling companies generated an estimated \$29.7 billion of sales, the additional impact of production activities, capital investment, and purchases by direct sellers generates an additional \$2.7 billion of output, resulting in total direct sales of \$32.4 billion. When combined with the \$39.7 billion of indirect and induced effects from supplier purchases and employee consumption, the industry's total sales impact in the United States is \$72.1 billion.⁸

c. Workforce Impact (Including Independent Contractor Activity and Jobs)

As noted previously, more than 13.6 million people participated in the direct selling industry as independent contractors selling products and services. The purchases of direct selling companies and the spending of their employees and independent contractor direct sellers generated an additional 334,700 jobs. Thus, the total workforce impact of the direct selling industry is 13.9 million people.⁹

⁵ Estimated Social and Economic and Social Contributions of the U.S. Direct Selling Industry, Ernst & Young, Feb. 15, 2006.

⁶ *Id.* at iii.

⁷ *Id.* at 5.

⁸ *Id.* at 4.

⁹ *Id.* at 3.

d. Indirect and Induced Contributions

The direct selling industry makes additional contributions to employment and income through economic linkages with other industries. As the direct selling industry grows, the firms that supply the industry also grow. These linkages result in the “indirect” economic contribution, which occurs as the direct selling industry buys products and services from other United States companies (e.g. suppliers of merchandise, office supplies, shipping services, etc.). The direct selling industry’s purchases contribute to a higher level of economic activity among supplier firms. As these firms expand their sales, they require additional employees and operating inputs.

Second, the income earned by the direct sellers and employees of direct selling companies and their suppliers generates consumer spending. Additional household consumption (increased demand) generates economic activity when merchants, service providers, and other firms that supply household consumption increase their sales. The increased level of sales creates additional demand for inputs from suppliers and labor from households.¹⁰ Direct selling as an alternative channel of distribution also increases competition in the marketplace, thereby helping to reduce costs of products and services to consumers.

e. Fiscal Contributions

The direct selling industry’s contributions to jobs, income, investment and research and development also result in increased tax collections. The direct selling companies, their employees and direct sellers are estimated to pay nearly \$2.2 billion in tax payments. Indirect economic impacts from supplier purchases and consumer purchases generate more than \$4.4 billion in taxes. The combined total contribution of additional tax payments resulting from indirect and induced employment, investment, and research and development activity is estimated to be \$6.6 billion in 2004.¹¹

f. Social Contributions

The direct selling industry makes a substantial economic contribution to the United States economy. While economic contributions are more easily measured, the industry also contributes considerably to the quality of life enjoyed by many Americans. Supplementary income, work schedule flexibility, and the entrepreneurial aspects of the profession are some of the major benefits cited by direct sellers.¹² These social contributions are no less important than the economic contributions discussed above.

In addition, direct selling companies gave an estimated \$90 million to charitable causes in 2003. When asked if they contribute any money, goods or services to social programs, 89

¹⁰ *Id.* at 10-11.

¹¹ *Id.* at 12.

¹² *Id.* at 14.

percent of the direct seller respondents said they contributed to human services programs and charities.¹³

ii. The Well-Known Direct Selling Business Model

Direct selling is a well-known and frequently cited business model. The Direct Selling Association typically refers to two different types of sales strategies when describing the direct selling business model: person-to-person and party plan. Additionally, there are several ways of compensating direct sellers.

a. Person-to-Person Sales

Person-to-person sales typically involve one seller and one or two customers in a sales demonstration. The seller of the product has typically made an appointment with the customers in advance, most often through a referral or other similar method of prior contact. Sales often take place in the home, but can take place in other location such as an office, over the internet, or any other mutually-agreeable location. Products often sold through a person-to-person strategy include vacuum cleaners, wellness and nutritional products, as well as services such as financial services and utilities.

Door-to-door selling is also a sales strategy used by a few companies, although what many typically envision when thinking of door-to-door selling has become rare in today's society. Traditional door-to-door selling involves a salesperson "cold-calling" on residents in a particular neighborhood. Companies that use this sales strategy have begun to rely more and more on referrals and appointments to meet with customers. "Cold-calling" is defined as knocking on a door to sell a product without a prior appointment.

b. Party Plan Selling

In a party plan scenario, the independent consultant will typically go to the home of a hostess who has invited her friends and family to see the sales demonstration. The event is usually social in nature, and food and beverage are often provided. After the demonstration, guests can place orders with the consultant. In the party plan scenario, the consultant typically receives a commission from the sales made at the party, while the hostess often receives free or discounted products based on party sales. Products sold through a party plan model can include just about any consumer product from cosmetics and spa products to scrapbooking supplies, housewares and pet products. Often, charitable and civic organizations use a party plan firm to conduct the demonstration and sales as a fundraiser for the organization.

¹³ *Id.* at 23.

c. Multilevel and Single Level Compensation

Multilevel marketing, also known as network marketing, is a compensation structure, not a sales strategy. In a multilevel compensation plan, independent consultants are compensated based not only on one's own product sales, but on the product sales of one's downline (those individuals the direct salesperson has recruited, or recruits of recruits.) In contrast, in a single level compensation plan, independent consultants are compensated based solely on one's own product sales. Companies using a multilevel compensation structure may use either a person-to-person or party plan sales strategy. Eighty-four percent of direct selling firms use some form of multilevel compensation, and virtually all new companies entering direct selling are using some form of multilevel compensation.

One thing all firms regardless of structure or compensation plan have in common is the continuing need to recruit new salespeople to their organizations. Recruiting is the lifeblood of the industry, with the vast majority of salespeople working only a few hours per week, with modest financial goals in mind.

B. Individual Direct Sellers and Their Characteristics

i. Seven Types of Salespeople

There are fundamentally seven types of salespeople in direct selling. The types are based on individual motivations for becoming a direct salesperson and staying affiliated with a direct selling corporation. Individuals can belong to more than one type at the same time and can easily move from one type to another. Hence, we do not have data that would allocate the percentages of salespeople into individual categories. These types are:

- Wholesale or Discount Buyers: These individuals technically are salespeople in that they sign up as salespeople but do so primarily to buy the company's products at the wholesale or discount price accorded members of the salesforce. Generally, they do not sell or recruit.
- Short Term/Specific Objectives: These are individuals who join a company to earn extra money for a specific objective. Examples of these people are women who join a company in the fall to earn extra income to spend on their own families' Christmas presents. Another example is when an individual joins one of our firms to earn enough money to replace a worn-out appliance, such as a refrigerator, or to buy a television set. Their normal family income is inadequate for them to be able to afford the purchase, so they take advantage of the income-earning opportunity and ease of entry and egress from the salesforce that our firms offer.¹⁴ Some sellers in this

¹⁴ See, e.g., the comments of Pam Heller, an Avon salesperson for 14 years:

"My husband was serving in the military when I joined Avon. When he was transferred, I needed to change jobs so I wanted something that could be flexible and move with me from base to base and direct selling was the perfect answer for my needs and lifestyle. I wanted to support my husband's career in the military and do something that was satisfying for myself as well. The freedom, the flexibility of direct selling, as well as the ability to move when my husband was

category will leave the business after achieving their goals, but may return again as necessary. Some also enjoy direct selling so much that they decide to continue with their direct selling activities.

- **Quality of Life Improvement:** These are people whose family income is inadequate to give them the quality of life they want. Both husband and wife may work outside the home or, in cases where one spouse stays home to care for the children, the couple may find a single income to be inadequate. One spouse, usually the wife, will devote a few hours per week to direct selling activities, to earn enough money to improve their quality of life.¹⁵
- **Careerists:** These are the people who work full-time at their direct sales business. They are micro-entrepreneurs with their own small businesses.
- **Social Contacts:** Some individuals join direct sales firms for the social contact direct selling provides both with their customers and with their colleagues.¹⁶
- **Recognition:** Many individuals become direct salespeople for the respect and recognition they earn for their efforts.
- **Product Advocates:** Some people choose direct selling because they love a particular product or service and want to tell others about its attributes.

transferred, has kept me involved for almost 14 years. Not having to start over every time we have moved was fantastic; the portability was key.”

View this video clip online at

<http://interface.audiovideoweb.com/lnk/ny60win16091/clip3.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

¹⁵ See, e.g., the comments of Leigh Funderbank, Country Bunny Bath & Body, with 3 years in the direct selling industry :

“I was in advertising at a newspaper until our first child was born. We chose to have me home vs. straining to work to help pay the bills and struggle with handing our baby to someone else every day. Direct sales changed my life completely. Until I learned about working this way, I thought that I had to stay at home and make sacrifices and then to find that I could run a business from home and that those sacrifices were just not necessary.”

View this video clip online at

<http://interface.audiovideoweb.com/lnk/ny60win16091/clip5.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

¹⁶ See e.g., the comments of Gigi Balido a direct salesperson with Saladmaster, with 18 years in the direct selling industry. “I like to meet new people and talk to them, really get to know them. My experience with Saladmaster allows me to earn money while doing things I love, like talking to people and educating them. Education is very important to me and I like to pass that on to others.”

-- View this video clip online at <http://interface.audiovideoweb.com/lnk/ny60win16091/clip8.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

ii. The Demographic, Income and Earnings Profile of a Direct Seller

a. Demographics

The ability of direct selling to meet the needs and expectations of so many people make it difficult to describe an “average” direct seller. Looking at the raw numbers as reported in the 2002 National Salesforce Survey conducted by Research International, one finds that the average direct salesperson is a female, about 45 years of age, married with children, working less than 10 hours per week on her direct selling business, with modest income goals. However, this does not begin to represent the diverse population of direct sellers that include people of all ages, nationalities, economic background, and education level.¹⁷

About 53 percent of direct sellers work 10 or fewer hours per week; about 86 percent work less than 30 hours per week. Approximately 14 percent sell for more than 30 hours per week, while less than 5 percent work 40 or more hours per week.¹⁸

About 80 percent of direct sellers are female; about 64 percent of full-time sellers are female. Fifty-four percent of sellers are between the ages of 35 and 54. About 22 percent of all direct sellers – and about 34 percent of full-time sellers – are over age 55, many of whom enjoy the opportunity to stay active.¹⁹

Half (49 percent) of all direct sellers have an overall household income of more than \$50,000. Some of these individuals have a full-time job in addition to their direct selling pursuits, while others use their direct selling income to supplement the income of their spouse.²⁰

b. Direct Selling Income

A direct seller’s median annual gross income from direct selling is about \$2,400 per year. This number rises to \$25,390 when considering direct sellers who work 30 or more hours per week. Fifty-nine percent of direct salespeople make less than \$10,000 per year from direct selling.²¹

¹⁷ *DSA 2002 National Salesforce Survey* at 90.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 70.

