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September 29, 2009

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex T)
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580

Re: Regulation of Debt Relief Services under FTC's Telemarketing Sales Rule

Dear Ladies and Gentlemen:

I am writing to express my views on the proposal by the Federal Trade Commission ("FTC") to regulate debt relief services under the Telemarketing Sales Rule, as published on August 19, 2009, in volume 74 at page 41988 of the Federal Register.

I have substantial experience with collection and settlement operations from the viewpoint of credit card issuers. More recently, I have consulted with a major debt settlement company. Based on these experiences, as discussed more fully below, I believe that debt settlement companies provide substantial consumer benefits and urge the FTC to not adopt regulations that limit the availability of this important type of debt relief service.

Background

1. I received a Bachelor of Science degree in 1993 from the United States Military Academy at West Point, where I earned designation as an Honors Graduate and Distinguished Cadet for graduating in the top 5% of my class. From 1993 to 1998, I served in the United States Army, and rose to the rank of Captain.

2. Following my service in the United States Army, I joined the international consulting firm of McKinsey & Co., where I served as a management consultant for a number of clients, including companies in the financial services industry (both on the retail and wholesale banking side of the business). My work included dealing with issues of market segmentation, business models, technology, regulatory issues and agencies, and transactional funding flows.

3. In 2001, I joined Capital One Services, Inc., one of the nation's largest issuers of credit cards, as Group Manager for U.S. Card Operations Strategy and Analysis. In 2003, I assumed the role of Director, Specialty Collections, U.S. Card Operations at Capital One. Among other things, I was responsible for business improvement initiatives and strategy for segments of the U.S. Card Collections Division. Capital One had approximately 4-5 million accounts in collections at any given time (defined as more than one day past due or more than $1 over limit). I was responsible for developing, implementing, and

improving techniques used in our collections division to reduce credit card losses, operating expenses, and aggregate risk of the portfolio.

4. At Capital One, my teams and I built, tested, monitored, and managed the programs and models behind them. These programs included, among other things, collections dunning letter strategies, outbound calling models, time of day predictive calling models, concession offers made to create incentives for repayment, and other call center and model based strategies to improve the performance of the portfolio. My teams and I regularly worked closely with other groups within the company, such Account Management and Recoveries, to understand their initiatives, customer profiles and behaviors, and portfolio performance.

5. I was also responsible for concession offers (including settlements) that Capital One made to delinquent consumers who we were pursuing collections activities against. We rigorously modeled and measured performance of various customer segments and how they reacted to various concession offers (including settlements). For certain segments it was very clear that certain concessions changed behavior and drove a positive financial outcome both for Capital One and for the consumer, while for other segments a similar offer had a deleterious effect. We regularly created, tested, and monitored such offers in a rigorous "test vs. control" environment. Our business decisions were informed by the output of statistical models we used to measure performance.

6. I also had full organizational responsibility for Capital One's "Third Party Debt Management" organization. This group managed the accounts and third party agencies handling consumer credit counseling accounts. I was responsible for the performance of that portfolio of accounts (approximately 400,000 accounts at any given time) for a period of two years. I personally managed agency relationships and spoke on behalf of Capital One at industry events, such as those sponsored by the Association of Independent Consumer Credit Counseling Agencies (AICCCA). I managed all aspects of that business including our internal call center, the technology platform we used to manage those accounts, our relationship with Visa and the ePay system, our relationship with MasterCard and the RPPS system, and all credit counseling and debt settlement agency relationships. At my direction, my team implemented new programs and managed the performance of that portfolio and the accounts therein. I regularly interacted with my peers at other creditors (such as American Express, Discover, Sears and Chase) to better understand the credit counseling industry, new regulations and their impact on consumers and the business, and general collection and recovery industry trends.

7. I also had responsibility for Capital One's "Skip" organization (a collections group designed to reestablish contact with debtors we had lost track of) and the "Liquidate" organization (a collections group that pursued either "high intensity" collections strategies or litigation). Our goal was to maximize delinquent debt recovery prior to "charge-off" (the point at which the account balance is written off, which occurred at 180 days of delinquency). My teams (at my direction) pursued business improvement opportunities and managed relationships with external collections and legal agency partners to that end.

8. At Capital One, I became familiar with laws and regulations applying to our business and our debtors, and I interacted with regulatory agencies, including agencies that were part of the Federal Financial Institutions Examination Council (FFIEC). During the issuance of revised FFIEC guidance on negative amortization and consumer credit counseling programs, I took the lead role at Capital One for interpreting the impact of those regulations on our business units as well as working with regulators to help them understand those impacts, clarify their intentions, and drive to resolution any changes in our business that would satisfy the new regulations. I regularly participated in industry roundtable events

with my peers, and accordingly developed knowledge of industry collection practices beyond what occurred at Capital One.

9. During the course of my work across the Capital One collections organization and in my interactions with industry peers, I was regularly made aware of changes in the industry as they were emerging. I witnessed the changes in consumer credit counseling as they became more "performance based." I also directed changes to some of our programs that precipitated such changes in the behavior of those agencies, and saw first-hand the emergence of the debt settlement company industry.

10. I am presently the Founder and Managing Director of thoughtLEADERS, LLC, a management consulting firm. In that capacity, I have provided consulting services to companies both in the prepaid debit card industry and in the debt purchase and collection industry, on issues ranging from strategic planning to business building. I have created, evaluated, and implemented new programs both in prepaid debit and debt purchase and collection focused on improving the performance of the client's business.

