



APPLICATION IN RESPONSE TO THE FTC'S REQUEST FOR AN
INDEPENDENT COMPLIANCE AUDITOR
TO ASSESS AND REPORT ON HERBALIFE'S COMPLIANCE WITH AND
IMPLEMENTATION OF THE STIPULATED ORDER FOR PERMANENT INJUNCTION
AND MONETARY JUDGMENT

AUGUST 29, 2016





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August 29, 2016

On behalf of BDO, I thank you for the opportunity to submit a proposal to serve as the Independent Compliance Auditor (“ICA”) to assess and report on Herbalife’s compliance with and implementation of the Stipulated Order for Permanent Injunction and Monetary Judgment (“Order”). BDO has a team of professionals who have the relevant experience and credentials to perform the various activities in carrying out the ICA’s duties as described within the Federal Trade Commission’s (“FTC” or the “Commission”) Request for Applications. Our professionals have extensive experience working on large, complex, and high-profile engagements requiring prudence, discretion, objectivity and independence in the context of regulatory oversight and public interest concerns, including monitorships and independent examinations of major organizations, such as the National Mortgage Settlement, the Gulf Coast Claims Facility, and Western Union, among others.

BDO is uniquely qualified to assist the FTC and Herbalife (the “Parties”) with this matter. With our collaborative culture rooted in our core values, we provide a holistic approach to client service and will, at all times, act in good faith and with integrity and fairness towards all the Parties in this matter. Our team is comprised of well-credentialed professionals with over 100 areas of accounting and consulting specializations across 63 offices. As such, we are able to mobilize quickly and handle the most complex challenges in an efficient manner. Our business model leverages our people as our best assets, which results in superior hands-on senior-level involvement and a genuine commitment to provide open, clear, and frequent communication and thorough, customized and quality work product.

In the subsequent pages, we set forth BDO’s qualifications, experience and relevant services, including representative engagements and the biographies of our dedicated professionals and sub-consultants who would be designated as leaders for this project, our draft project approach and work plan, and estimates on resources and pricing.

We look forward to the opportunity to serve you in the role of ICA and thank you for your consideration. In the meantime, please feel free to contact me if you have any questions or to coordinate a follow-up discussion or presentation regarding our firm’s qualifications.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony M. Lendez". The signature is fluid and cursive.

Anthony M. Lendez
Partner, BDO USA LLP

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A. EXECUTIVE SUMMARY

In response to the Federal Trade Commission's ("FTC" or the "Commission") Request for Applications ("RFA"), BDO USA LLP ("BDO") submits the following proposal to serve as the Independent Compliance Auditor ("ICA") to assess and report on Herbalife's compliance with and implementation of the Stipulated Order for Permanent Injunction and Monetary Judgment ("Order"). In carrying out the ICA's duties as described in the RFA, BDO's focus would be the *(Proposed) Specific Testing Procedures* detailed on pages 15 to 27 of this proposal and as required under Section III.E of the RFA. These procedures collectively comprise a work program for testing each of the individual provisions of the Order as laid out in Section II, Scope of Work, of the RFA.

B. PERSONNEL

BDO has substantial experience serving as monitor as well as supporting monitors in the regulatory oversight of large, historic settlements. Our team includes experts with decades of experience counseling large, multinational companies on compliance matters. We have extensive experience executing large, complex, and high-profile engagements requiring objectivity and independence in the context of regulatory oversight and public interest concerns, including monitorships, independent evaluations and consulting related to, for example, the historic \$25 billion National Mortgage Settlement, the monitorship of Western Union's anti-money laundering settlement, and the examination (ordered by the U.S. Department of Justice ("DOJ") pursuant to legislation) of claimant payments made by the Gulf Coast Claims Facility, among others.

Anthony M. Lendez would lead the BDO team and overall execution of the ICA team's duties under the Order. Mr. Lendez is a Certified Public Accountant and Certified Fraud Examiner with over 30 years of auditing and consulting experience. Mr. Lendez has been the lead partner on virtually all of BDO's engagements assisting monitors or acting as monitor to assess compliance pursuant to the respective settlement provisions.

The names of the key individuals who would comprise the BDO ICA team and a summary of the relevant background of each team member as well as their respective expected areas of responsibility on the ICA team are outlined below. At this time, we have no existing or expected significant time commitments that would limit the availability of our team members for work on the ICA team. If any such time commitments arise we will notify the Parties as soon as reasonably possible, but in view of BDO's extensive firm-wide resources any such time commitments would in no way impede our ability to perform the required work timely or at the expected high quality level.



Anthony M. Lendez, CPA, CFE, CFF, BDO Consulting Partner

Areas of Responsibilities:

- Mr. Lendez will oversee all work conducted by the ICA team.
- He will serve as the primary point of contact for the Parties.
- He will lead the team in developing and executing the compliance testing plans and activities.

Summary of Relevant Background:

- Mr. Lendez has over 30 years of experience assisting clients with monitorships, securities litigation, and corporate internal investigations, among other matters involving alleged financial statement irregularities, compliance issues, and management fraud. Mr. Lendez is currently the lead partner assisting Monitors for various settlement agreements, including the \$25 billion National Mortgage Settlement, where BDO is overseeing the implementation of its mortgage servicing standards and the provision of consumer relief to distressed borrowers by the nation's largest mortgage servicers. He is also leading teams working with Monitors of several other settlements, and the team monitoring Western Union's compliance with a settlement agreement related to its anti-money laundering efforts. Mr. Lendez also led the teams that conducted the independent evaluations of the Gulf Coast Claims Facility and the American Red Cross, and the independent examinations of New Century Financial Corporation and AOL Time Warner.



Marc Simon, CPA, CFE, MBA, BDO Consulting Managing Director

Areas of Responsibilities:

- Mr. Simon will serve as the co-project leader for the ICA team with the responsibility of coordinating and completing all project activities.
- He will oversee the engagement team, including any sub-consultants, and has the authority to allocate staff resources to meet the needs of the Parties.
- He will serve as the single point of contact for all technical matters, including sampling and statistical related inquiries.

Summary of Relevant Background:

- Mr. Simon is a part of the leadership team in BDO's engagements assisting the Monitors of the National Mortgage, Citigroup Residential Mortgage Backed Securities ("RMBS"), and Flagstar settlements evaluating compliance with those settlements, including compliance with consumer relief provisions involving various forms of loss mitigation and mortgage servicing standards—under both the National Mortgage Settlement and the Consumer Financial Protection Bureau ("CFPB") standards. Among other things, Mr. Simon has been responsible for addressing all issues related to sampling and the statistical validity of various sampling methodologies. He has also conducted training sessions on both servicing standards and consumer relief, including related sampling.



Nicole Sliger,
CPA, CFE,
CFF, BDO
Consulting
Managing
Director

Area of Responsibilities:

- Ms. Sliger will serve as the co-project leader for the ICA team with the responsibility of coordinating and completing all project activities.
- She will be primarily responsible for drafting the ICA's reports and reviewing other key project deliverables.
- She will support the team from a quality control perspective, leveraging her senior leadership and experience to ensure project deliverables and work product meet the highest quality standards.
- She will serve as the single point of contact for all project management related matters and has the authority to allocate staff resources to meet the needs of the Parties.

Summary of Relevant Background:

- Ms. Sliger has over 15 years of experience providing accounting and consulting services, including conducting forensic investigations, interviews and regulatory compliance monitoring services to privately held companies, government agencies, and financial institutions. She has excellent interviewing and report writing skills. Ms. Sliger is currently the primary project leader for the National Mortgage Settlement engagement assisting the Monitor in evaluating several large financial institutions' compliance with new mortgage servicing rules and other settlement terms. Ms. Sliger has been involved in a number of high-profile securities litigation matters, investigations and financial statement fraud cases, helping counsel evaluate and interpret auditing, accounting, financial reporting, and compliance issues.



Maryellen K.
Sebold, CPA,
CFF, CIRA,
BDO
Consulting
Managing
Director

Area of Responsibilities:

- Ms. Sebold will serve as the local resource team lead in Los Angeles.
- She will assist with conducting interviews, performing testing procedures, consulting with the team on project management matters, as needed.
- She has the authority to allocate staff resources to meet the needs of the Parties.