II. Any New Business Opportunity Rule Must be Directed at Fraudulent Opportunities and Should Not Cover Legitimate Direct Sellers

A. Direct Sellers' Interest in Eliminating Business Opportunity Fraud

The FTC has described significant fraud in two market segments – work-at-home schemes and pyramid schemes – that have successfully misrepresented and deceived the public as to their true fraudulent nature. At times, these schemes achieve this confusion by comparing themselves to legitimate direct selling companies.

Because of our strong interest in protecting the public from these frauds, DSA supports many of the *concepts* behind provisions of the proposed Rule. Some of these provisions are reflected in DSA's own Code of Ethics.²² Nonetheless, we are troubled that the specific requirements of the proposal could exacerbate confusion between fraudulent opportunities and legitimate direct selling by including legitimate direct selling activity within the proposed Rule's coverage.²³ If the rule is finalized as proposed, direct sellers would be subjected to a rigorous new regulatory regime that poses significant risk to and

²² See Appendix D, Pertinent portions of the Code and similar concepts of the proposed rule include:

Identifying Information (Section 437.3) – DSA agrees that identifying information should be provided to the prospective purchaser. Section A (5) of the DSA Code of Ethics states that “[s]ellers shall truthfully identify themselves, their company, their products and the purposes of their solicitation.” As an additional protection we require that all written orders or receipts shall contain “the name and address of the salesperson or the member firm represented” (DSA Code of Ethics, Section A (3) (b)).

Misrepresentation of Sales or Profits (Section 437.5 (d)) – DSA concurs that no sellers should misrepresent the amount of sales or profits that a prospective purchaser may earn. In fact, DSA prohibits members from misrepresenting “the actual or potential sales or earnings of its independent salespeople.” (DSA Code of Ethics, Section A (8)).

Misrepresentation of Terms/Conditions of Refunds/Cancellation Policies (Section 437.5(k)) – DSA concurs that all refunds and cancellation policies should be clearly disclosed to purchasers of the opportunity. In fact, DSA requires that all member companies incorporate and clearly describe in their materials, the DSA-mandated one-year, 90 percent return requirement for all resalable inventory, promotional materials, sales aid and kits.

Requirements Not Expressly Reflected in the DSA Code – In addition to the proposals reflected in its Code of Ethics, DSA concurs with the idea that sellers should not misrepresent “how or when commissions, bonuses, incentives, premiums, or other payments from the seller to the purchaser will be calculated or distributed” (Section 437.5(g)). In fact, direct selling company materials provide detailed, unambiguous explanations of their commission structure, bonuses and other incentive programs. We fully support the proposition that this information should not be misrepresented or distorted in any way. Additionally, we believe that material aspects of assistance offered to a prospective purchaser should not be misrepresented in any form (Section 437.5(i)). When presenting the opportunity, direct sellers should clearly explain their role in the process and provide truthful information regarding any and all assistance offered.

²³ The Commission itself seems ensnared in this tangle. Pyramid schemes are clearly illegal under Section 5 of the FTC Act, the Securities Act of 1933 (as amended) and the Securities Exchange Act of 1934, postal regulations and one way or another by all 50 states, and are vigorously attacked by law enforcement authorities. Such schemes are not immune from prosecution by virtue of the minimum investment threshold of the current Franchise Rule, which the Commission now seeks to abolish in the context of the proposed Rule.

places undue burden on legitimate direct selling businesses. Direct selling companies provide ethics and sales training for both salesforce regarding effective, ethical selling and recruiting practices via audio and video tapes, in-person seminars, workbooks, conference calls, Internet-based training, and other resources. Ironically, the training practices of direct selling companies might very well constitute “business assistance” as broadly defined in the proposal and would trigger the requirements of the proposed Rule, thus penalizing the companies which have demonstrated their commitment to avoid the very problems the proposal seeks to address.

Of course, when true business opportunity frauds described by the Commission compare themselves to direct sellers, the members of the Direct Selling Association, their customers, salesforces, employees, and ultimately the public, are harmed. DSA supports the Commission and other authorities in their continuing efforts to combat fraud. While we believe that there are many tools available for the prosecution of these frauds,²⁴ we have not hesitated to work with policy makers to strengthen the legal arsenal that might be used against them. Thus, DSA has argued forcefully for many years that while the Franchise/Business Opportunity rule should be strengthened, it should also distinguish legitimate direct selling companies from business opportunity frauds.

In comments to the Commission in both 1995 and 1997,²⁵ DSA expressed its support for a refined, limited definition of “business opportunity” separate from that of a franchise. DSA also urged that any new definition not include legitimate direct sellers (including those that used a multilevel form of compensation) and should follow the example of state laws in this regard (none of which define direct selling activities as business opportunities.)²⁶ We continue to believe that any franchise or business opportunity regulation(s) should recognize the fundamental differences between legitimate direct selling activities and business opportunity fraud. Such regulations(s) should be careful not to impose unnecessary and overly burdensome requirements on legitimate activity. The NPR notes the importance of this balance in its description of the history of the current Franchise Rule:

[The Commission] therefore sought to strike the proper balance between prospective purchasers’ need for pre-sale disclosure and the burden imposed on those selling business arrangements....

²⁴ State laws include; Georgia (Ga. Code Ann Sec.16-12-38); Kentucky (Ky. Rev. Stat. Ann Sec.367.830); Louisiana (La. Rev. Stat. Ann. Sec. 51:361 to 363); Maryland (Md. Ann. Code Sec. 27-233D); Montana (Mont. Code Ann. Sec. 30-10-324 to 325); North Carolina (N.C. Gen. Stat. Sec. 14-291.2); Oklahoma (Okla. Stat. Ann. Sec. 1072); Texas (Tex. Bus. & Comm. Code Ann. §17.461); Utah (Utah Code Ann Sec. 76-6a-1 to 76-6a-1); Virginia (Va. Code Ann. Sec. 18.2-239); Washington (Chapter 65 – Laws of 2006). Similarly on a federal level, Sec. 5 of the FTC Act exists.

²⁵ See, Appendix C.

²⁶ See, Appendix I.

[W]hen the required investment to purchase a business opportunity is comparatively small, prospective purchasers face a relatively small financial risk. **In such circumstances, compliance costs may outweigh the benefits of pre-sale disclosure**²⁷ (emphasis added).

The Commission acknowledges in its NPR that the “scope of coverage of the proposed Rule is **much broader** than that of the Franchise Rule,”²⁸ (emphasis added) and justifies this extraordinary, proposed expansion with its assertion that the new “compliance burden is much lighter.” We challenge this assertion. In fact the requirements of the proposed Rule represent an entirely new and extraordinary burden for direct selling.

Thus, we urge the Commission to strike the proper balance between the Rule’s utility and its burdens and costs; legitimate direct sellers should not be covered by any new business opportunity rule.

Section III of this submission sets out a number of alternatives, that if adopted by the Commission, will more accurately define the business opportunity frauds the Commission seeks to address or otherwise clarify that legitimate direct selling companies will not be covered by any final Rule.

B. Legitimate Direct Sellers are Not the Source of Business Opportunity Fraud

The FTC has described “work-at-home schemes” as being rife with fraud and misrepresentation. The Commission describes such schemes in some detail:

Sellers of fraudulent work-at-home opportunities deceive their victims with promises of an ongoing relationship in which the seller will buy the output that opportunity purchasers produce. These sellers often misrepresent that there is a market for a purchaser’s goods and services, just as sellers of fraudulent vending machine and rack display opportunities falsely claim that profitable vending locations are available. Work-at-home opportunity sellers often claim to provide ongoing training and other assistance...²⁹

The Commission cites envelope-stuffing and medical billing work-at-home schemes as examples.³⁰

Clearly, direct sellers are not engaged in these types of activities. Direct selling companies do not promise an ongoing relationship in which the company will purchase what an individual direct salesperson produces. Indeed, individual direct sellers do not “produce” such goods. Direct selling companies thus cannot and do not represent that

²⁷ NPR at 4.

²⁸ NPR at 6.

²⁹ NPR at 18.

³⁰ *Id.*

there is a market for goods that the individuals produce. Direct selling companies might in fact make available certain training and assistance, but not with regard to materials that an individual produces.

Additionally, DSA shares the FTC's interest in eliminating pyramid schemes from the marketplace, but believes that accurate distinctions need to be drawn between complaints and losses generated by pyramids and those related to legitimate companies. Pyramid schemes often masquerade as legitimate direct selling companies. DSA has been active in support of clear standards under which pyramids can be prosecuted. Indeed, the FTC has set out the fundamental rules for identifying pyramid schemes³¹ and has successfully taken actions against such schemes for many years. A pyramid - in which participants pay money in return for the right to receive compensation that is based on the recruitment of others into the scheme - is typified by headhunting fees, large upfront payments and inventory loading. In contrast, a *bona fide* marketing plan gives compensation based not on the mere recruitment of others into the plan, but instead pays compensation based on sales to real consumers and users of the product. Additionally, a legitimate company using multilevel compensation (in which one is rewarded not only for his own sales, but also the sales of recruits) typically offers other significant distinguishing features from a pyramid scheme. Chief among these features is that no large non-returnable investment in inventory is required to start or stay in the business, there is no large unreasonable start-up fee, and the company will repurchase inventory from a departing salesperson (a so-called "buyback").

The proposed Rule fails in its stated intent to address the evils of pyramid schemes, in that it recognizes none of the hallmarks of a pyramid nor the distinguishing features of legitimate companies. The result is a remarkably broad and cumbersome definition of a "business opportunity" which would not make pyramid schemes any more illegal than they already are, but would instead place extraordinary new burdens on legitimate companies and their salespeople.

DSA conducted a comprehensive review of complaints against all 193 active DSA member companies, as reported by local Better Business Bureaus.³² The data showed that on average there was only one complaint for every \$55 million in retail sales or one complaint for every 23,765 individual direct sellers per year. Of those complaints, 97 percent were resolved. The data further indicated that there were on average only 17 unresolved complaints per year. That calculates to one unresolved complaint for every \$1.76 billion in retail sales or one unresolved complaint for every 764,705 individual direct sellers. By any measure, this is an extraordinarily low level of consumer

³¹ See, *In re. Amway Corp.*, 93 F.T.C. 618 (1979) and *In re. Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975), *aff'd sub. nom. Turner v. FTC*, 580 F.2d 701 (D.C. Cir. 1978).

³² DSA staff reviewed the reliability reports for all DSA active member companies <http://search.bbb.org/> (May 31, 2006).

complaints and demonstrates the level of DSA member commitment to consumer protection and satisfaction.