<u>Issues and Conclusions</u>

11. This letter addresses the following subjects:

a. The nature of the credit counseling and debt settlement industries, how businesses within those industries operate, how they deal with creditors, and the services they offer to customers, and the differences between credit counseling and debt settlement; and

b. Whether, and to what extent, credit counseling and debt settlement benefit consumers, especially in the current economic environment.

12. The following is a summary of the conclusions I have reached as a result of my review and analysis:

a. The services offered by debt settlement companies differ substantially from those offered by credit counselors; and

b. Debt settlement companies benefit many consumers in ways that other alternatives, including credit counselors cannot, and serve a need that is particularly acute in the current economic climate.

<u>Discussion</u>

12. Credit counseling originally began as a result of the work of credit card companies, which provided most of the funding for the credit counseling industry. Credit counselors work with consumers to educate them regarding debt and, if necessary, arrange to implement plans with creditors by which the consumers will pay off their debts over time. Credit counselors have traditionally been compensated by the credit card companies themselves, typically through what is called a "fair share" arrangement (where a percentage of the debt paid by the consumer to the credit card company is kept by the counselor as its "fair share").

13. At its most basic level, credit counseling involves education, including working with consumers on how to prepare and maintain a budget and manage their expenses. These efforts can be especially helpful for consumers who are just beginning to find themselves stretched and on the verge of becoming delinquent on their obligations. For consumers who find themselves becoming delinquent and facing the prospect of what is known as a "debt spiral," credit counselors can offer a "debt

management plan" (or "DMP"). When enrolled in a DMP, a consumer's interest rate will be reduced, past due, over-limit and maintenance fees will generally be waived, and a monthly payment schedule will be established to pay off the full amount owing (including principal, fees, and finance charges that have accrued on the account up to the time of enrollment on a DMP). Generally, each credit card company has standard DMP terms that are not subject to negotiation. The consumer will make payment through the credit counselor, which then forwards payment to the creditor (and, as noted above, the credit counselor is compensated by the creditor through a "fair share" arrangement). For consumers who can afford the monthly payments required by a DMP, there is an opportunity to get out of a situation in which their accounts are considered delinquent and they are accruing past due fees, and they may be able to avoid further adverse credit reporting consequences. In this model, very different from the more recent debt settlement industry, the credit counseling organization has control over client funds, including receiving and distributing those funds on behalf of the consumer each month.

14. Many consumers find themselves so deeply in debt that they cannot make the payments required by a DMP (which does not reduce the principal amount the consumer owes). In fact, many consumers who enter DMPs drop out of the plans, and end up filing for bankruptcy instead of getting out of debt. For consumers who cannot make the payments required by a DMP, credit counseling is not a viable option. After months or years of being pursued by collections agencies, their ultimate choices are either to file for bankruptcy or to negotiate settlements with their creditors for less than 100 cents on the dollar.

15. Very few consumers have the experience or knowledge base to negotiate successfully with credit card companies to resolve their outstanding debts for less than the amount owed. In fact, many consumers do not even know there is a possibility of negotiating a resolution for less than 100% of the outstanding amounts. Furthermore, most consumers do not like to interact with collection agents and, if given the option, would likely prefer having a third party interact on their behalf. A debt settlement company can provide a valuable service to these consumers by negotiating on their behalf. Unlike credit counselors, debt settlement companies are not compensated by creditors. Instead, debt settlement companies are compensated based on the amount of debt enrolled by a consumer and the amount of debt reduction that they are ultimately able to negotiate.

16. From the creditor's perspective, debt settlement companies are far more formidable negotiators than individual consumers. Debt settlement companies generally have substantial experience dealing with creditors, have access to large quantities of data, can engage in sophisticated analysis of those data, have a good understanding of what sorts of deals can realistically be struck with particular creditors, develop ongoing relationships with those creditors, and importantly their clients generally have the capital to fulfill the negotiated settlement at the time of the negotiation.

17. Debt settlement companies must dedicate significant time and effort to implement a successful program, especially since consumers usually do not have enough money available early in the program to make a reasonable settlement offer. In my experience, however, delay can be an effective tactic in negotiating with creditors. A creditor is motivated to maximize its net recovery (the amount it receives less the costs required to obtain it); generally, as time goes on, collection costs increase, and the chances of recovery decrease. As a result, time can be a very effective leverage tool in negotiating a favorable settlement on behalf of a consumer.

18. Debt settlement is labor intensive with most consumers enrolling multiple credit card accounts. There is substantial person to person interaction with consumers and creditors over a period that

typically spans approximately 3 years. A significant amount of this work occurs even before the first settlement is finalized with a creditor.

19. Based on my experience, the debt settlement business model which employs the essential financial discipline of a third party special purpose savings account – as opposed to the model where a consumer tries to set aside a certain amount every month in an account where the money is commingled with funds used by the consumer for other purposes (the proverbial "cookie jar") – is far more likely to be effective for the consumer and enhances the likelihood of success.

20. The number of customers who use debt settlement has grown dramatically over the last five years or so. I believe this growth is attributable to the fact that debt settlement companies are filling an important consumer need that would otherwise be unmet, particularly in the current economic environment, and that for many consumers debt settlement is the only realistic alternative to bankruptcy.

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For the above reasons, I believe that many debt settlement companies offer and, in fact provide, valuable services to consumers, and that it would be harmful to consumer interests if the FTC adopted regulations that had the effect of limiting the availability of debt settlement services.

Regards,

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