Summary of Relevant Background:

- Ms. Sebold has more than 27 years of experience in the areas of forensic accounting and fraud investigations, litigation consulting, bankruptcy and corporate restructuring. She has led teams in the development of strategies specific to complex financial fraud matters and internal investigations of public and private companies. She has been designated as an expert witness and has testified in numerous trials, depositions and arbitrations, applying her specialized knowledge to a wide range of industries, including healthcare, manufacturing, and securities, among others.



Kirstie
Tiernan, CFE,
OCA,
BDO
Consulting
Director

Area of Responsibilities:

- Ms. Tiernan will assist the ICA team with conducting data analytic testing to assess Herbalife’s compliance with the Order.
- She will work closely with the senior leadership team to understand the information management infrastructure and systems of record.

Summary of Relevant Background:

- Ms. Tiernan has over 13 years of experience providing data analytics, technology consulting, and risk management services. As a Certified Fraud Examiner and an Oracle Certified Associate, Ms. Tiernan assists clients with utilizing data across the organization from multiple sources, locations, systems, languages, and functions. Ms. Tiernan is experienced in managing “big data” analytics projects requiring the collection of entire ERP systems with experience in many accounting systems, including PeopleSoft, SAP and Oracle. Managing a team of database and data analytics experts, she provides clients with the necessary dashboards, statistical models, and predictive analytics to turn data into information upon which key business decisions are made.



Brian Hickey,
CPA, MBA,
BDO
Consulting
Senior
Manager

Area of Responsibilities:

- Mr. Hickey will lead the ICA team’s testing to assess Herbalife’s compliance with the Order.
- He will work closely with the senior leadership team to develop appropriate testing methodologies, leveraging his experience conducting various compliance testing methodologies on other settlement compliance engagements.
- He will develop and provide training to testers and work with Herbalife to provide the relevant supporting documents and data sources for the ICA team to perform its testing.

Summary of Relevant Background:

- Mr. Hickey has over 10 years of professional experience with a diverse background that includes providing professional services to financial services clients. He has served on numerous engagement teams and led internal controls testing, broker-dealer statutory audits, regulatory compliance projects, and various financial statement audits. He is a key member of the leadership team assisting the Monitor of the National Mortgage Settlement with his review of the Servicers’ compliance with the Settlement’s servicing standards. As part of that team, he oversees the work of several professional accounting firms monitoring compliance with the Settlement’s terms and develops Court and public-facing reports summarizing the Servicers’ compliance with those terms.



Frank
Maughan,
CPA,
BDO
Assurance
Partner

Area of Responsibilities:

- Mr. Maughan will provide technical support to the ICA team leveraging his accounting and auditing experience with multi-level marketing companies.
- He will assist with developing the work program and related testing procedures.
- He will also provide quality control oversight as needed.

Summary of Relevant Background:

- Mr. Maughan has over 35 years of public company, capital markets, and merger & acquisition experience. His experience includes serving clients ranging from small start-ups to large multi-national public companies and has helped lead numerous private and public debt and equity offerings as well as helped lead in merger and acquisition transactions. He has expertise in various industries, including multi-level marketing/direct selling, consumer products, retail and manufacturing.



Thomas
Jensen, CPA,
MAcc, BDO
Assurance
Partner

Area of Responsibilities:

- Mr. Jensen will provide technical assistance to the ICA team leveraging his accounting and auditing experience with multi-level marketing companies.
- He will assist with developing the work program and related testing procedures.
- He will also provide quality control oversight as needed.

Summary of Relevant Background:

- Mr. Jensen has approximately 15 years of public and corporate accounting experience, including having worked nearly a decade at a Big Four accounting firm. He brings clients the perspective of having several years of experience running an accounting department in industry with a multi-billion dollar company. His industry focus includes multi-level marketing/direct selling companies, manufacturing, biotechnology and consumer products, among others. He has regularly dealt with complex accounting matters, including business combinations, revenue recognition, derivatives, and foreign currency.



Susan Wolak,
CPA,
BDO
Assurance
Partner

Area of Responsibilities:

- Ms. Wolak will provide technical assistance to the ICA team leveraging her accounting and auditing experience with multi-level marketing companies.
- She will assist with developing the work program and related testing procedures.
- She will also provide quality control oversight as needed.

Summary of Relevant Background:

- Ms. Wolak has more than 35 years of experience in manufacturing, distribution, services, technology and life sciences industries. Her experience includes all phases of auditing, accounting and consulting for large multinational and medium-sized public and private organizations. Ms. Wolak has advised and assisted numerous clients with SEC financial reporting matters, including initial public offerings, and she has extensive experience in financial analysis, due diligence for mergers and acquisitions, and business consulting.

We submit that our consulting practice's substantial monitorship experience combined with our assurance department's subject matter expertise with multi-level marketing companies, renders our team uniquely qualified to serve as the ICA in the Order.

C. QUALIFICATIONS

Since it was founded in 1910, BDO has grown to serve clients through 63 offices and more than 450 independent alliance firm locations nationwide. BDO Consulting, a division of BDO, provides clients with Financial Advisory, Business Advisory and Technology Services in the United States and around the world, leveraging BDO's global network of nearly 65,000 professionals. BDO's professionals in BDO Consulting provide independent review or oversight and, where appropriate, conduct investigations of suspected inappropriate behavior – all with minimal disruption to the businesses involved.

BDO has extensive experience conducting work under the oversight of the DOJ, the SEC, and the CFPB, among other regulators, assisting monitors in assessing and validating compliance by major organizations with the requirements of consent judgments and settlement agreements. BDO has provided monitorship and consulting services to several of the country's largest financial institutions and mortgage lenders. In particular, BDO has been engaged in a number of significant monitorships and has provided forensic consulting services, including compliance testing and review procedures, for a multitude of major organizations.

Collectively, BDO's ICA team has substantial experience in all seven of the qualifications listed in Section III.C of the RFA. Many of these qualifications are apparent in our background summaries in the Personnel section above. With respect to the RFA's request for information broken down by individual team member, the following table summarizes our expertise in the seven qualifications in terms of both the team leaders discussed above and others in our firm who would assist with the monitoring activities:

Substantial experience in:	A. Lendez	N. Sliger	M. Simon	B. Hickey	K. Tiernan	Other team members
<i>Monitoring, auditing, evaluating, reviewing</i>	X	X	X	X		X
<i>Statistical & data analysis</i>			X	X	X	X
<i>Information technology</i>					X	X
<i>Data management</i>		X		X	X	X
<i>Completing projects timely & within budget</i>	X	X	X	X	X	X
<i>Court proceedings</i>	X	X	X	X	X	X
<i>Report writing</i>	X	X	X	X	X	X

As described in greater detail in Section D below, our consulting practice team members for the past several years have focused on monitorship and similar independent examinations and related engagements, involving reviewing and evaluating organizations, in multiple industries, for compliance with settlement agreements, consent orders, and similar court decrees. These have involved:

- Devising resource and testing infrastructures
- Developing technology platforms
- Formulating compliance testing “metrics”
- Determining related metric testing populations and assessing for accuracy and completeness those populations provided to us, including BDO’s review of population-deriving query codes in programs such as SQL or SAS
- Establishing appropriate statistical sampling parameters and performing statistical sampling to derive samples for compliance testing
- Testing sampled items and statistically analyzing results
- Summarizing our results in reports to regulatory and governmental bodies and other interested parties

Our assurance team members have in-depth subject matter expertise auditing direct marketing companies and dealing with hot topics that are relevant to such companies, including high risk areas such as complex compensation structures, related calculations and reporting, and marketing strategies.

Our information technology and data management teams and resources have been an integral part of all of our monitorship teams. Utilizing BDO’s forensic technology services (“FTS”) team members, BDO provides a collaborative and cohesive “one stop shopping” solution to evaluate and analyze data regardless of its format, database platform, or system, comprehensively and cost-effectively. Whether assessing millions of records domestically or culling through terabytes of multi-lingual, cross-border transactions, our FTS professionals provide our clients with the insight needed to identify anomalies, trends, gaps and deviations, all while leveraging our data visualization tools to allow us to provide and present meaningful data quickly and efficiently. As indicated in the table above, the majority of our team members have extensive experience preparing for and participating in court proceedings, including providing expert testimony. With respect to project completion within anticipated deadlines, ordinarily such deadlines on

monitorship engagements are established by regulatory bodies, and compliance with such deadlines is mandatory, not optional. As such, we take our role very seriously and consider it part of our responsibility as professionals to complete projects within mandated deadlines, devoting the time necessary and marshalling adequate resources to fulfill that responsibility. We also believe that completing our projects within budget is important both for our clients and, from the standpoint of credibility and keeping our word, ourselves as a practice.