Similarly, a review of 2005 *Council of Better Business Bureaus* data reveals that over 755,000 general consumer complaints were received. Multi-level companies accounted for 215 of those complaints, and were ranked 456th in complaints. Only 49 percent of those complaints were not resolved, a 74 percent settlement rate. By contrast, work-at-home schemes were ranked 37th in the number of complaints and business opportunities were ranked 82nd in complaints, with settlement rates of only 50 percent and 59 percent, respectively.³³

C. Legitimate Direct Sellers Will be Unnecessarily and Greatly Damaged by Imposition of the Proposed Requirements

DSA believes that in its effort to protect the public from business opportunity frauds costing less than \$500, the FTC has proposed a rule which will impose enormous, potentially devastating costs on legitimate direct sellers. Further, we believe that these costs far outweigh any potential benefit that might accrue from this way of addressing business opportunity fraud. While the public policy goal of protecting prospective purchasers from business opportunity frauds is a laudable one, we fear that the proposed Rule would enact new regulation at the cost of overly burdening legitimate businesses, while not significantly affecting fraudulent activity. We question the Commission's assertion that the "expansion of Rule coverage...would be balanced by drastically reduced compliance costs"³⁴ in that direct selling activities will now be subject to a rigorous new set of requirements. Where before there were no compliance costs for direct sellers as a result of the Franchise Rule, there will in fact now be dramatic *new* costs, both in direct expenses and effects on our business.

The proposal would eliminate the existing required payment threshold and would broaden the definition of a "business opportunity" by specifying that either the making of an earnings claim or the promising of "business assistance" will trigger coverage. The definitions of "business assistance" and "earnings claim" are so broad as to result in potentially all direct selling companies being pulled within the proposed Rule coverage. The imposition of a new regulatory regime would be challenging for any business; the effect of this proposal on direct selling would be devastating.

The process of becoming a direct salesperson is now relatively simple for the company, the recruiting salesperson, and the prospective salesperson. This ease of entry into (and exit from) direct selling explains the continued appeal of direct selling in the United States, and the large number of people who come in and out of our business as they meet their typically limited financial goals (*see* the discussion of the seven types of direct salespeople *supra*).

³³ <http://www.bbb.org/about/stat2005/us05reposit.pdf> (lasted vis ited on Jul. 16, 2006)(3.3 percent of multilevel complaints were not pursuable).

³⁴ NPR at 76.

The proposed Rule and its accompanying comments grossly underestimate the number of companies and independent contractors that will be affected by the proposal, as well as the practical impact that the proposed requirements would have on our channel of distribution. While DSA's roster of active and pending members currently stands at approximately 275 companies,³⁵ we have identified at least 1,500 direct selling companies that will be affected by the new proposed Rule. Most of these are small companies, most likely to be vulnerable to the burdens created by the proposed Rule. Additionally, the more than 13.6 million people who sell as direct sellers will be affected by the provisions of the proposal.

Ironically, while compliance with the new mandates might be relatively simple for work at home schemes and will be ignored by fraudulent pyramid schemes, compliance would prove much more challenging and extremely burdensome for legitimate direct sellers.

The proposed Rule presents two potential costs to legitimate direct sellers – the direct and indirect expenses associated with compliance and the impact of decreased business activities.

i. The Costs of Compliance

To better assess the potential direct costs that might be incurred by direct selling companies in their efforts to comply with the proposed Rule, DSA polled member companies requesting that each company describe what, if any, additional resources might be required in order to comply with the proposed requirements, including personnel and any new necessary infrastructure.³⁶

Respondents were categorized as small and large firms, with the expectation that costs for companies with varying salesforce sizes would vary. Median total costs were \$130,000 per year for small firms, to more than \$567,000 annually for large firms (see table below).

Additionally, respondents also estimated that a median 15 pages of disclosure documents could be required under the proposal. DSA estimates that approximately 5 million people are successfully recruited into direct selling each year; poll respondents indicated that an estimated 10 presentations are made for each person who actually enters direct selling. Thus, we calculate that **750 million pages** of disclosure documents would have to be produced and distributed as a result of the proposed Rule. During the three year retention period required by the proposal, some **2.25 billion pieces of paper** would be generated and warehoused.

³⁵ DSA estimates that its members represent approximately 95 percent of direct selling sales volume in the United States.

³⁶ DSA Executive Poll (Conducted Jul. 9-14, 2006).

**Median Reported Compliance Costs
by Proposed Rule Requirement**

Proposed Rule Requirement	Small Firms	Large Firms
Disclosure Document:		
Legal Actions Disclosure	\$7,750	\$25,000
Cancellation/Refund Policy	\$1,550	\$3,050
Earnings Claims	\$11,000	\$5,500
References Requirement	\$37,000	\$195,000
Entire Disclosure Document a/	\$51,000	\$328,401
Record Keeping	\$32,015	\$122,800
Sales Force Education	\$25,000	\$75,000
Total a/	\$130,000	\$567,500

a/ Medians of reported totals may not sum to medians of reported component costs.

Note: Small firms defined as those with 10,000 or less new direct sellers in 2005. Large firms defined as those with more than 10,000 new direct sellers in 2005. Twenty-six firms responded to the compliance cost survey, 14 small firms and 12 large firms.

ii. The Effect of the Proposed Rule on Recruiting and Sales in Direct Selling

a. The General Public’s Receptiveness to Direct Selling if Subject to the Requirements of the Proposed Rule – Survey Results

The most significant and devastating cost of the proposed Rule would be its negative impact on recruitment and attendant sales by those recruited. Two thousand fifty-six (2,056) people were surveyed in a Harris Interactive³⁷ Survey of Adults in the United States (“Harris Survey”) to measure their level of interest in the direct selling opportunity with and without the three requirements (i.e., waiting period requirement, references requirement, legal disclosures requirement) in the proposed Rule. The survey was fielded during July 5-7, 2006, and the results were weighted to represent the U.S. adult population. Analysis of the responses was conducted by Nathan Associates.³⁸ Not unexpectedly, the percentage of U.S. adults who were “extremely interested,” “very

³⁷ Harris Interactive is one of the largest market research and consulting firms in the world and the global leader in conducting online research.

³⁸ Nathan Associates is an economic consulting firm established in 1946 that has extensive experience and expertise in economic policy, economic impact analysis, regulatory issues, damages analysis, and international trade issues.

interested,” or “interested” in the direct selling opportunity declines more than 40 percent if all three requirements were to be imposed. When the analysis is narrowed to U.S. adults who were “extremely interested” or “very interested” in the direct selling opportunity (the adults most likely to become direct sellers), the decline in interest with the three proposed requirements is even more pronounced (almost 66 percent).³⁹

b. The Reaction of Direct Sellers to the Requirements – Survey Results

In addition to the Harris Survey of U.S. adults, a survey was conducted of U.S. direct sellers about the FTC’s Proposed Business Opportunity Rule. The survey was conducted online, and direct selling companies were invited at the end of June 2006 to distribute to some of their direct sellers a link to the Web page with the survey. By July 10, 2006, 6,951 direct sellers had submitted complete surveys; again, results were analyzed by Nathan Associates.⁴⁰

To measure the potential impact of the three proposed requirements, the survey asked if the direct salesperson would consider signing up with a direct selling company if the three requirements were in effect. Sixty percent said they would not consider signing up with the waiting period requirement; 76 percent would not with the references requirement, and 80 percent would not sign up were there a legal disclosures requirement. If all three requirements were in effect, only 15 percent would have considered signing up. This 85 percent reduction in possible recruits would be devastating in impact on direct selling. Even more disturbingly, those respondents with the greatest recruitment success or the longest tenure were the most likely to say they would be discouraged by the proposed requirements. This suggests that that people with the will and ability to become sales leaders would not sign up with direct selling companies if these three requirements were in effect.⁴¹

c. Reduction in Sales and Economic Impact

To illustrate the impact of the potential reduction in recruitment and sales activity, consider that an 80 percent reduction in recruitment and attendant sales would cut direct retail sales volume by \$24 billion with a decrease in the economic impact of direct selling on the US economy of \$57.6 billion. A 30% reduction in recruitment and attendant sales would cut direct retail sales volume by \$9 billion with a decrease in the economic impact of direct selling on the US economy of \$21.6 billion. Even a 10 percent reduction in sales would mean some \$3 billion in lost direct retail sales volume and a decrease in the impact on the economy of \$7.2 billion.⁴²

³⁹ *Potential Impacts of the FTC’s Proposed Business Opportunity Rule on the Direct Selling Industry*, Nathan Associates Inc., Jul. 14, 2006.

⁴⁰ *Id.* at 4.

⁴¹ *Id.*

⁴² *See*, economic impact discussion, *supra*.

Ironically, by making recruitment of new salespeople that much more difficult for the direct seller, the proposed Rule will have the perverse effect of forcing individuals (and companies) to focus even more energy on recruitment activities, rather than all-important sales of products or services.

d. The Waiting Period is Unnecessary, Impractical and Unworkable for Direct Sellers, and Will Have Disastrous Consequences on Recruiting and Sales

While DSA supports providing ample information to individuals interested in direct selling, we believe that the requirement of Section 437.2 (that certain disclosures be given at least seven calendar days **before** any prospective purchaser signs a contract or makes payment to the seller) is impractical and will fundamentally and adversely alter the way in which direct selling operates. The Commission envisions that, like the franchise disclosure review period, this seven day waiting period will afford prospective business opportunity purchasers the opportunity to review the basic disclosure document, any earnings disclosures, and otherwise perform due diligence about the opportunity.

Ease of ingress and egress from our industry is a hallmark of our successful business model. Any barrier to entry would be extremely damaging. The barriers posed by the proposed Rule would be disastrous.⁴³ The Harris Survey indicated that the level of interest in direct selling by a prospective direct salesperson would drop at least 33 percent if a waiting period were instituted. Among those expressing the greatest likelihood of entering direct selling, the interest level drops more than 57 percent.⁴⁴

Unlike the franchising opportunity, in which large amounts of money are at stake, direct selling requires little or no up front payment. Individual direct sellers are able to return inventory and sales aids, training aids and the like; additionally, start-up costs are also refundable for a period of time upon cancellation by the salesperson.⁴⁵

⁴³ See, e.g., the comments of Pam Heller:

“I understand wanting to protect consumers, but having a waiting period before someone decides to spend \$10 to join Avon could seriously harm my business. My business thrives and grows by bringing in new salespeople. With the low cost of entry, Avon’s full money-back unconditional guarantee, and the fact that we don’t ask people to pay us for products until they have been paid by their customers -- new Avon recruits are fully protected and can get a fast start on their Avon business.”

--Pam Heller, Avon, 14 years in the direct selling industry.

View this video clip online at

<http://interface.audiovideoweb.com/lnk/ny60win16091/clip6.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

⁴⁴ *Potential Impacts of the FTC’s Proposed Business Opportunity Rule on the Direct Selling Industry* at 3.

⁴⁵ As a condition of association membership, DSA members are required to provide their sales force with the opportunity to sell back any inventory purchased from the direct selling company. Salespeople may also return any currently marketable company-produced promotional materials, sales aids or kits which are required to be purchased or whose purchase provides a financial benefit to the recruiter. Protected by this minimum 9 percent “buyback” mandated under the DSA Code of Ethics, a direct salesperson’s risk of financial loss is quite limited, particularly in light of the minimal up front costs otherwise involved with beginning in direct selling.

