

May 10, 2024

Ms. Lois Greisman Associate Director Division of Marketing Practices Federal Trade Commission 400 7th Street SW Washington, DC 20024

Re: Response to 2004 FTC Staff Advisory Opinion—Pyramid Scheme Analysis and Updated Business Guidance Concerning Multi-Level Marketing

Dear Lois:

I am in receipt of your March 15, 2024, letter regarding the 2004 Staff Advisory Opinion on pyramid scheme analysis. I also appreciate you making me aware of the updated *Business Guidance Concerning Multi-Level Marketing* posted to the Federal Trade Commission ("FTC" or "Commission") website on May 1.

The Direct Selling Association ("DSA") welcomes guidance from representatives of the FTC regarding how staff interpret pertinent law and its regulatory authority. However, DSA disagrees with the interpretations of the law in your letter and the updated guidance as inconsistent with established law.

DSA recognizes that FTC staff issues non-binding guidance that typically summarizes existing law or FTC cases to provide advice to consumers and businesses. However, guidance issued based on the perspectives of FTC staff that is contrary to court rulings on what constitutes lawful and ethical business practices does not protect consumers and confuses the millions of people engaged in direct selling in the United States.

In fact, a judicial decision less than a year ago specifically rejected the same interpretations of law that are now set forth in your letter and updated guidance. Indeed, FTC staff is reiterating arguments specifically rejected by the court. We

would have expected FTC staff to reflect existing law, including the most recent litigated decision. Instead, your letter and guidance ignore well-established principles of law.

These recent unsupported pronouncements could arbitrarily and unfairly chill the opportunity direct selling provides to millions of people to purchase products at a discount and/or earn modest supplemental income. Accordingly, DSA will continue to voice our disagreement with your interpretations of the law and legal business practices with the FTC, consumers, courts, and policymakers.

As always, I look forward to continuing our dialogue. Although we may disagree on these matters, please know that DSA is committed to ensuring that the interests of consumers and direct sellers are protected.

Sincerely,

Joseph N. Mariano President Direct Selling Association