For example, BDO exhibited its responsiveness and ability to adapt to the client's needs on the Gulf Coast Claims Facility evaluation engagement. BDO was engaged in late December 2011, and immediately took action to assemble a team of 130 professionals across the U.S., working 18+ hours a day by the first week of January 2012. Our team worked tirelessly to develop and deploy an online review platform for BDO's claims-review compliance testing, enabling our team to analyze millions of records. By mid-April 2012, BDO issued an executive summary of its findings and observations and issued a subsequent full report in mid-June 2012 (see further details on this engagement in Section D below).

BDO is well qualified to assist in validating and reporting its findings relative to the Order based on its credentials and expertise as described further in Section D below.

D. PRIOR EXPERIENCE AND REFERENCES

BDO's monitorship experience and qualifications render BDO well-positioned to monitor Herbalife's compliance with the Order. BDO advises on governance practices that make public and private organizations compliant and competitive. BDO has provided consulting, monitorship and independent examination and evaluation services for a number of major settlement agreements and related matters, including the following:

National Mortgage Settlement: BDO was selected as the Primary Professional Firm to assist the Monitor of the National Mortgage Settlement in overseeing compliance by the nation's largest mortgage servicers with the new servicing standards and the provision of consumer relief to distressed borrowers. BDO worked with the Monitor and the mortgage servicers to develop work plans and testing templates designed to validate compliance with the servicing standards and the provision of consumer relief. BDO developed various tools (for example, checklists, questionnaires, and work programs) used by five Secondary Professional Firms to perform their test work. BDO also developed a technology platform to document the results of the Secondary Professional Firms' evaluation of the mortgage servicers' compliance with the servicing standards and a web-based platform to analyze thousands of consumer complaints.

Reference: Joseph A. Smith, Partner, Poyner Spruill LLP
301 Fayetteville Street, Suite 1900, Raleigh, NC 27601
P.O. Box 1801, Raleigh, NC 27602-1801
jsmith@poynerspruill.com
(919) 783-1064

Sample Reports:

Initial Compliance Report dated June 18, 2013 for Bank of America:

<https://www.jasmithmonitoring.com/omso/wp-content/uploads/sites/4/2014/05/compliancebankofamerica.pdf>

Second Compliance Report dated December 4, 2013 for JPMorgan Chase:

https://www.jasmithmonitoring.com/omso/wp-content/uploads/sites/4/2014/05/Chase_Filing_oversight-update.pdf

Gulf Coast Claims Facility (GCCF): BDO was retained by the GCCF pursuant to legislation, with oversight and direction by the DOJ, to conduct an independent evaluation of the GCCF, the facility established when BP turned over decision-making authority to Kenneth R. Feinberg to review claims and distribute over \$20 billion to individuals and businesses harmed by the Deepwater Horizon oil spill. BDO focused on setting forth an explanation of the GCCF's formation and operations, reviewed claim outcomes for possible errors and addressed concerns raised by claimants, public officials and other stakeholders. BDO's team analyzed millions of records and developed and deployed an online review platform for claims-review compliance testing. Coupled with extensive data analytics, BDO used the results of this claims-review testing to identify millions of dollars in additional payments to be made to claimants. BDO's findings were presented in a report to the DOJ that was made available to the public.

Reference: Thomas J. Perrelli, Partner, Jenner & Block LLP
(Former U.S. Associate Attorney General)
1099 New York Avenue, NW, Suite 900
Washington, DC 20001-4412
tperrelli@jenner.com
(202) 639-6004

Sample Reports:

Executive Summary Report dated April 19, 2012:

<https://www.justice.gov/iso/opa/resources/697201241917226179477.pdf>

Report of Findings and Observations dated June 5, 2012:

<https://www.justice.gov/iso/opa/resources/66520126611210351178.pdf>

Western Union: BDO was selected as the Monitor for Western Union to evaluate its compliance with a settlement agreement with the state of Arizona related to its anti-money laundering efforts. Among other things, BDO is evaluating whether Western Union has successfully implemented over 100 recommendations designed to enhance its anti-money laundering efforts and determining whether any additional enhancements are necessary.

Reference: D. Matthew Conti, Esq.
Arizona Attorney General's Office
Drug and Racketeering Enforcement Section
1275 West Washington
Phoenix, AZ 85007
Matthew.Conti@azag.gov
(602) 542-8427

Sample Report: Confidential

Major Midwestern Banking Organization: BDO was selected by one of the nation's top 10 largest savings banks to assist in evaluating its compliance with a CFPB Consent Order related to its default mortgage servicing compliance system. BDO performed an independent review of the Bank's mortgage servicing compliance system related to its loss mitigation activities and proposed remediation recommendations. BDO is now working with the Monitor to assess the Bank's ongoing compliance with our recommended enhancements to its mortgage servicing compliance system and the requirements of the Consent Order.

Reference: Joseph A. Smith (see *National Mortgage Settlement* above)

Sample Report: Confidential

Bank Regulators: BDO was retained by the Monitor who was selected to validate compliance by eight banks with the provision of consumer relief contained in amended consent orders with two major bank regulators. BDO validated whether the consumer relief activities were eligible for credit under the terms of the orders based on statistical sampling of three categories of consumer relief, including first lien modifications, second lien modifications, and short sales/deeds in lieu of foreclosure.

Reference: Joseph A. Smith (see *National Mortgage Settlement* above)

Sample Report: Confidential

JPMorgan Chase and Wells Fargo USTP Settlements: BDO was retained by the Independent Reviewers appointed pursuant to JPMorgan Chase's and Wells Fargo's settlement agreements with the DOJ's U.S. Trustee Program ("USTP") to assist in evaluating representations and remediation related to the Banks' obligations under the settlement agreements involving their filing of Payment Change Notices and/or escrow statements in bankruptcy courts.

References:

For JPMorgan Chase:

Amy Walsh, Partner, Morvillo LLP
One World Financial Center, 27th Floor
New York, NY 10281
awalsh@morvillolaw.com
(212) 796-6347

For Wells Fargo:

Lucy Morris, Partner, Hudson Cook, LLP
1909 K Street, NW, 4th Floor
Washington, DC 20006
lmorris@hudco.com
(202) 327-9710

Sample Report:

Initial Report by the Independent Reviewer dated December 22, 2015 for JPMorgan Chase:

http://www.chaseindependentreview.com/Initial_Report_CIR_12-22-15.pdf

JPMorgan Chase, Citigroup, Bank of America, Morgan Stanley and Goldman Sachs RMBS Settlements: BDO was selected by the Monitors of five RMBS settlements to assist in overseeing compliance with the consumer relief activities related to the banks' multi-billion dollar global settlements involving the DOJ and federal/state agencies. BDO is assisting the Monitors in validating billions of dollars of consumer relief designed to help distressed borrowers. With regard to some of these settlements, BDO is assisting the Monitors in validating the propriety of the mortgage servicer's borrower outreach program.

References:

For JPMorgan Chase:
Joseph A. Smith (see *National Mortgage Settlement* above)

For Citigroup:
Thomas Perrelli (see *Gulf Coast Claims Facility* above)

For Bank of America, Morgan Stanley, and Goldman Sachs:
Eric Green
Resolutions, LLC
125 High Street, Suite 2205
Boston, Massachusetts 02110
ericdgreen@resolutionsllc.com
(617) 556-0800

Sample Reports:

Initial Compliance Report dated July 22, 2014 for JPMorgan Chase:
<https://www.jasmithmonitoring.com/chase/reports/initial-report/>

Fifth Monitor's Report dated June 2016 for Citigroup:
http://www.citigroupmonitorship.com/wp-content/uploads/2016/06/Citi_Monitorship_fifth_report_6-27-2016.pdf

Fifth Monitor's Report dated May 31, 2016 for Bank of America:
<http://bankofamerica.mortgagesettlementmonitor.com/Reports/May-31-2016-Report-2014-Bank-of-America-Mortgage-Settlement.pdf>

Initial Progress Report dated August 9, 2016 for Morgan Stanley:
<http://morganstanley.mortgagesettlementmonitor.com/Reports/August-9-2016-Report-2016-Morgan-Stanley-Mortgage-Settlement.pdf>

Large Nutritional Supplement Manufacturer and Distributer: BDO was engaged as a damages expert in multiple Federal matters where our client was facing a class action in 17 states for alleged false advertising and violations of unfair competition statutes involving several of its products. BDO evaluated the damages analyses prepared by the expert for the class and prepared an independent damages analysis. BDO evaluated the client's sales in the 17 states over a period of approximately 5½ years and prepared a Rule 26 report of its findings. The matter was resolved in Court and our client received a favorable result.