In a franchising operation, a prospective franchisee is considering starting a full-time business and investing significant funds; thus the prospective franchisee is motivated to review the disclosure statements and follow-up. In direct selling, the interaction between prospect and the current direct salesperson is frequently a social one. The prospective direct salesperson will be part-time, makes only a very small (and often refundable) investment, and is not intent on researching a business. She would thus be far less likely than the prospective franchisee to need or want to review the disclosures and then follow-up.

Unfortunately, any waiting period is likely to inconvenience enthusiastic individuals anxious to participate in direct selling opportunities that present little or no risk, or otherwise create an “air of suspicion,” as one concerned direct salesperson has put it,⁴⁶ around the activity that could be highly discouraging to existing and prospective direct sellers.

Many people become involved in direct selling not because they are looking for a business or franchise opportunity, but because they have experienced the enjoyment of a direct selling home party, have seen the effectiveness of personal explanation and demonstration of a product, or witnessed the satisfaction of a customer purchasing through direct sales. They are attracted to direct selling because they know that it is an easy, low-risk way to quickly earn some additional income for a myriad of personal reasons. During the direct sales presentation, many are inspired to participate and are thus recruited into direct selling. The review period contemplated by proposed Section 437.2 would divorce this experience from the act of becoming a direct seller, would introduce a delay into the process that would dampen the prospective direct sellers’ initial interest, fog her recollection of the appeal of direct selling, and complicate and delay the interaction of recruiter with prospect so as to lessen the chance of the individual’s participation.

Consider this scenario – a direct salesperson might encounter a prospective recruit in almost any setting, including an organized direct selling party, at work or at other social events. Often a prospect may sign up after an initial conversation and presentation

⁴⁶ “The proposed rules from the FTC create an air of suspicion about direct selling and removes the spontaneity of the industry. I think this air of suspicion creates a negativity and a fear that closes people’s minds. When a person is considering making a change or going in a new direction, they have natural apprehensions and reservations. I don’t think it helps them to add an air of suspicion unnecessarily and unfairly. The proposed rule will most assuredly make people think twice about direct selling. In fact, it will result in a dramatic reduction in recruiting new independent salesforce members. Even as a Harvard Business School graduate, I’m not sure I would have gotten involved in direct selling had I been presented with excessive reporting and paperwork, and pages and pages of litigation history. What a major loss that would have been in my life and the lives of others.”

--Gloria Mayfield Banks, Mary Kay, 18 years in the direct selling industry

View this video clip online at <http://interface.audiovideoweb.com/lnk/ny60win16091/clip1.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

because of the low cost and minimal risk afforded by the direct selling activity. Under the proposed Rule, during this initial encounter a direct salesperson would need to get the prospect's contact information, including her address. The direct salesperson would then need to relay this information to the direct selling company so that they can make the individualized disclosure statement for that prospect. (This would be necessary because of the 10-reference requirement.) They would then need to get the disclosure statement to the prospect before the seven-day waiting period can start. The direct salesperson would then need to follow up with the prospect after the seven-day waiting period is over. By virtue of the proposed Rule, what initially would have been one contact to sign up a new direct salesperson has potentially become three. This could mean instead of one car trip, three might be necessary. This could significantly increase the time and cost of recruiting direct salespeople.

Additionally, we are concerned that legitimate direct selling activities will be cast inappropriately in a suspicious light by the disclosure and waiting period. Indeed, the FTC has described business opportunities as "permeated with fraud."⁴⁷ Direct selling is not. Eighty-nine percent of direct sellers report a positive experience,⁴⁸ having entered the industry with very modest goals and because of their interest in the activity because of its limited nature, the small scale of its initial phases, and the non-threatening nature of its requirements and regulations. The proposed Rule would suggest a level of risk that simply does not exist, and, due to the initial modest goals of prospective entrants, puts up a psychological and actual barrier to entry that would threaten the viability of the entire industry.

Given the part-time and seasonal nature of direct selling activities of many direct sellers, we are concerned that any delay in the entry and sales activity of a new direct salesperson will significantly decrease income potential. Take for example, the salesperson who enters into direct selling in mid-November to earn extra income for Christmas presents. She has a four week window to sell and earn. A delay of seven days (at least) under the proposed Rule would effectively reduce her earning potential by 25 percent. This would be an unfortunate consequence of the proposed Rule.

The Commission should consider an alternative approach that will afford *post-sale* protections to purchasers. This approach will encourage companies to offer such protections and will avoid the disastrous consequences to direct sellers described above. DSA suggests that the obligations to furnish written documents of Sec. 437.2 might be replaced with a requirement that each covered seller of a business opportunity be required to provide each participant entering the plan with a written contract or statement which describes the material terms of the agreement and provides the participant an opportunity to cancel. Upon cancellation within the time specified in the agreement and the return of all items required by the agreement, the participant would be entitled to a refund of all payments required by the agreement.

⁴⁷ NPR at 9.

⁴⁸ DSA 2002 National Salesforce Survey at 34.

Such a right of rescission or “cooling off” is not only analogous to the FTC’s home solicitation sales rule⁴⁹ but is one familiar to the direct selling industry. When adopted in June 1974, the rule effectively put an end to the perception (and sometime reality) of high pressure door-to-door sales by allowing a consumer three business days to rescind the transaction. That rule was welcomed by direct sellers because it struck an appropriate balance between the need to protect consumers and the need to impose the least burdensome regulation possible on legitimate businesses. A “cooling off” for business opportunities would, we suggest, achieve that same balance.

- e. The Requirement for Disclosure of Legal Actions Is Drafted Too Broadly, Will Be Impossible to Effectively Comply With, and Could Be Confusing to Users of the Information

Section 437.3 (3) of the proposed Rule requires that sellers of business opportunities provide disclosures regarding all legal actions (regardless of outcome) concerning “misrepresentation, fraud, securities law violations, or unfair or deceptive practices” over the previous ten years. This disclosure would include civil court cases and arbitrations, all governmental actions including criminal matters and administrative law actions, including cease and desist orders or assurances of voluntary compliance. This requirement that direct sellers create, monitor and maintain, update and then make available, a report on such a broad scope of “litigation” would be an impracticable burden. The rule would require disclosure of litigation *potentially unrelated*⁵⁰ to the business opportunity transaction, as well as litigation that was favorably resolved for the business opportunity seller, settled, or otherwise completed in such a way as to be irrelevant to the recipient of the report. Many commercial enterprises today face the challenge of frequent litigation.⁵¹ These legal actions might involve claims of misrepresentation, yet have no relevance to the purchase or sale of a business opportunity. Annette Pelliccio, Owner of The Happy Gardener, a small direct selling business, with three years in the direct selling industry describes the potential difficulties with such a requirement:

As an inexperienced businesswoman, I was put in a very unfortunate situation with a dishonest bookkeeper a year ago. I was fortunate that the suit was dropped and never did end up in court. If it had gone to court even though the outcome would have been in our favor, my company’s credibility and my customers’ trust

⁴⁹ 16 CFR Part 429.

⁵⁰ *E.g.*, two businesses may litigate an intellectual property issue. In the context of such claims (which might have no relationship to business opportunity issues) allegations of misrepresentation might arise. Such litigation must be reported under the proposed rule.

⁵¹ The United States Chamber of Commerce’s Institute for Legal Reform reports, *e.g.*, that more than 17 million cases were filed in state courts alone in 1997.

<http://www.instituteforlegalreform.org/newsroom/index.php?p=factsfigures> (last visited Jul. 16, 2006).

would have greatly decreased if we had to report this situation. We are building a company that is based on doing what's right and the FTC's proposed rule could indicate that we are doing something wrong.

-- View this video clip online at

<http://interface.audiovideoweb.com/lnk/ny60win16091/clip10.wmv/play.aspx> (Jul. 10-11, 2006).

Under the proposal, a ten-year rolling record of such litigation would have to be maintained and distributed to all potential purchasers of a business opportunity. A small direct selling company, which promotes itself to 10,000 individuals per month that experienced a single lawsuit against that company, would be forced to make more than 120,000 disclosures in one year. A larger enterprise, with more litigation to report, and more potential recruits, would suffer a significantly magnified obligation. The vast number of persons annually contacted by our salesforce and solicited to become distributors is massive. Over a given year, we estimate that in excess of 50 million Americans will be so approached, with five million signing up. Each person approached as a prospect would have to be given this disclosure (and others). The practical burdens of complying with this provision will be monumental. While the proposed Rule purports to create a one page disclosure document, the broad (and possibly irrelevant) information required by this provision alone could result in a multi-page form.

Additionally, the proposed Rule as currently drafted is unclear in its scope. A direct selling company, if covered by the rule, might be obligated to report not only litigation involving the company itself,⁵² but also litigation involving any member of its independent contractor salesforce, parent companies, and sister companies (even though those companies may have nothing to do with the offering of the business opportunity.) If thus interpreted, the proposed Rule would create a truly unmanageable burden with regard to this disclosure alone, in that a company would be forced to track such litigation over a ten-year period, maintain a database of that docket, and distribute the information. Again, much of the litigation could be unrelated to the business opportunity.

Finally, the rule may actually encourage litigation in that competitors, detractors, or even extortionists would recognize that such legal action would have to be reported, and might bring unwarranted litigation in an effort to harm the recruiting and sales efforts of the subject company.

The Harris Survey indicated that the level of interest in direct selling by a prospective direct salesperson would drop at least 29 percent if this burdensome disclosure was instituted. Among those expressing the greatest likelihood of entering direct selling, the interest level drops 43 percent.⁵³ Among direct sellers, 80 percent report that they would

⁵² See, Section 437.3 (a)(3)(i)(B) requiring that legal actions involving any "affiliate" of the business opportunity seller be reported. See also, Section 437.3(a)(3)(i)(C) requiring such a report regarding a "sales manager" or "any individual who ... performs a function similar to [a] sales manger..."

⁵³ *Potential Impacts of the FTC's Proposed Business Opportunity Rule on the Direct Selling Industry* at 3.

not have signed up with their direct selling company, had this requirement been in place.⁵⁴

f. The Requirement to Provide Disclosures Regarding Cancellations and Refunds Would Be Difficult to Comply With and Could Actually Mislead Users of the Information

Section 473.3 (5) of the proposed Rule would require that sellers of business opportunities “[s]tate the total number of purchasers of the same type of business opportunity offered by the seller during the two years prior to the date of disclosure [and to] [s]tate the total number of oral and written cancellation requests during that period for the sale of the same type of business opportunity.” Given the large number of people who enter and exit direct selling each year (a well understood, accepted and valued attribute of this sales method), this requirement, if applied to direct sellers, would mandate that each direct selling enterprise maintain an enormous database of all business opportunity sales transactions.

