

MEMORANDUM

TO:                 DSA Executive Contacts

                        DSA Government Relations Committee

                        DSA General Counsel Committee

SUBJECT:      DSA Meeting with FTC Commissioner Rohit Chopra

DATE:            October 1, 2021

*Private and Confidential*

Earlier this week, Joe Mariano and Brian Bennett met with FTC Commissioner Rohit Chopra. Audrey Austin and Maria Bazan from the Commissioner’s staff also joined as did Bureau of Consumer Protection Acting Deputy Director Monica Vaca, Associate Director Lois Greisman, and Assistant Director Kati Daffan.

Commissioner Chopra was confirmed to be Director of the Consumer Financial Protection Bureau yesterday, so is no longer a FTC Commissioner. Although we feel his perspective is shared among other FTC Commissioners including Chairman Khan.

The cordial thirty minute conversation was initiated by DSA to gain more perspective on his[remarks](https://www.ftc.gov/system/files/documents/public_statements/1591046/statement_of_commissioner_rohit_chopra_regarding_the_business_opportunity_rule.pdf) made in conjunction with the FTC’s announcement the Commission was initiating a ten year review of the Business Opportunity Rule.  Commissioner Chopra’s statement was widely interpreted to mean that he wanted a rule to cover multi-level marketers.

Commissioner Chopra Views of Business Opportunity Rule

Commissioner Chopra  was aware from earlier FTC staff discussions with DSA that  we are concerned about a new rule that might be directed at direct sellers—“Multilevel marketers” as he called them. Chopra made clear that his statement should not be read that disclosures required under the current Business Opportunity Rule would be directed at, or extended exclusively to multi-level marketing companies, but used as an opportunity to codify express prohibitions of income and earnings misrepresentations.

His main concern is that unless these violations are codified, they are limited in their ability to recover monetary damages due to the current legal landscape. This concern is not specific to direct sellers, but can also be applied to gig companies and post-secondary education companies.  Throughout the discussion, Mr. Chopra made clear that any new rule would have broad application and mentioned the gig economy several times.

Commissioner Chopra invited, and DSA agreed to work constructively with the FTC on specific guidelines of what would constitute false and misleading income and earnings claims under the forthcoming business opportunity rule. DSA cited the[DSSRC Earnings Claims Guidance](https://bbbnp-bbbp-stf-use1-01.s3.amazonaws.com/docs/default-source/dssrc/dssrc_guidanceonearningsclaimsforthedirectsellingindustry_2020.pdf?sfvrsn=4ecfcd36_8) as a good starting point.

We expressed our hope to work constructively on the possible proposed rule, while ensuring that the rule was reasonable and appropriate. We further cited our previous opposition to numerous aspects of the previous attempt to amend the business opportunity rule to specifically apply to direct sellers. Chopra specifically expressed his hope that DSA would suggest what the “contours” of any new or amended rule might be.

Compliance and Liability for Past Conduct

DSA expressed concern that although our businesses continue to evolve and emphasize compliance, the FTC looking back a number of years on conduct makes this difficult. Commissioner Chopra said his experience is when the Commission sees good faith compliance on an issue they do not push forward. Chopra acknowledged that monitoring a large salesforce is not easy.

Ms. Greisman and Ms. Daffan were asked to opine on how compliance needs to evolve within direct selling. Greisman said the FTC will not dictate how companies implement compliance, while Daffan indicated that companies should be mindful if they have compensation plans that have incentives to make misrepresentations about earnings claims.

Continued Engagement with the FTC

Commissioner Chopra asked DSA to report that the FTC views recent court decisions striking down their authority to collect monetary damages as important. That forces the Commission to meet their goal of protecting consumers using other authorities.

He believes disclosures as required under the business opportunity rule aren’t necessary in all situations - implying that direct sellers and multi-level marketing could be one of those cases. Emphasizing his main focus would be extending the rule to clearly defining earnings and income misrepresentations rather than requiring more disclosures.

False and misleading income and earnings misrepresentations was also a main point of emphasis in our recent conversation with Bureau of Consumer Protection Director Sam Levine. DSA will continue engaging with FTC staff on these issues and will work constructively with members and the FTC to agree on clear and common practices in the industry.