Reference: Juliet A. Markowitz Esq., Partner, Tatro, Tekosky, Sadwick LLP
333 S. Grand Avenue, Suite 4270
Los Angeles, CA 90071
jmarkowitz@ttsmlaw.com
(213) 225-7171

Sample Report: Confidential

E. PROPOSED ACTIVITIES

The following describes our preliminary thoughts regarding the proposed activities to perform the Scope of Work as outlined in the RFA, including the development of the ICA's Work Plan pursuant to Section VI.K of the Order.

Development of the Work Plan

The primary purpose of the Work Plan is to set out the testing methods, procedures and methodologies that Herbalife, the Commission, and the ICA agree are to be used by the ICA to validate Herbalife's compliance with the Order, primarily involving the use of Metrics, or tests, for purposes of assessing Herbalife's compliance with the Order's "Prohibited Business Practices" (Section I.A-F and I.I). The Work Plan is not intended to limit or negate, and does not limit or negate, any rights or responsibilities established under the Order. Rather, the Work Plan supplements the Order in those areas that are the subject of the Work Plan and provides added definition to those areas. In the event of a conflict between the Work Plan's description of the Order and the Order itself, the applicable provision(s) of the Order would prevail.

The Work Plan will include, among other things, the following information:

- Background on the Order and purpose of the Work Plan;
- Descriptions of the Metrics to be used to test compliance with the Order, including population definitions and other Metric-related definitions (e.g., sampling methodology and parameters, agreed-upon threshold error rates for the Metrics) and reporting timelines;
- Testing parameters, test questions to determine whether an error has occurred, and agreed-upon procedures for evidence documenting testing results;
- Information regarding updates and potential amendments to the Work Plan; and
- Dispute resolution procedures.

Proposed Process and Timing of Testing and Reporting

Pursuant to Section VI.K.1 of the Order, the ICA will prepare a Work Plan no later than February 15, 2017, and will present it to the FTC and Herbalife. Concurrent with the development of the Work Plan, the ICA will set out to develop the specific testing protocols, as described below, in conjunction with its points of contact at Herbalife.¹ Such testing protocols will be adjusted, as necessary, based on the final approved Work Plan.

The ICA expects to perform its test work each quarter or semi-annual period, and report the results of that analysis via its semi-annual Reports to the Parties. Pursuant to Section VI.I of the Order, it is expected that the ICA will report on Herbalife's compliance every six months from the effective date of the Order for the first three years beginning November 15, 2017, and annually for the remaining four-year term.² Based on the effective date of Section I of the Order of May 15, 2017, the Parties would need to discuss the time period to be covered by the ICA's initial report, which is due by November 15, 2017, and subsequent ICA reports thereafter.

Proposed Testing Protocols and Methodologies

The ICA team will perform test work and make an assessment of Herbalife's compliance with the Order through quarterly or semi-annual validation reviews (each a "Validation Review") of Herbalife's internal compliance work. The ICA's Validation Reviews will be based on information provided by Herbalife, including supporting documentation, data from its systems of record ("SOR"), and any other information provided by Herbalife to the ICA to evidence Herbalife's compliance with the Order.

Transaction-level testing protocols and procedures for performing a review of policies and procedures specifically tailored to Herbalife's business operations would be set out in detailed test plans that would be prepared by BDO in consultation with Herbalife's business operations for its multi-level marketing program. The test plans will be based on the Work Plan, including Metrics definitional templates that describe the specific testing protocols and criteria for passing/failing the Metric under review.

¹ This proposal was prepared on the basis that the initial testing to demonstrate Herbalife's compliance with each provision of the Order will be performed by BDO. If, however, as part of Herbalife's due diligence to demonstrate its compliance with the Order and submit its compliance report to the Commission pursuant to Sections X.A.4 and XI.E of the Order, Herbalife chooses to have its internal audit department or similar function perform the initial compliance testing, BDO will revise its proposed procedures and budget accordingly. In such circumstances, this "internal compliance group" would be separate and independent function from the line of business being reviewed. The ICA would need to review the qualifications and resources of Herbalife's internal compliance group to ensure it has the capacity, competency and independence to do a credible job. On many, if not most of BDO's previous and current monitorship engagements, an internal compliance group has been an integral part of the overall compliance testing structure, and this structure has worked well in terms of both testing effectiveness and efficiency and has resulted in significant cost savings for the monitored organizations.

² The estimated timing for the ICA's Reports for the first three years is as follows: November 15, 2017; May 15, 2018; November 15, 2018; May 15, 2019; November 15, 2019; and May 15, 2020. Thereafter, the ICA's Reports will be issued annually in May 15, 2021; May 15, 2022; May 15, 2023; and May 15, 2024 for the remaining four-year term.

Validation Reviews and Compliance Assessments through Metrics Testing

Validation Reviews will be undertaken through testing of Metrics. There are seven categories of Metrics as described below, and for each of these categories, one or more Metrics will be developed once the ICA obtains an in-depth, process-level understanding of Herbalife's business practices and operations of its multi-level marketing program:

- 1) Multi-Level Compensation Calculations and Limitations on Rewardable Transactions (Section I.A)**
 - Sales to Preferred Customers whom the Participant has personally recruited or sponsored (Section I.A.1.a)
 - Sales to Preferred Customers in the Participant's Downline (Section I.A.1.b)
 - Profitable Retail Sales of the Participant's Downline (Section I.A.1.c)
 - Rewardable Personal Consumption (Section I.A.1.d)
 - Consistency of multi-level compensation with non-rewardable transactions (Section I.A.2)
 - Equal assigned values for products in point system(s) used to measure Rewardable Transactions for Preferred Customers, Retail Customers and Business Opportunity Participants (Section I.A.3)
 - Caps on multi-level compensation (Section I.A.4)
 - No compensation for enrollment or recruitment (Section I.A.5)
- 2) Classification and Differentiation between Preferred Customers and Business Opportunity Participants (Section I.B)**
 - Changes to classifications (Sections I.B.1-2)
 - No benefits/status based on individual's activity (Section I.B.3)
 - Business Opportunity Participants by default (Section I.B.4)
- 3) Collection and Maintenance of Retail Sales Information (Section I.C) – Business Opportunity Participants' document collection/retention (Sections I.C.1-7)**
- 4) Verification and Monitoring of Profitable Retail Sales and Preferred Customer Sales (Section I.D.1-2)**
 - Validity of product sales (Section I.D.1)
 - Occurrence/existence of product sales (Section I.D.2)
- 5) Calculations and Limitations on Claimed Profitable Retail Sales (Section I.D.3) – No multi-level compensation on excess amounts of claimed Profitable Retail Sales**
- 6) Calculations and Limitations on Rewardable Personal Consumption of Business Opportunity Participants (Sections I.E and I.F)**
 - Business Opportunity Participant's monthly purchases not to exceed \$200 of wholesale product expenditures to qualify as Rewardable Personal Consumption (Section I.E.1)
 - To qualify as Rewardable Personal Consumption, monthly Business Opportunity Participant's purchases cannot exceed the greater of (Section I.E.2):
 - \$125 in wholesale product expenditures; or
 - The 75th percentile of average monthly wholesale product expenditures among Preferred Customers over prior twelve months
 - Annual Re-setting of Limitations on Rewardable Personal Consumption of Business Opportunity Participants based on 12-month prior activity (Section I.E.3)

- No minimum quantity of products for Business Opportunity Participants (except initial set-up package, and no multi-level compensation is generated/paid) (Section I.F.1)
- Threshold/targets for products should be met only through Profitable Retail Sales and Sales to Preferred Customers (Section I.F.2)
- No auto-shipment or other similar programs for Business Opportunity Participants (Section I.F.3)

7) Policies for Leased and Purchased Business Locations (Section I.I)

- No lease, sublease or purchase of a physical location for Participants' program-related businesses unless the Participant (Section I.I.1):
 - Has been classified as a Business Opportunity Participant for at least 12 months (Section I.I.1.a)
 - Has completed training on the operation of a leased/purchased business location (Section I.I.1.b)
 - Has drafted, retained and made available to Herbalife and the ICA a written business plan describing facilities/equipment and related costs, applicable regulations and related steps and costs, estimated start-up costs and sources of funding for same, promotional plan, estimated volume of customers and sales for profitable operations, and forecasted statements of income and expenses (Section I.I.1.c)

In assessing Herbalife's compliance via the Metrics, a set of general guidelines would be followed in relation to testing procedures and methods. The Work Plan will specify a statistical sampling methodology across all applicable Metrics to determine sample sizes, excluding Metrics that do not require statistical sampling (i.e., any policy and procedure Metrics, which are designed to test whether appropriate policies and procedures with respect to a provision of the Order are included in the policies and procedures of Herbalife and are being followed by Herbalife).