Considering the part-time nature of the sales activities of most individual direct sellers and the likelihood that the independent contractors who sell direct often do so to achieve specific, short term objectives, “cancellation” is likely to be artificially high, and misleading in and of itself. No matter the number, the maintenance of this data, and its frequent recalculation, is likely to be an impracticable burden for direct selling companies. Additionally, in light of the large number of people who enter and exit direct selling over the course of two years, the practical utility of the information to individuals who might be interested in becoming a direct salesperson is dubious.

g. The Requirement to Provide References Could Be Impossible to Effectively Comply With, Would Violate Individuals’ Expectations of Privacy, and Could Be Counterproductive

If applied to direct sellers, Sec. 473.3 (6) of the proposed Rule would require that each company maintain a geographically manageable, comprehensive database of individuals who have sold for it for the last three years, including names, cities, states, and telephone numbers. The proposal would require the disclosure of all of these individuals to prospective salespeople, or alternatively, that the identities of ten geographically nearest purchasers be revealed to the prospect.

We are concerned that the proposed Rule could place direct salespeople in the unenviable position of violating privacy laws and revealing confidential, personal information to prospective purchasers, even though persons who are engaged in direct selling are easily located without infringement upon their privacy.⁵⁵ While

⁵⁴ *Id.* at 4.

⁵⁵ For example, this long-time direct seller is fearful that this requirement will significantly impact her successful direct selling business:

the Commission might be correct that “business opportunity purchasers are not readily identifiable” and that they cannot be found “by looking in the yellow pages,”⁵⁶ this is clearly not true regarding direct salespeople, as a quick survey of any hard copy or Internet based-telephone directory demonstrates.

Each reference alternative posed by the FTC is problematic.

Comprehensive Database – Direct selling companies hold the lists of their salespeople as confidential, proprietary information. Indeed, the list of sellers is considered one of a direct selling company’s greatest assets and has been held not subject to disclosure to even government entities for licensing, tax or other purposes.⁵⁷ The proposed Rule would effectively make these lists available to competitors, cranks, solicitors, and any other interested parties.

The potential for breaches of salesforce privacy and confidentiality is incalculable. The proposed Rule would require that existing members of the salesforce be notified that their personal information (including telephone number) “can be disclosed in the future to other buyers.”⁵⁸ We believe that this notice alone could have a significant “chilling effect” on the willingness of an individual to engage in direct sales for fear that they will be subject to invasion of their privacy. Additionally, we do not believe that the dissemination of this information will be limited to other “buyers.” Direct selling companies would be forced to give this information to *anyone* who might claim to be interested in selling; the information could then be used for any purpose. Additionally, given the frequent entry and exit of salespeople from our business, an individual whose name is revealed might no longer be in the business, and not welcome this intrusion.

Ten Purchaser List - Many of the same concerns are raised by the alternative permitted under the proposal that allows for a list of ten purchasers to be provided to a prospective purchaser. By providing such a list to a prospective direct salesperson for the clear purpose of contacting them, there will likely be unintended consequences resulting in confusion, violations of privacy interests of many parties, and ultimately discouragement

“Based on my understanding of the FTC proposed rule, I think, initially, recruiting will come to a standstill which would be disastrous from a business standpoint. I’m also concerned about having to share the names of others. It’s not only a privacy issue, but it may make the recruit feel like there’s no room for them in the business. It’s my experience that there’s a place for everyone who wants to be in this industry. You know, in fact, I wonder if I would have ever joined if I was presented with all that information.”

--Judi Daugherty, Tupperware, 14 years in the direct selling industry.

View this video clip online at <http://interface.audiovideoweb.com/lnk/ny60win16091/clip9.wmv/play.aspx> (Jul. 10-11, 2006)(on file with DSA).

⁵⁶ NPR at 53-54.

⁵⁷ See, e.g., *U.S. v. Duke*, 379 F.Supp. 545 (N.D. Ill. 1974), in which the Court denied a demand by the Internal Revenue Service that a direct selling company give it access to the names of thousands of their independent contractor salespeople.

⁵⁸ See, Proposed Rule Sec. 437(a)(1).

from participation in direct selling (no matter how positive the reference's experiences.) Ironically, the disclosure might result in the prospect (if she becomes a direct salesperson) being solicited by other competing direct salespeople. Confusion might arise about who recruited whom, and when, (an important matter for direct salespeople whose compensation can depend in part on the strength of sales from their personal "downline"). A deceitful individual may obtain a list of potential recruits (salespeople from another direct selling company) under the pretense of being a prospect and use it to solicit them for product, services, or another opportunity. Finally, the value of the ten purchaser list is undermined in that it does not take into account the length of time that the reference has been involved with a company.

Practical Concerns – The proposed Rule would present a practical problem regarding when the references must be given. Given the informal and social nature of many direct selling activities, recruiting discussions are often spontaneous and initiated by the prospective recruit at a home party or some other venue. The direct selling "recruiter" would be literally unable to provide a list of the ten nearest "purchasers" at the same time a disclosure statement must be given. She would be unable to prepare such a list in advance because she will not know who might attend the direct selling event or express interest there. In fact, the direct salesperson might not even be aware of other salespeople who are in the area but not in her immediate sales organization.

The proposed Rule apparently does not contemplate such a circumstance and thus provides no guidance about when the references must be given or when the waiting period is tolled. Additionally, unlike franchisees, the vast majority of direct sellers have no assigned geographic territories; the geographically closest direct salespeople may therefore have less relevance to a prospective recruit. Finally, given the part-time nature of many direct sellers and the variety of motivations for their involvement (i.e., discount buyers, desire for social contacts and recognition, discussed *supra*), the ten closest references might have little helpful, relevant information to offer the prospective direct salespeople. Additionally, as mentioned *supra*, the names of other direct sellers able to provide information about their experience is readily available in any telephone directory, either in print or online.

Privacy Concerns – The FTC has rightly noted in other proceedings that "consumers must be given options with respect to whether and how personal information collected from them may be used."⁵⁹ We believe that the requirements of proposed section 473.3 (6) do not afford consumers those options. Individual direct sellers would have their names, telephone numbers and locations revealed.⁶⁰ They would have no option to avoid

⁵⁹ Online Profiling: A Report to Congress, Part 2: Recommendations, <http://www.ftc.gov/os/2000/07/onlineprofiling.htm> (July 2000).

⁶⁰ See, e.g., the remarks of Joanne Nistico a Shaklee salesperson with 35 years in the direct selling industry: "I'm happy to talk about direct selling to anyone, but in this day when identity theft is a major concern, I'm uncomfortable giving out the personal information of other Shaklee distributors." View this video clip online at <http://interface.audiovideoweb.com/lmk/ny60win16091/clip7.wmv/play.aspx>

such revelation other than to not participate in direct selling in the first place. We believe the Commission has seriously underestimated the legal, practical, and economic consequences of revealing the identities of these individuals and strongly urge this matter to be more fully considered. As the Commission states, “privacy is a central element of the FTC’s consumer protection mission.”⁶¹ Disclosure of the identity of these individuals is at odds with the privacy rights and considerations of those individuals and the FTC’s own stated standards regarding privacy.

The Harris Survey indicated that the level of interest in direct selling by a prospective direct salesperson would drop at least 38 percent if this reference requirement were instituted. Among those expressing the greatest likelihood of entering direct selling, the interest level drops 71 percent.⁶² Among direct sellers, 76 percent said that if faced with this requirement they would not have begun direct selling.⁶³

h. The Commission’s Proposed Definition of “Earnings Claim” is Too Broad and Attendant Disclosures Unclear

DSA Initiatives on Earnings Claims – DSA strongly supports the proposition that earnings claims should be substantiated and has long required that its members adhere to a firm standard regarding such claims. The DSA Code of Ethics requires that no member company shall “misrepresent the actual or potential sales or earnings of its direct sellers [independent salespeople]. Any earnings or sales representations [that are] made [by member companies] shall be based on documented facts.”⁶⁴ The requirements of the DSA Code were adopted in 1993 and reflect the industry understanding of the standard of federal law regarding such claims.⁶⁵

The DSA Code Administrator responsible for handling complaints under the Code, reports that since 2002, fewer than ten percent of complaints have related to the payment of commissions to salespeople. DSA is aware of the Commission’s focus on misleading earnings claims in business opportunity fraud; despite the relatively low percentage of DSA Code complaints related to such claims, the association has continued to monitor the issue. In 2002, we established an Earnings Claims Task Force to review state, federal, and international standards regarding such claims as well as industry practices. DSA has previously offered to work with the Commission to develop potential self-regulatory standards regarding earnings claims. The Commission has not responded to the association’s initiative.

Despite the similarities in DSA’s self-regulatory approach and certain aspects of the Commission’s proposed earnings disclosures, there are significant and problematic variances.

(Jul. 10-11, 2006)(on file with DSA).

⁶¹ FTC Privacy Initiatives, <http://www.ftc.gov/privacy/index.html> (last visited July 15, 2006).

⁶² *Potential Impacts of the FTC’s Proposed Business Opportunity Rule on the Direct Selling Industry*, Nathan Associates Inc., Jul. 14, 2006 at 3.

⁶³ *Id.* at 4.

⁶⁴ DSA Code of Ethics, Sec. A(8).

⁶⁵ *See*, DSA Code Comment, Sec. A(8).

Description of Earners' Characteristics –The proposed Rule (see Section 437.4 (a) (4) (iv-vi)) would mandate potentially complex compilations of statistical information of time periods, demographic data and earnings claims. We are concerned that this approach will be ineffective in preventing true business opportunity fraud in that truly fraudulent business opportunity offerors will not provide accurate data. On the other hand, legitimate businesses, such as DSA members, which will try to faithfully comply, will have the difficult, if not impossible, challenge of interpreting and meeting the proposed requirements.

Additionally, the relevance and utility of the information for most people interested in direct selling is questionable, given the multiple motivations of individuals who enter into direct selling. Someone who enters as a discount buyer or for short term supplemental income, for example, may ultimately consider a very modest amount of income to be a successful outcome of their involvement.

Specifically, Section 437.4(a)(vi) of the proposed Rule represents a particularly daunting challenge in that it requires disclosure of “[a]ny characteristics of the purchasers who have achieved at least the represented level of earnings, such as their location, **that may differ materially** from characteristics of the prospective purchasers being offered the business opportunity...”(emphasis added). Millions of people who are interested in direct selling enter and exit the business at will, the timing determined by their own goals and motivations. It is impossible to know with any degree of certainty, what demographic/geographic factors play in the earnings of direct sellers. Direct selling companies try mightily (without consistent result) to identify the very characteristics that make stand out, successful salespeople who might be likely to move from part-time sales activities to full-time direct selling careers. Moreover, even if one could identify those characteristics, it would be hard to determine how a direct selling company could know and compare those characteristics to the traits of its entire existing salesforce or potential salespeople.