The sampling design reflects the size, complexity, and risk to Participants associated with the Order provision being evaluated by a particular Metric, and ensures sample data adequately supports test objectives. The sampling design would be commensurate with the type of test being performed and the objectives of the testing. The ICA would also validate the accuracy and completeness of the Metric populations to ensure all relevant transactions are properly included within our testing population.

Proposed Specific Testing Procedures

BDO has incorporated key terms from Herbalife's "Sales & Marketing Plan" to expand on the proposed procedures described below. The inclusion of this information is intended for illustrative purposes only and any procedures performed by the ICA will need to incorporate Herbalife's restructured compensation structure and governing business rules as of the Effective Date (and, as applicable, subsequent ICA reporting dates). The ICA's duties include assessing and reporting on the following:

Compliance with Order Sections X and XI: Is Herbalife complying with the Compliance Reporting and Recordkeeping requirements of the Order? [Order § X & XI]

Proposed Procedures:

- 1) Interview appropriate Herbalife personnel to gain an understanding of the process undertaken, progress achieved to date, and expected future actions to be taken to comply with each Section of the Order pursuant to the requirements of Section X.A.4. Review associated documentation.
- 2) Interview appropriate Herbalife personnel to gain an understanding of the process undertaken, progress achieved to date, and expected future actions to be taken to comply with the recordkeeping and retention requirements of Sections XI.A through XI.H of the Order.
- 3) Review samples of records produced to date pursuant to Section XI.E of the Order, which requires creation of “all records necessary to demonstrate full compliance with each provision of this Order, including all submissions to the Commission,” and analyze the extent to which such records demonstrate such compliance. Discuss analysis with appropriate Herbalife personnel and assess the adequacy of Herbalife’s response to the analysis.

Retail Sales: Is Herbalife collecting all required retail sales information? [Order § I.C]

Proposed Procedures:

- 1) Gain an understanding of the controls around the capture of Profitable Retail Sales information related to Business Opportunity Participants to understand how Herbalife ensures such sales information is accurate and complete. Gain an understanding of how Herbalife ensures Business Opportunity Participants capture required information on the official Herbalife Retail Order Forms and how such information will be collected by Herbalife, including the frequency of obtaining such documentation and any established monthly deadlines for submitting documentation. Review associated documentation.
- 2) Obtain an understanding of how Herbalife calculates Profitable Retail Sales, including but not limited to understanding the software product(s) employed, the calculation of Volume Points and the Business Opportunity Participant’s average wholesale cost over the preceding twelve-month period, and the controls around the process to ensure accuracy. Review associated documentation. Select a statistically valid sample and validate the accuracy of individual calculations to ensure this process is functioning as designed.
- 3) Obtain a list of all Business Opportunity Participants and gain understanding of how Herbalife’s ensures such information is accurate and complete. Obtain a list of all active individual Distributor ID numbers covered by the Order and gain an understanding of Herbalife’s application and approval process to become a Herbalife Distributor. Determine which Business Opportunity Participants have had Profitable Retail Sales and confirm that they are included in the required retail sales information for the purpose of testing the completeness of such sales information.
- 4) Select a statistically valid sample from the retail sales information and validate the propriety of the (a) method of payment; (b) products and quantities sold; (c) the dates; (d) the price paid by the purchaser; (e) first and last name of purchaser; (f) contact information for purchaser, including at least two of the following: telephone number, address or e-mail

address; and (g) for any paper receipt submitted to Herbalife, the signature of the Retail Customer or Preferred Customer.

Retail Sales: Is Herbalife accurately calculating profitable retail sales in a downline? [Order § I.A.1]

Proposed Procedures:

- 1) Obtain an understanding of how Herbalife is calculating Profitable Retail Sales in a downline, the software product(s) employed, and the related controls to ensure the accuracy and completeness of such sales. Review associated documentation.
- 2) Validate that Herbalife's methodology for calculating Profitable Retail Sales in a downline is performed pursuant to the requirements of the Order.
- 3) Select a statistically valid sample of Profitable Retail Sales and validate that Multi-Level Compensation paid to a Business Opportunity Participant for a given period is generated solely by the categories of transactions ("Rewardable Transactions") specified in the Order occurring in the same period or, during such Business Opportunity Participant's first six months as a Business Opportunity Participant, the three months prior to that period.
- 4) To the extent possible, consider using data analytic techniques to determine if Herbalife is accurately calculating Profitable Retail Sales in a downline.

Retail Sales: Is Herbalife adhering to the requirement that a participant's claimed profitable retail sales cannot exceed that participant's total product purchases minus his or her product designated for personal consumption? [Order § I.D.3]

Proposed Procedures:

- 1) Obtain an understanding of how Herbalife calculates the total amount of Product and the Profitable Retail Sales for Business Opportunity Participants, the software product(s) employed, and the related controls to ensure (a) the accuracy and completeness of such information and (b) a Business Opportunity Participant's claimed profitable retail sales does not exceed their total product purchases less his or her product designated for personal consumption. Review associated documentation.
- 2) Validate that Herbalife's methodology for ensuring that a Business Opportunity Participant's claimed profitable retail sales does not exceed their total product purchases is consistent with the requirements of the Order.
- 3) Select a statistically valid sample of Profitable Retail Sales of Business Opportunity Participants and validate that when the Profitable Retail Sales exceeds the total amount of Product purchased by a Business Opportunity Participant (less any amount designated at the time of purchase as being for the Business Opportunity Participant's own or household use, subject to the limitations set forth in Subsection I.F of the Order) Herbalife has not paid any Multi-Level Compensation on the excess amount of claimed Profitable Retail Sales.
- 4) To the extent possible, consider using data analytic techniques to determine if Herbalife is adhering to the requirement that a Business Opportunity Participant's claimed Profitable Retail Sales cannot exceed that Business Opportunity Participant's total product purchases minus his or her product designated for personal consumption.

Retail Sales: Is Herbalife adequately monitoring profitable retail sales to ensure that they are genuine and in fact occurred as reported? [Order § I.D.1&2]

Proposed Procedures:

- 1) Obtain an understanding of the relevant policies and procedures and the steps taken by Herbalife, including both random and targeted audits, and review associated documentation, to ensure that:
 - a. Profitable Retail Sales and Preferred Customer Sales are genuine sales of Products and not an attempt to manipulate the Program's compensation plan.
 - b. Profitable Retail Sales in fact occurred as reported in the information collected and maintained pursuant to Subsection I.C of the Order.
- 2) Obtain an understanding of the objectives and scope of Herbalife's internal audit function (or other group performing such audits), the nature of its responsibilities, and its organizational status, including the function's authority and accountability. Review associated documentation.
- 3) Interview professionals in Herbalife's internal audit or other group to understand:
 - a. The level of competency of the internal audit function.
 - b. Whether the internal audit function's organizational status and relevant policies and procedures adequately support the objectivity of the internal auditors, and
 - c. Whether the function applies a systematic and disciplined approach, including quality control.
- 4) Review the audit plans and programs used by Herbalife's internal audit group to understand the nature of the audit work they perform and frequency of such work.
- 5) Review the working papers of the internal audit group for any audits conducted of these two areas and:
 - a. Corroborate, on a test basis, the content in the group's memoranda.
 - b. Subsample the sample items selected for internal audit group testing and confirm the accuracy of the results.

Preferred Customers: Is Herbalife correctly differentiating between preferred customers and business opportunity participants, including by:

- ***reclassifying preferred customers and business opportunity participants only upon their own written request or application made directly to Herbalife, and***
- ***ensuring that preferred customers neither sell goods or services, nor recruit others into the program, nor receive multi-level compensation? [Order § I.B & Def. I]***

Proposed procedures:

- 1) Obtain a listing of all Preferred Customers and Business Opportunity Participants as of the Effective Date of Section I.B of the Order.
- 2) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated controls, to:
 - a. Differentiate between Herbalife's sales to Preferred Customers and Business Opportunity Participants, both initially and on an ongoing basis,
 - b. Reclassify a Preferred Customer to a Business Opportunity Participant, and vice versa, and

- c. Ensure that Preferred Customers do not sell goods and services, recruit into the program, or receive Multi-Level Compensation.
Review associated documentation.
- 3) Validate that Herbalife's policies, procedures, and processes are consistent with the Order's definitions of Preferred Customers and Business Opportunity Participants, the Order's requirement to reclassify Preferred Customers and Business Opportunity Participants only upon their own written request or application made directly to Herbalife, and the Order's requirement to ensure that Preferred Customers do not sell goods and services, recruit into the program, or receive Multi-Level Compensation. Gain an understanding of how the activity of Preferred Customers is monitored.
 - 4) Select a statistically valid sample of Business Opportunity Participants that were new Herbalife distributors after the Effective Date of Section I.B of the Order. Review appropriate evidence to validate this classification was granted as a result of individuals' own written request or application made directly to Herbalife. Consider the use of positive confirmations for obtaining such evidence.
 - 5) Select a statistically valid sample of Preferred Customers. Review underlying account activity and perform procedures to validate these individuals did not receive Multi-Level Compensation.
 - 6) Select statistically valid samples of sales of goods and services, Business Opportunity Participants that purchased business pack on or after the Effective Date of Section 1.B of the Order, and receipts of Multi-Level Compensation and validate that none of these violate the Order's prohibition regarding Preferred Customers. Select a statistically valid sample of Preferred Customers and review associated activity records to validate that they do not include sales of goods and services, recruiting of other participants into the program, or receipt of Multi-Level Compensation.

Preferred Customers: Is Herbalife adhering to the requirement that a preferred customer who transitions to business opportunity participant may not receive or retain any benefit or status other than a continued discount on product for personal consumption? [Order § I.B.3]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated controls, to ensure that a Preferred Customers who becomes a Business Opportunity Participants may not receive any benefit or status that depends on that individual's activity as a Preferred Customer, except that any discount the individual obtained as a Preferred Customer may continue to be used to purchase the product that is designated, at the time of purchase, of being for the individual's own or household use. Review associated documentation.
- 2) Select a statistically valid sample of Preferred Customers who become Business Opportunity Participants and review their activity to validate that they have not received any benefit or status that depends on their activity as a Preferred Customer other than a continued discount on product that was designated, at the time of purchase, of being for their own or household use. Also consider the use of positive confirmations.

Preferred Customers: Is Herbalife accurately calculating the preferred customer sales of a participant and in the participant's downline? [Order § I.A.1]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated controls, for determining, for a given Business Opportunity Participant and as of a particular point in time, the Preferred Customer whom the Business Opportunity Participants has personally recruited or sponsored. Review associated documentation.
- 2) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated software product(s) employed and controls, for determining, for a given Business Opportunity Participant and as of a particular point in time, the composition of the Business Opportunity Participant's Downline. Review associated documentation.
- 3) Obtain an understanding of Herbalife's policies, procedures, and processes, including the software product(s) used for the calculations and the associated controls, for calculating the Multi-Level Compensation paid to a Business Opportunity Participant for a given period and for ensuring that it is generated solely by the four categories of Rewardable Transactions in Section I.A.1 of the Order occurring in the same period or, during the Business Opportunity Participant's first six months as a the Business Opportunity Participant, the three months prior to that period. Review associated documentation.
- 4) Select a statistically valid sample of Multi-Level Compensation payments to Business Opportunity Participants and:
 - a. Validate the accuracy of individual Multi-Level Compensation calculations, including period cutoff, for sales to Preferred Customers whom the Business Opportunity Participant has personally recruited or sponsored, sales to Preferred Customers in the Business Opportunity Participants Downline, Profitable Retail Sales of the Business Opportunity Participant's Downline pursuant to Section I.C of the Order, and Rewardable Personal Consumption transactions pursuant to I.A.1.d of the Order, and
 - b. Validate that the Multi-Level Compensation was generated solely by sales to Preferred Customers whom the Business Opportunity Participant has personally recruited or sponsored, sales to Preferred Customers in the Business Opportunity Participant's Downline, Profitable Retail Sales of the Business Opportunity Participant's Downline pursuant to Section I.C of the Order, and/or Rewardable Personal Consumption transactions pursuant to Section I.A.1.d of the Order.
- 5) To the extent possible, consider using data analytic techniques to determine if Herbalife is accurately calculating the Preferred Customer sales of a Business Opportunity Participant and in the Business Opportunity Participant's Downline.

Preferred Customers: Is Herbalife adequately monitoring sales to preferred customers to ensure that they are genuine? [Order § I.D.2]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies and procedures, and any related software product(s) employed, regarding the reasonable steps taken, including both random and targeted audits, to monitor Profitable Retail Sales in order to ensure that they in fact occurred as reported in the information collected and maintained pursuant to Section I.C of the Order. Review associated documentation.
- 2) Select a sample of the steps taken by Herbalife, including both random and targeted audits, to monitor Profitable Retail Sales in order to ensure that they in fact occurred as reported in the information collected and maintained pursuant to Section I.C of the Order. Review and assess the type and frequency of such steps, and discuss with Company management the results of such steps. Review associated documentation.
- 3) Consider participating, in conjunction with Herbalife's internal auditors or other relevant group, in one or more of the random and/or targeted audits, reviewing Herbalife's assessment and documentation of the results, and comparing such assessment with our assessment.
- 4) Select a statistically valid sample of Profitable Retail Sales and review for propriety the supporting documentation collected and maintained pursuant to Section I.C of the Order.

Personal Consumption by Business Opportunity Participants

- ***Is Herbalife accurately calculating rewardable personal consumption in a downline according to the both the designation requirement and individual monthly limit? [Order § I.E]***
- ***Is Herbalife ensuring that product purchases that are counted as rewardable personal consumption are in fact being purchased for the participant's own or household use? [Order § I.E & Def. O]***

Proposed procedures for these two bulleted questions:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated software product(s) employed and controls, for ensuring that the Rewardable Personal Consumption of a Business Opportunity Participant in a given period is limited to purchases in that period that are designated by the Business Opportunity Participant at the time of purchase as being for the Business Opportunity Participant's own or household use. Review associated documentation.
- 2) Obtain an understanding of Herbalife's policies, procedures, and processes, including the software product(s) used for the calculations and the associated controls, for ensuring that Rewardable Personal Consumption is determined incorporating the monthly limitations prescribed in Sections I.E.1 and I.E.2 of the Order. Review associated documentation.
- 3) Obtain an understanding of Herbalife's policies, procedures, and processes, including associated controls, for obtaining reasonable assurance that purchases designated by a Business Opportunity Participant at the time of purchase as being for the Business Opportunity Participant's own or household use are in fact being purchased for such use. Review associated documentation.

- 4) Select a statistically valid sample of Business Opportunity Participant Rewardable Personal Consumption determinations and validate that for each:
 - a. Herbalife's calculation of Rewardable Personal Consumption incorporates the designation requirement of Section I.E of the Order,
 - b. Herbalife's calculation of Rewardable Personal Consumption incorporates the individual monthly limitations of Section I.E of the Order, and
 - c. Herbalife has obtained reasonable assurance that the purchases designated by the Business Opportunity Participant at the time of purchase as being for the Business Opportunity Participant's own or household use are in fact being purchased for such use.
- 5) To the extent possible, consider using data analytic techniques to determine if Herbalife is accurately calculating Rewardable Personal Consumption according to both the designation requirement and individual monthly limit.

Paying Multi-Level Compensation: Is Herbalife paying multi-level compensation on retail sales only when retail sales information has been collected and reflects that the sale was profitable? [Order § I.A & Def. M]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including the related software product(s) employed and controls, for collecting and maintaining the necessary retail sales information and performing the necessary calculations under Definition M of the Order to determine if a retail sales transaction constitutes a "Profitable Retail Sale" under that definition. Review order form templates and Herbalife's records to gain an understanding how such information is reported to Company. Review associated documentation.
- 2) Select a statistically valid sample of what Herbalife has recorded as Profitable Retail Sales and validate that for each such sampled transaction:
 - a. The retail sales information necessary to perform the calculation under Definition M has been collected and properly maintained in a clear and usable format,
 - b. The calculation to determine whether the retail sale is a Profitable Retail Sale is accurate, and
 - c. The retail sale is correctly reported as a Profitable Retail Sale for purposes of paying Multi-Level Compensation.
- 3) To the extent possible, consider using data analytic techniques to determine if Herbalife is paying Multi-Level Compensation on a retail sales transaction only when such transaction constitutes a Profitable Retail Sale.