Given the varying demographic, experiential, geographic, and motivational profiles of direct sellers from company to company, we believe the Commission should allow greater flexibility in the form and substance of any earnings disclosures. Ultimately, what is most critical in informing any prospective direct salesperson is the accurate context of information that is provided about potential earnings. The Commission should consider allowing multiple forms of earnings disclosures and substantiation, including the prominent use of disclaimers in connection with earnings claims.

Substantiating Non-Direct Earnings Claims – Direct sellers may also be practically challenged to comply by virtue of the breadth of definition of “earnings claims.” Proposed Sec. 437.1(h) defines non-direct, implied earnings (such as photographs of cars) as covered claims subject to the disclosure requirements of 437.4(a)(iv- vii). As with direct earnings claims, we suggest that it could be difficult or impossible to describe “any characteristics” of purchasers that differ materially from the prospective direct salespeople, particularly when earnings are only generally implied. We ask that the

Commission provide clarification in this regard. In any case, we believe that the definition of “earnings claims” should be less broad and more concrete. The Commission should consider alternative forms of substantiation and/or the use of disclaimers in connection with implied earnings claims.

General Media Earnings Claims – Again, DSA strongly supports the proposition that earnings claims should be substantiated. We believe this to be particularly true in claims made through the general media, the audience of which will invariably include individuals less experienced in business and financial matters.

However, proposed section 437.4(b) presents identical challenges with regard to general media “earnings claims” as those described above regarding the earnings disclosure document. Indeed, given the broad definition of “earnings claim,” this proposed section could apply to virtually every communication from a direct selling company or individual (including any non one-on-one communication, e.g., classified ads or Internet communications). We question whether or not such information as this section would require (beginning and ending dates of earnings, as well as number and percentages of purchasers who achieved those earnings) would be noticed or valued given the amount of advertising and information clutter facing today’s casual reader/viewer/listener. Furthermore, given the “EARNINGS CLAIM STATEMENT REQUIRED BY LAW” mandated under Section 437.4 (a)(4) which will be provided to anyone directly solicited to purchase a business opportunity, the disclosures suggested for general media earnings claims seem superfluous.

Compliance Costs of Earnings Disclosures – The FTC suggests the compliance costs incurred in connection with earnings disclosures would be “strictly optional.” However, the FTC’s proposed definition of “earnings claims” is quite broad and would trigger an earnings claim disclosure for almost any representation. Given the extraordinary paperwork obligations described (*supra*) (i.e., 750 million documents per year will need to be produced and distributed) we expect the attendant costs to be quite high.

Industry Statistics – Proposed section 437.4(c) might limit the use by DSA member companies of valid industry earnings data, in that the seller must offer substantiation that the industry statistics reflect typical earnings of business opportunity purchasers. Industry-wide data may in fact *not* be typical of any particular company’s earnings experience and could be valuable for just that reason. We believe it important that DSA continue periodic survey of direct sellers regarding earnings and earnings expectations as part of the association’s on-going industry research activities. DSA-produced earnings research, we trust, can be an important supplement to earnings information otherwise available from individual companies.

iii. The Proposed Rule Will Have Negative International Consequences for Direct Selling

Direct selling is conducted in more than 150 countries, through some 58 million salespeople, with retail sales in excess of \$100 billion. The direct selling industry is truly

a global business. More than 70 percent of all direct sales occur outside of the United States and are carried out by approximately 44.3 million salespeople (*Worldwide Direct Sales Data*, World Federation of Direct Selling, and May 17, 2006). There are 56 national Direct Selling Associations and one regional federation – Federation of European Direct Selling Associations.⁶⁶ (“FEDSA”). FEDSA and all 56 Direct Selling Associations are members of the World Federation of Direct Selling Associations (“WFDSA”), the mission of which is to “build understanding and support for direct selling worldwide.”⁶⁷ As a requirement of WFDSA membership, all Direct Selling Associations must establish individual Codes which comply with the requirements of the WFDSA Codes of Conduct. Each individual Code must be fully reviewed and accepted by WFDSA before an applicant is approved for membership. In particular, the WFDSA requires that these codes prohibit members from “us[ing] misleading, deceptive or unfair sales practices,”⁶⁸ and “refer[ing] to any testimonial or endorsement which is not authorized, not true, obsolete or otherwise no longer applicable, not related to their offer or used in any way likely to mislead the consumer.”⁶⁹ Similarly, WFDSA restricts members from “misrepresent[ing] the actual or potential sales or earnings of their Direct Sellers,”⁷⁰ discourages inventory loading⁷¹ and requires the repurchase of unsold inventory and other sales materials at 90 percent of the original price paid by the seller.⁷² Each WFDSA member must also establish complaint handling procedures and appoint a Code Administrator to settle unresolved complaints and breaches of the Code.

It is clear that the proposed Rule in its present form would have untold international consequences. The legislative and regulatory bells that ring in Washington, DC are heard from Brussels to Beijing to Brasilia. Foreign governments have long looked to the United States for guidance not only on legal issues of first impression, but also when amending their current codes. The publication by the Commission of this proposed Rule has already been transmitted, *inter alia*, to various government entities across the globe. Unfortunately, a number of countries will misconstrue the proposal as if it were US law on the subject. Others will look to the proposal as a model for them to enact similar laws or regulations in their own countries. This is now the nature of our electronic, Internet age. The potential burdens and damage that we assume is already in progress abroad due to the maladroit drafting of this proposal can only be mitigated if the Commission’s final Rule reflects the reality that direct selling companies are not sellers of business

⁶⁶ The WFDSA affiliated national DSAs are located in the following counties: Argentina, Australia, Austria, Belgium, Brazil, Canada, Chile, Columbia, Costa Rica, Czech Republic, Denmark, Ecuador, El Salvador, Estonia, Finland, France, Germany, Guatemala, Honduras, Hong Kong, Hungary, Lithuania, India, Indonesia, Ireland, Israel, Italy, Japan, Korea, Malaysia, Mexico, Netherlands, New Zealand, Norway, Panama, Peru, Philippines, Poland, Portugal, Romania, Russia, Singapore, Slovenia, South Africa, Spain, Sweden, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Kingdom, United States, Uruguay and Venezuela.

⁶⁷ http://www.wfdsa.org/about_wfdsa/index.cfm?fa=mission (last visited Jul. 15, 2006).

⁶⁸ WFDSA Code of Conduct Toward Consumers, Sec. 2.1.

⁶⁹ *Id.* at Sec. 2.10.

⁷⁰ Any earnings or sales representations made shall be based upon documented facts. *Id.* at Sec. B(d).

⁷¹ *Id.* at Sec. B(h).

⁷² *Id.* at Sec. B(g).

opportunities. Any final Rule should recognize that in the United States and throughout the world, direct selling can provide extremely low to no risk micro-entrepreneurial opportunities for people to earn supplemental family incomes or to build a career, and serves as an alternative consumer product distribution system that increases competition and consumer choices.

III. The Proposed Rule Should Be Clarified to More Accurately and Specifically Define “Business Opportunity” and Remove Direct Sellers from Inappropriate Coverage

In light of the extraordinary negative effect the proposed Rule will have on legitimate direct sellers, and the negligible utility of the requirements of the proposed Rule for prospective direct sellers, DSA urges that direct selling not be included as a covered “business opportunity” under the proposed Rule. Direct selling companies do not sell business opportunities. They sell products and services to ultimate consumers through more than 13.6 million independent contractor direct salespeople. We suggest that the final rule should not include those situations in which potential participants are given sufficient information about the company and/or are otherwise at little or no risk of financial loss. DSA believes the final Rule should be more precisely drawn to define and cover those business opportunities likely to result in fraud and loss, without impacting legitimate direct sellers. Accordingly, DSA urges that one or more of the following five approaches be considered as ways of distinguishing legitimate direct selling businesses from business opportunities likely to result in fraud or loss to participants.

A. Do Not Cover Companies in Which Individuals Have Minimal Start-up Costs

i. Minimum Investment Threshold - The Commission argues that the elimination of the minimum payment exemption of the existing rule is warranted because of the “comparatively lighter burden” posed by the proposed Rule as compared to the Franchise Rule.⁷³ The proposed Rule would extend even to purchasers of business opportunities whose financial risk is as little as \$0.01. We note with interest the Commission’s discussion of DSA’s earlier comments recommending that the minimum payment threshold of the existing rule be maintained or even increased.⁷⁴ We continue to believe that the minimum payment threshold is an effective distinguishing feature between low risk commercial activities, (like those of direct sellers)⁷⁵ and high-risk business opportunity frauds. Accordingly, we affirm our earlier comments that any Rule should include such a threshold investment amount, below which the requirements of the Rule would not apply, particularly if the new, broad definition of “business opportunity” is maintained.

DSA has consistently argued that a minimum threshold amount should be included in any franchise or business opportunity rule, and continues to believe that low-cost, low-risk activities should not fall within the scope of the proposed Rule. The FTC notes that its promulgation of a new business opportunity rule “is consistent with . . . the regulatory approaches adopted in most states.”⁷⁶ In fact, direct selling is not considered a “business

⁷³ NPR at 6.

⁷⁴ NPR at 75.

⁷⁵ According to a DSA internal survey of member company websites and materials, the average cost to become involved in a direct selling company is \$134.

⁷⁶ NPR at 8.

opportunity” under current state law and all states with business opportunity laws have minimum payment thresholds which effectively exclude direct sellers from coverage.⁷⁷

Additionally, the North American Securities Administration Association has developed a model Business Opportunity Sales Act, which has a \$500 threshold exemption for payments made for the not-for-profit sale of sales demonstration equipment, material, or samples or for product inventory sold to the purchaser at a *bona fide* wholesale price. Similarly, the National Conference of Commissioners on Uniform State Laws has a Model Franchise and Business Opportunity Act with a \$500 threshold.⁷⁸ DSA recommends that the FTC look to the policy considerations contemplated by these organizations, as well as the states, as it considers the maintenance of a threshold in the proposed Rule.

ii. Wholesale Inventory Purchases with Buyback – The Commission notes that the existing Franchise Rule’s exclusion of voluntary purchases of reasonable amounts of inventory (at *bona fide* wholesale prices for resale) had the consequence of eliminating many pyramid marketing plans from the Franchise Rule.⁷⁹ In order to ensure that legitimate businesses are not covered inappropriately by the proposed Rule, yet not allow pyramid frauds to escape appropriate government action, DSA recommends that application of any new rule not be triggered by payments for the purchases of inventory at a *bona fide* wholesale price, when such purchases are subject to repurchase for at least 90 percent of the net cost.