Paying Multi-Level Compensation: Is Herbalife limiting the multi-level compensation paid for consumption by business opportunity participants in a downline based on the relevant volume of retail sales and preferred customer sales? [Order § I.A.1]

Paying Multi-Level Compensation: Is Herbalife paying multi-level compensation for rewardable transactions during the same period only, with the sole exception being a three-month "look-back" for new business opportunity participants during their first six months in that status? [Order § I.A.1]

Proposed procedures:

The foregoing two questions would be tested as part of the testing performed of the preceding question: “Is Herbalife accurately calculating the preferred customer sales of a participant and in the participant’s downline? [Order § I.A.1]”

Paying Multi-Level Compensation: Is Herbalife complying with the prohibition against paying multi-level compensation to a participant who has not taken and successfully completed a training course that focused on required topics? [Order § I.H]

Proposed procedures:

- 1) Obtain an understanding of Herbalife’s Business Opportunity Participants training procedures, including but not limited to the preparation and assessment of training materials, frequency, timing, attendance and related recordkeeping, session protocol, environment, instructor qualifications, tests given to attendees, remediation for attendees with failing test results, and handling of absenteeism. Review documentation associated with these procedures.
- 2) Review training materials to ensure that the eight topics listed in Section I.H of the Order are the focus, and consider sitting in on all or part of one or more training sessions to assess coverage of topics, attendance and related recordkeeping, session protocol, environment, quality of instruction, handling of absenteeism, and overall training quality.
- 3) Obtain an understanding of Herbalife’s procedures, including related software product(s) employed and controls, for paying Multi-Level Compensation only to Business Opportunity Participants who have taken and successfully completed a training course that is focused on required topics under Section I.H of the Order. Review associated documentation.
- 4) Select a statistically valid sample of Multi-Level Compensation payments and validate that each payment was made only to a Business Opportunity Participant who had taken and successfully completed a training course that is focused on required topics under Section I.H of the Order.
- 5) To the extent possible, consider using data analytic techniques to determine if Herbalife is complying with the prohibition against paying Multi-level Compensation to a Business Opportunity Participant who has not taken and successfully completed a training course that focused on required topics.

Paying Multi-Level Compensation: Is Herbalife adhering to the prohibition against varying multi-level compensation based on non-rewardable transactions? [Order § I.A.2]

Proposed procedures:

- 1) Obtain an understanding of Herbalife’s policies and procedures, including associated software products employed and controls, for excluding Non-Rewardable Transactions from determination of Multi-Level Compensation pursuant to Section I.A.2 of the Order, such that if a Business Opportunity Participants has Non-Rewardable Transactions in his or her Downline, the amount of compensation he or she may receive does not vary from the amount of compensation that he or she would receive if the Non-Rewardable

Transactions was not in his or her Downline. Gain an understanding of how Herbalife identifies and tracks Non-Rewardable Transactions. Review associated documentation.

- 2) Select a statistically valid sample of Non-Rewardable Transactions. Confirm that Non-Rewardable Transactions were not considered in part or in whole in any Multi-Level Compensation calculations for the associated Business Opportunity Participants, regardless of whether the Non-Rewardable Transaction was in the Business Opportunity Participant's Downline.
- 3) To the extent possible, consider using data analytic techniques to determine if Herbalife is adhering to the prohibition against varying Multi-Level Compensation based on Non-Rewardable Transactions.

Paying Multi-Level Compensation: Is Herbalife adhering to the prohibition against varying aspects of multi-level compensation based on the identity of the purchaser? [Order § I.A.3]

Proposed procedures:

- 1) Obtain an understanding of the Volume Point system or any other method or software product(s) used by Herbalife to measure Rewardable Transactions based on assignment of values to various types of Rewardable Transactions and the frequency and timing of such measurements. Review associated documentation.
- 2) Obtain an understanding of the policies, procedures, and processes used by Herbalife, including the related software product(s) employed and controls, to ensure that (1) the Volume Point system or any other method used to measure Rewardable Transactions assigns the same values to a given product regardless of whether the product was sold to a Preferred Customers, a retail customer, or a Business Opportunity Participants, and (2) any system or method used by Herbalife to calculate Multi-Level Compensation does not vary the compensation for a Rewardable Transactions based on whether the product was sold to a Preferred Customer, a retail customer, or a Business Opportunity Participants for personal consumption. Review associated documentation.
- 3) Select a statistically valid sample of sales involving Rewardable Transactions and validate that the point system or method used to measure Rewardable Transactions assigns the same values to a given product regardless of whether the sale was to a Preferred Customer, a retail customer, or a Business Opportunity Participants.
- 4) Select a statistically valid sample of Multi-Level Compensation calculations involving Rewardable Transactions and validate that the compensation for a Rewardable Transaction did not vary based on whether the product was sold to a Preferred Customer, a retail customer, or a Business Opportunity Participants for personal consumption.
- 5) To the extent possible, consider using data analytic techniques to determine if Herbalife is adhering to the prohibition against varying aspects of Multi-Level Compensation based on the identity of the purchaser.

Paying Multi-Level Compensation: If business opportunity participants must meet any thresholds related to multi-level compensation, is Herbalife adhering to the requirement that such thresholds may be met exclusively through profitable retail sales and preferred customer sales? [Order § I.F.2]

Proposed procedures:

- 1) For Programs used by Herbalife, obtain an understanding of Program requirements, including Volume Point calculations, the software product(s) used for the calculations, and the frequency and timing of evaluating qualification activity, for a Business Opportunity Participant to meet a threshold or target in order to (a) obtain or maintain a level or designation necessary to receive any particular type or amount of Multi-Level Compensation, (b) qualify or become eligible to receive Multi-Level Compensation, (c) otherwise increase the Business Opportunity Participant's amount of Multi-Level Compensation, or (d) obtain, maintain, increase, or qualify for a discount or rebate on product purchased for resale. Review associated documentation.
- 2) Obtain an understanding of Herbalife's policies, procedures, and processes, including related software product(s) employed and controls, for ensuring that with respect to Program requirements regarding Business Opportunity Participants meeting such targets or thresholds, any such target or threshold is met exclusively through Profitable Retail Sales and/or Sales to Preferred Customers. Review associated documentation.
- 3) Select a statistically valid sample of Business Opportunity Participants that met thresholds related to Multi-Level Compensation and review account activity for the relevant time period to determine whether there is sufficient evidence that the level or designation was obtained exclusively on Profitable Retail Sales and/or Sales to Preferred Customers.
- 4) To the extent possible, consider using data analytic techniques to determine whether Herbalife is adhering to the requirement that any thresholds that Business Opportunity Participants must meet related to Multi-Level Compensation are to be met exclusively through Profitable Retail Sales and/or Sales to Preferred Customers.

Paying Multi-Level Compensation: Is Herbalife complying with the prohibition against paying a "headhunter fee"? [Order § I.A.5]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including related software product(s) employed and controls, for ensuring no compensation is paid solely for enrolling or recruiting a Business Opportunity Participant or Preferred Customers into the Program. Review associated documentation.
- 2) Select a statistically valid sample of compensation payments and validate that no payments were made solely for enrolling or recruiting a Business Opportunity Participant or Preferred Customers into the Program.
- 3) To the extent possible, consider employing data analytic techniques to validate that no compensation is paid solely for enrolling or recruiting a Business Opportunity Participant or Preferred Customers into the Program.

Paying Multi-Level Compensation: Is Herbalife complying with the prohibition against paying multi-level compensation based on purchase of a start-up package? [Order § I.F.1]

Proposed procedures:

- 1) Obtain an understanding of Herbalife's policies, procedures, and processes, including related software product(s) employed and controls, for ensuring Business Opportunity Participants are not required to purchase a minimum quantity of products, with the exception that Business Opportunity Participants may be required to purchase an initial start-up package or its equivalent, provided that no Multi-Level Compensation is generated or paid on the purchase. Review changes to Herbalife Sales & Marketing Plan, Herbalife Advantage Program, relevant order forms and information disclosed in distribution business pack(s) to verify no minimum purchase quantity is required. Review associated documentation.
- 2) Select a statistically valid sample of Business Opportunity Participant product purchases and validate that they do not reflect a required purchase of a minimum quantity of product.
- 3) To the extent possible, consider employing data analytic techniques to validate that product purchases do not reflect a required purchase of a minimum quantity of product.