An effective and enforced buyback, as included in the DSA Code of Ethics, can eliminate the central risk of a business opportunity – significant financial loss. A *bona fide* buyback eliminates this possibility by ensuring that purchasers will be able to recoup most or all of their payments for the inventory. A pyramid scheme cannot offer and honor a *bona fide* buyback policy, particularly if the sales and training aids are subject to repurchase as inventory. Likewise, business opportunity frauds do not offer real and enforced buybacks of these types of materials.⁸⁰ Thus we argue that *bona fide* wholesale purchases subject to such a buyback not trigger the other burdensome provisions of the Rule.⁸¹

⁷⁷ See, Appendix I.

⁷⁸ UNIFORM FRANCHISE AND BUSINESS OPPORTUNITIES ACT, National Conference of Commissioners on Uniform Laws (1987).

⁷⁹ NPR at 5. DSA notes again that pyramid marketing schemes are illegal under section 5 of the Federal Trade Commission Act and can be prosecuted effectively. The FTC itself reports many successful enforcement actions against pyramids schemes (See, NPR at 22).

⁸⁰ Work at home schemes often deceive purchasers with the promise of an ongoing relationship in which the seller will buy the output that the purchaser produces. Additionally, the business opportunity seller often misrepresents that there is a market for this output. This deception should not be confused with a *bona fide* buyback policy of a legitimate company in which inventory and sales materials can be returned to the company. The Commission acknowledges this difference in its comments. (See, NPR at 29).

⁸¹ DSA understands that law enforcement officials seek a straightforward, uncomplicated standard for compliance and enforcement actions. A company or operation that promises a buyback and does not meet

iii. Purchase of Sales Materials on a Not-for-Profit or Fair Market Value Basis and Subject to a Buyback – DSA recommends that the FTC rule not be triggered by payments for the purchase of demonstration kits, equipment and materials related to the operation of the business, made on a not-for-profit or at-cost basis, or sold at fair market value, and subject to a buyback as described above, in that these purchases present little risk of loss to purchasers.

iv. Optional Purchases or Payments Subject to a Buyback – DSA strongly suggests that the rule be amended to clarify that optional purchases of products or materials, i.e., payments that are not required in order to participate in the enterprise, subject to a *bona fide* buyback as described above, not be considered payments or purchases that would trigger application of the rule.

B. Utilize Existing Definition of Business Opportunity from the Franchise Rule

In FTC materials that describe the existing Franchise Rule, the FTC defines a business opportunity as one in which:

- the seller simply offers the right to sell any goods or services supplied by the seller, its affiliate, or a supplier with which the seller requires the “franchisee” to do business;
- the seller offers to secure retail outlets or accounts for the goods or services to be sold, to secure locations or sites for vending machines or rack displays, or to provide the services of someone who can do so; and
- the purchaser is required to make any payment to the seller or an affiliate, or a commitment to make a payment, as a condition of obtaining the business opportunity.⁸²

DSA suggests that the existing definition of business opportunity from the current rule be maintained. Direct sellers do not qualify as “business opportunities” under this definition and thus would not be covered by the requirements of any new rule which also used this definition.

that promise could be the subject of an effective enforcement action for that misrepresentation, just as easily as it might be for non-compliance with the requirements of the proposed Rule.

⁸² See, <http://www.ftc.gov/bcp/franchise/netrule.htm> (last visited Jul. 16, 2006).

C. Craft a Definition of “Business Opportunity” in the Proposed Rule to Cover Only Work at Home Schemes, Vending Machine Operations and Similar Schemes

As discussed earlier,⁸³ direct sellers are clearly not the work-at-home schemes of concern to the Commission. Accordingly, DSA respectfully suggests that if the current Franchise Rule definition of “Business Opportunity” is not maintained, that any final Rule be focused on those work at home and other schemes likely to result in fraud, based on those characteristics which the Commission identified.

For example, a “business opportunity” might be defined as follows:

A) *Business Opportunity* means a commercial arrangement in which the Seller solicits a prospective purchaser to enter into a new business; and

(1) The prospective purchaser makes a payment or provides other consideration to the seller, directly or indirectly through a third party; and

(a) the seller provides some or all of the tools, equipment, components, parts, inputs, software, data, instructions, directions or guidance to make, produce, fabricate, grow, breed, modify or provide goods or services, and

(b) the seller buys back, or purports to buy back, any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides.

or

(2) The Seller provides, or purports to provide, locations for the use of operation of equipment, displays, vending machines, or similar devices on premises neither owned nor leased by the purchaser.

DSA welcomes further discussion with the Commission about how the definition of “business opportunity” might be crafted to cover actual business opportunity frauds.

D. Do Not Cover Companies Engaged in “Best Practices”

Any rule should encourage companies to provide relevant, helpful information to prospective participants in an effective, efficient, and complete manner. We believe that the rule can and should encourage the adoption of “best practices” by legitimate companies. Accordingly, companies which, on their own initiative, or as a condition of

⁸³ *Supra* at 17

membership in a self-regulatory organization, provide such information should not be subject to the additional (and superfluous) regulation of any new rule.

Specifically, DSA believes that any final rule should not cover companies with the following attributes:

- *The company provides each salesperson entering the plan with a written contract or statement which describes the material terms of the agreement and provides the participant an opportunity to cancel. Upon cancellation within the time specified in the agreement and the return of all marketable, resalable items required by the agreement, the participant would be entitled to a refund of all payments required by the agreement.*

This provision would recognize those companies which give a purchaser the material terms of the agreement in writing when he or she enters into the plan, and also provide the purchaser a “cooling-off” period, a period of time during which one may cancel the agreement in its entirety. Upon cancellation of the agreement and return of all materials received unless waived, the purchaser would receive a refund of all required payments made pursuant to the agreement. This provision would recognize those companies that ensure that purchasers make informed decisions, which they can cancel without risk of financial loss.

- *The company does not require salespeople to purchase goods or services in an amount which unreasonably exceeds that which can be expected to be resold or consumed within a reasonable period of time.*

This provision would recognize those companies that do not engage in “inventory loading” practices, i.e., requiring participants to buy more goods or services than they can either use or resell within a reasonable period of time. The language is consistent with the U.S. Direct Selling Association’s Code of Ethics and World Federation of Direct Selling Associations World Code of Conduct.

- *The company enters into an agreement with each salesperson to buy back, on reasonable commercial terms, marketable goods and services purchased from the company.*

This provision recognizes those companies that follow the U.S. DSA’s Code of Ethics and WFDSA’s World Code of Conduct which provide participants leaving the business a buyback of purchased goods and services at the participant’s request. This buyback covers currently marketable goods and services (those which are current and salable) purchased by the participant within the 12 months prior to the salesperson’s departure from the company, notwithstanding whether the goods or services are intended for resale or for personal use/consumption. The amount refunded would be at least 90 percent of the participant’s original net cost less appropriate set-offs and legal claims, if any.

- *The company owns or is the licensed user of a federally registered trademark or servicemark which identifies the company promoting the plan, the goods or services it sells, or the plan itself.*

One indicia of legitimacy for a company or organization is that it has properly registered the trademark or servicemark which identifies its business, its marketing plan, or its products. Such marks enable the public and law enforcement authorities to easily identify the company or organization responsible for product or distribution-related issues.

E. Do Not Apply the Rule to Companies That are Adherents to Effective Self-Regulatory Regimens

DSA believes that industry self-regulation can and should provide an important supplement to government regulation in that self-regulation can provide a more immediate, knowledgeable, and cost-effective solution to marketplace problems. While not necessarily a replacement for all government action, self-regulation can be an important, experience based, and powerful mechanism for protecting consumers, while supplementing the often stretched government resources available for consumer protection. FTC Chairman Deborah Platt Majoras has eloquently noted that self-regulation, like that demonstrated by DSA's Code of Ethics, is an important and powerful mechanism for protecting consumers.⁸⁴

⁸⁴ See, e.g., the remarks of FTC Chairman Deborah Platt Majoras :

“Well-constructed industry self-regulatory efforts may offer several advantages over government regulation. First, self-regulation is likely to be more prompt, flexible, and responsive... Self-regulatory organizations often have the ability to move faster and in more directions than traditional government regulators. They may or sometimes can adapt to market changes and consumer needs more readily than can major regulatory systems, which generally only get reconfigured, if at all, years after initial implementation. Self-regulatory organizations also may be better able to narrowly tailor their reach to a particular category of businesses. Government regulation, conversely, cannot always adapt as easily to focus on issues affecting small groups of similarly situated firms... rather, it tends to paint with a broader brush. If self-regulatory organizations have obtained the support and participation of member firms, the regulatory outcomes will likely be well-attuned to the realities of the market. They can be conceived with the accumulated judgment [sic] and hands-on experience of the industry members who are likely able to devise workable rules in areas in which it might be difficult for the government to draw bright lines. That can result in restrictions that are at once more effective and less burdensome for firms. And often the rules or guidelines developed will represent a broad cross-section of industry views, because participants will not want to risk significant refusals to participate, which would undermine the entire scheme.

Compliance can be just as high under a coordinated self-regulatory system as under command and control regulation, ... Further, the “sticks” of public recognition for non-compliance and of government intervention if the self-regulation fails can be quite effective...”

Self Regulatory Organizations and the FTC, Address Before the Council of Better Business Bureaus (Apr. 11, 2005) <http://www.ftc.gov/speeches/majoras/050411selfregorgs.pdf> (last visited Jul. 16, 2006).

i. DSA Code of Ethics

The Direct Selling Association has long recognized that as guests in our customers' homes, direct salespeople and the companies whose products they sell have a special obligation to consumers. The association has promulgated standards of sales behavior for its companies and salespeople for more than 60 years. In the 1970's those standards were enhanced and formalized into the DSA Code of Ethics, a self regulatory program originally designed to set out specific standards for our members, as well as a redress process for consumers who felt those standards had not been met. In 1993 the Code was expanded to provide similar standards for our salespeople and recruits.⁸⁵

a. Key Provisions

The Code protects consumers by requiring that: no statements be made that would be likely to mislead the consumer;⁸⁶ all terms of sale be unambiguous;⁸⁷ all warranties or guarantees be provided and adhered to;⁸⁸ and that direct sellers "truthfully identify themselves, their company, their products and the purposes of their solicitation to the prospective customer."⁸⁹

The Code also protects protect both the active and prospective direct seller. Pyramid schemes are prohibited under the Code,⁹⁰ of course; thus companies operating pyramids are not permitted to be members of the DSA. All companies are required to ensure that "no statements, promises or testimonials are made which are likely to mislead...prospective salespeople."⁹¹ Additionally, to discourage inventory loading and protect direct sellers from significant financial loss, DSA requires that all member companies incorporate a "buyback" policy which mandates that companies repurchase inventory (including required and/or commissionable promotional materials, sales aids and kits) purchased during the year prior to the salesperson's departure. The buyback amount must be at least 90 percent of the original net cost of the items to the salesperson.⁹² Finally, the Code prohibits companies from misrepresenting the actual or potential sales or earnings of its independent salespeople and requires that any earnings or sales representations made shall be based on documented facts.⁹³

⁸⁵ See, Moral Suasion, Appendix F, a history of the DSA Code.