Annual U.S. Multi-Level Compensation: Is Herbalife accurately calculating net rewardable sales and total net sales, and limiting the sum of multi-level compensation payments if so required? [Order § I.A.4]

Proposed procedures:

- 1) To the extent not already obtained through previous testing steps, obtain an understanding of Herbalife's policies, procedures, and processes, including related software product(s) employed and controls, for calculation of Net Rewardable Sales, Total Net Sales, Multi-Level Compensation, and Wholesale Commissions. Review associated documentation.
- 2) Obtain an understanding of Herbalife's process, including the software product(s) used for the calculations and the related controls, for calculating the limitation in Section I.A.4, capping the Multi-Level Compensation if required based on the amount of the limitation, validating that the limitation was not exceeded, and determining next steps if the limitation is exceeded. Assess the propriety of such next steps under the Order. Review associated documentation.
- 3) For each fiscal year covered under the Order, recalculate the limitation on Multi-Level Compensation and compare to Herbalife's calculation, investigating any differences. Recalculate the quantity pursuant to Section I.A.4 of the Order that is to be compared to the limitation and compare that recalculated quantity to Herbalife's calculation, investigating any differences. Review Herbalife's determination of whether the limitation was exceeded, and if it was, review the ensuing steps taken by Herbalife for propriety.
- 4) To the extent possible, consider using data analytic techniques to determine if Herbalife is accurately calculating Net Rewardable Sales and Total Net Sales, and is limiting the sum of Multi-Level Compensation payments if so required.

Limitations on Leased or Purchased Business Locations: Is Herbalife adequately enforcing the prohibition against participants leasing or purchasing a physical location unless they have met all relevant requirements? [Order § I.I]

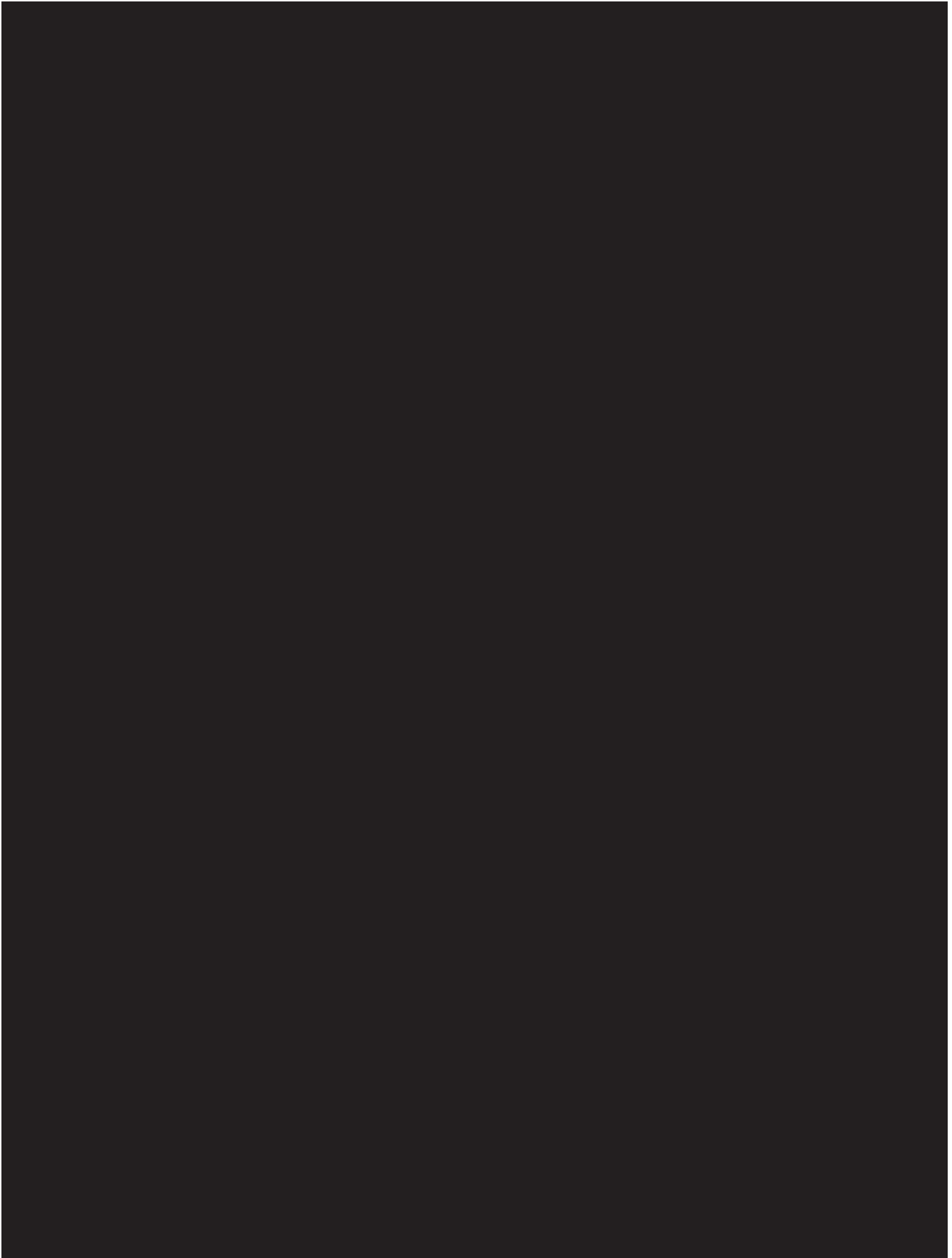
Proposed procedures:

- 1) Obtain a listing of existing Nutrition Clubs as of the Effective Date of this Section.
- 2) Review Herbalife's Nutrition Club Rules and Nutrition Club Manuals to gain an understanding of relevant requirements.
- 3) Obtain an understanding of Herbalife's process for communicating, making individual Business Opportunity Participant compliance determinations related to, and enforcing the Order's prohibitions in I.I related to a Business Opportunity Participant's leasing, subleasing, or purchasing a physical location or portion of a physical location (other than their homes or dwellings) for their Program-related businesses until the Business Opportunity Participant has fulfilled specified requirements. Review associated documentation.
- 4) Select a statistically valid sample of Business Opportunity Participants that had their applications confirmed by Herbalife to enter into such leasing, subleasing, or purchasing arrangements after the Effective Date of this Section based on Company records, and validate that these Business Opportunity Participants have met the specified requirements. Review evidence that training materials met all relevant requirements and review evidence of written business plans.
- 5) Review relevant account activity of all Business Opportunity Participants that had applications confirmed on or after the Effective Date of this Section and perform procedures to validate certain qualification criteria was met (e.g., review corroborating evidence that Business Opportunity Participant had been active for at least twelve consecutive months).

F. POTENTIAL CONFLICTS OF INTEREST OR BIAS

We do not believe our team members and firm have any conflicts of interest. In the interest of full disclosure, BDO performed work for Herbalife several years ago regarding issues unrelated to the Order. Specifically, we provided consulting services related to Herbalife's anti-corruption policies and internal controls. Also, BDO's Los Angeles office proposed on the audit of Herbalife's financial statements following KPMG LLP's resignation, but ultimately BDO was not retained as the company's independent registered public accounting firm. We do not view these circumstances as related to this work, or as a potential or perceived conflict of interest or potential bias. Based on the lack of relevance BDO's prior work has on the duties of the ICA and the time that has elapsed since such work had been completed, we do not feel that such facts would warrant barring our team's selection as ICA. The individuals involved with these consulting services and proposal for Herbalife's financial statement audit are not on the ICA's proposed team and will not have any role on the ICA engagement. BDO is highly respected in its field and is committed to performing this work with integrity. We will fairly work with all parties in this matter to analyze the relevant facts and circumstances in assessing Herbalife's compliance with the Order.

G. ESTIMATED COSTS





We would welcome the opportunity to meet with you in person to discuss the proposed team's experience, how the team would approach the role of the ICA, and related matters.