⁸⁶ DSA Code of Ethics, Sec. A (1).

⁸⁷ The Code requires that total amounts (including interest); service charges and fees the name and address of the salesperson or member firm represented and any other costs and expenses as required by federal and state law to be include in all written orders or receipts. DSA Code of Ethics, Sec. A(3).

⁸⁸ DSA Code of Ethics, Sec. A(4).

⁸⁹ DSA Code of Ethics, Sec. A(5).

⁹⁰ Id. at Sec. A(6).

⁹¹ Id. at, Sec. A(1).

⁹² Id. at Sec. A(7)(b).

⁹³ Id. at Sec. A(8).

If the consumer or direct salesperson believes that a DSA member company has dishonored any of the above requirements, they may file a complaint through DSA's Code complaint process, as discussed below. The DSA Code also requires that all member companies provide a link to the Code on their Web sites, so that both consumers and sellers may learn about the Code and how to file a complaint.⁹⁴

b. Independent Code Administration

One element of our industry's self-regulation efforts is the independent enforcement of the Code by an outside Code of Ethics Administrator. The Administrator is appointed by the DSA Board of Directors and "shall be a person of recognized integrity, knowledgeable in the industry, and of a stature that will command respect by the industry and from the public."⁹⁵

c. The DSA Code Complaint Process

If the complaint is first lodged with the company itself, the Code requires that all members "shall promptly investigate the complaint and shall take such steps as it may find appropriate...to cause the redress of any wrongs which its investigation discloses to have been committed."⁹⁶ However, if the complainant believes his or her concerns have not been sufficiently addressed, he or she may file a complaint through the DSA Code complaint process.

As stated above, and as required by the Code, each member company⁹⁷ must post a direct link to the DSA Code of Ethics on its Web site, wherein lies information as to how to file a code complaint. Once a complaint is filed, the administrator first determines whether the complaint concerns potential violations of the Code. If so, he then promptly forwards the complaint to the member company's Code Responsibility Officer, with a corresponding letter notifying the member of the complaint and requesting any necessary information or documentation. After his investigation, the Administrator reaches a decision as to whether the complaint has sufficient merit and, if so, determines the appropriate remedy.

If the member refuses to cooperate or does not consent to the determined course of action, the Administrator "shall serve upon the member...a notice affording the member an opportunity to appear before the Appeals Review Panel."⁹⁸ This panel consists of five representatives from active member companies, as selected by the DSA's Executive Committee.⁹⁹ The panel then reviews all relevant documents and determines whether to

⁹⁴ Id. at Sec. B(2).

⁹⁵ Id. at Sec. C(2).

⁹⁶ Id. at Sec. B (1).

⁹⁷ This includes "pending members;" companies that have not undergone their full one-year legal review nor have been approved by the DSA Board of Directors.

⁹⁸ DSA Code of Ethics, at Sec. C(2).

⁹⁹ When an appeal is made, the Chairman of the DSA Board of Directors selects three of the five members (none of which can work for a company whose interests compete with that of the Appellant). *Id.* at Sec.D (4).

affirm, amend or dismiss the administrator's decision. If the company continues noncompliance, the DSA Board of Directors may vote to terminate the membership of the company.¹⁰⁰

Additionally, the DSA Code requires that member companies "shall voluntarily not raise the independent contractor status of salespersons...as a defense against Code violation allegations..."¹⁰¹

d. Pending/Active Member Review Process

To ensure the highest ethical and legal business practices, all DSA members undergo a rigorous review process, both when applying for membership and again as active members. When conducting company reviews, DSA examines all submitted materials complaints and other relevant information to in our efforts to ensure compliance with the DSA Code of Ethics.

All direct selling companies applying for membership must undergo a one year legal review process before they may be considered for full membership. During this period, companies are classified as "pending members" and must not only pledge to abide by the Code but publicize this pledge by posting an link to the Code that is easily accessible to both customers and their sales force on their Web site. When a company applies for membership, DSA requests information from the Attorney General and Better Business Bureau of the state in which the applicant is located. Additionally, DSA requests that relevant consumer agencies) including the FTC provide information regarding complaints, actions or other relevant records regarding the potential member.

After applying, the company must provide all applicable materials to DSA, including but not limited to: customer receipts, brochures, audio and video tapes, distributor agreements, recruiting brochures, information involving legal actions and documents regarding international operations. DSA also requires pending members to provide schedules of upcoming training sessions and/or opportunity meetings and advises applicants that DSA staff may anonymously attend these meetings. DSA also reviews media reports, and other available information. Throughout the process, DSA attorneys are in contact with pending members to inform them of their status, request additional information, provide appropriate legal information and inform companies of various concerns regarding their materials. If the materials reviewed are not in compliance with the DSA Code, the company is asked to amend there policies to do so. If the company does not agree to amend their policies, or if there are outstanding legal questions regarding the applicant's marketing practices, the company will not be presented to the Board for full membership consideration until all matters are resolved or answered.

Similarly, 20 percent of active DSA member company materials are reviewed every year. Companies that have already been "approved" by the DSA Board of Directors must submit to random reviews at least once every five years. In fact, companies are randomly

¹⁰⁰ *Id.* at Sec. E(3)

¹⁰¹ *Id.* at Sec.B(1)

chosen as much as three times per five year cycle. Ultimately, all member company materials are re-reviewed every five years to ensure continued compliance with the Code. As with pending members, all member companies are required to provide a link to the Code, with a “clear, bold-faced statement as to how to make the connection.”¹⁰² After reviewing all updated materials, DSA provides each member company with an updated legal analysis.

e. Value of the Code

Through continuing reviews and enforcement of the Code complaint process, DSA’s self-regulatory mechanism seeks to ensure that our members are abiding by the highest business practices. DSA Code provisions, in some respects, exceed current state and federal regulatory and statutory requirements.¹⁰³

ii. FTC Recognition of Self-Regulation

We believe that there is no reason to apply the proposed Rule to companies which are adherents to self-regulatory regimens that provide effective protections against the types of fraud that the FTC described in its NPR. Those regimens should be effective, approved, and administered by non-profit entities. DSA is aware of other industry self-regulation programs that have been cited by the FTC and other agencies as exemplars of such initiatives.¹⁰⁴ Indeed, we believe that the DSA Code and self-regulation program

¹⁰² DSA Code of Ethics, Sec. B(2). This is also required of pending members.

¹⁰³ *E.g.*, DSA requires the buyback of inventory (discussed *supra*); there is no corresponding federal legal requirement to do so.

¹⁰⁴ *See, e.g.*, the FTC’s recognition of the Funeral Rule Offenders Program (“FROP”), of the National Funeral Directors Association (NFDA). FROP allows funeral homes which have not met the requirements of the Rule to enroll in a compliance program administered by NFDA, which includes training, testing and certification. Once completed, the funeral homes are exempt from the fines, litigation and penalties associated with non-compliance. In remarks before Congress, FTC Associate Director for Marketing Practices Eileen Harrington noted that that association’s efforts “in advancing its certification and training proposal represented a meaningful commitment to self-regulation that promised to do more to benefit consumers than would continued reliance only on case-by-case enforcement.. [That self-regulation program] has enabled the Commission to achieve better compliance with the Funeral Rule while expending fewer resources.” *See*, Prepared Statement of the Federal Trade Commission, For the Committee on Health, Education, Labor and Pensions (Apr. 26, 2002) <http://www.ftc.gov/os/2002/04/funeraltest020426.pdf> (last visited Jul. 16, 2006).

See also, Remarks of Chairman Deborah Platt Majoras regarding the National Advertising Review Board of the Council of Better Business Bureaus at 10.

See also, the National Association of Securities Dealers (NASD). NASD regulates all U.S. brokers and dealers that conduct securities transactions with the public by requiring training, licensing, registration, and dispute resolution and investor education, among other requirements. Federal law gives NASD the authority to discipline securities firms and individuals in the securities industry who violate the rules; they have the power to fine, suspend or even expel them from the industry. *See* U.S. Securities and Exchange Commission. Report to the Congress: The Impact of Recent Technological Advances on the Securities Markets, <http://www.sec.gov/news/studies/techrp97.htm> (last visited Jul.16, 2006).

meet the criteria set out by Chairman Majoras in her April 11, 2005 remarks. More specifically:

- Our Code offers an opportunity to be more prompt, flexible, and responsive than government regulation,
- The Direct Selling industry's self-regulation may be able to adapt to market changes and consumer needs more readily than government regulation,
- Our industry is better able to narrowly tailor the reach of self-regulation to our particular category of businesses, unlike the "broad brush" approach reflected in the proposal, and
- DSA members have supported and participated in DSA's Code,¹⁰⁵ the provisions of which have been conceived with the accumulated judgment and experience of those members.

We look forward to discussing this matter more fully with the Commission.

See also Testimony of Robert Glauber, Chairman and C.E.O., before the Subcommittee of Capital Markets, Insurance and Government Sponsored Enterprises (Nov. 17, 2005).

See also, <http://www.nasd.com/RegulatoryEnforcement/NASDEnforcementMarketRegulation/index.htm> (last visited Jul. 16, 2006).

¹⁰⁵ "Perceptions of Direct Selling Corporate Officers Regarding Codes of Ethics" in *Direct Selling Ethics at the Top: An Industry Audit and Status Report*, *Journal of Personal Selling and Sales Management*, Spring 2002 (*See*, Appendix G).

IV. Conclusion and Summary/ Request for Workshops or Hearings

In conclusion, DSA respectfully asks the Commission to consider the concerns raised in this submission. We ask the FTC to maximize the effectiveness and efficiency of the proposed Business Opportunity Rule by narrowly tailoring it to regulate those activities presenting the greatest threat of consumer harm, while not unduly affecting direct selling and the benefits it offers to literally millions of Americans.¹⁰⁶

For the above stated reasons in this submission, DSA does not believe direct selling firms as represented by those in our association should be defined as business opportunity sellers.

DSA believes that public hearings and/or workshops will be necessary to ensure that the Commission fully appreciates and understands the implications and shortcomings of the proposed rule. DSA reserves the right to request to participate in any such hearing or workshop to address the foregoing issues or to rebut any issues raised in comments submitted by other parties. DSA anticipates that its participation in any such hearing or workshop would involve testimony and/or presentation on the issues addressed herein.

¹⁰⁶According to the “Direct Selling Tracking Study: General Public Attitudes Toward Direct Selling,” 63 percent of consumers report having “purchased items through direct selling.” Additionally, 65 percent of those surveyed stated they were “extremely, very or somewhat” interested in purchasing via direct selling in the future. DSA Public Attitude Survey 2003.