

Application to Serve as Independent Compliance Auditor (ICA) for Herbalife

A. Executive Summary

This proposal to serve as the Independent Compliance Auditor (ICA) for Herbalife pursuant to their recent Agreed Order with the Federal Trade Commission (FTC) is submitted by former Kentucky Attorney General Jack Conway, with significant support in auditing, compliance consulting and economics from Deloitte Advisory. Mr. Conway is now in private practice, but during his two terms as Attorney General, he worked closely with the FTC in the most significant joint state-FTC legal action against a pyramid scheme in the last decade – the lawsuit and ultimate receivership of Fortune Hi-Tech Marketing in 2013. If selected as the ICA, Mr. Conway will bring high-level credibility with consumer groups who are closely watching the enforcement of the Agreed Order between Herbalife and the FTC. Moreover, Mr. Conway is well versed in the legal standards used to differentiate between an illegal pyramid scheme and an acceptable multi-level marketing (MLM) entity. Additionally, Mr. Conway served in national leadership positions amongst his colleagues, and is well-familiar with the independent monitor process, having employed it in investigations of for-profit colleges that he led, as well as the state Attorneys General National Mortgage Settlement.

Mr. Conway will be assisted by professionals from **Deloitte Advisory** with deep experience working with companies and monitors to assist companies in enhancing the business processes, internal controls, and IT systems that support good compliance. In particular, he will work closely with Rob Biskup and Steve Stanton who will lead the Deloitte Advisory team. As further described below, Mr. Biskup and Mr. Stanton bring extensive experience in serving as monitors, auditing and testing compliance related business processes systems and controls, and developing appropriate remediation and enhancement plans to help companies address the many root causes of compliance failures, and prevent future recurrence of those breakdowns. They will leverage the deep resources of Deloitte Advisory and other Deloitte practice areas.

With more than 70,000 employees in over 100 offices, Deloitte is the largest accounting and professional services provider in the United States. Deloitte's depth and breadth of resources and its reputation as one of the world's leading audit and risk advisory firms will provide access to a wide range of skills needed to assist the ICA.

In responding to this Request for Applications, this team has done its best to be responsive in the areas of scope of work and budget. However, our experience informs us that much of this planning and identifying the scope will be done after initially meeting with both Herbalife and representatives of the FTC. To that end, our initial task will be to develop a proposed work plan for activities in the initial year, which will be done in consultation with Herbalife management who would be most knowledgeable about the operations under review and how best to obtain the information and data to be tested. This work plan will address

each of the requirements set forth in Section II of Request for Application to Serve as Independent Compliance Auditor for Herbalife. A timetable will also be developed that will enable us to meet the reporting deadlines set forth in the Order.

The proposed work plan and timetable will be discussed with FTC staff to get their input and concurrence prior to commencing the testing. Based on our experience in similar situations, we would expect that much of our work would be “front end loaded” with extensive assessment activity during the first year in particular. We anticipate that the work plan prepared for the first year will be detailed and that conceptual work plans for subsequent years will be developed at the outset of the engagement. The subsequent year work plans will be modified and refined as appropriate based on testing and findings in the first year.

B. Personnel

Jack Conway will serve as the ICA. In that capacity he will be responsible for overseeing all aspects of work, including establishing the scope of testing to be performed, ensuring that the testing is performed diligently, discussing the testing and results obtained with Herbalife management, and reporting the results to the FTC.

Jack Conway served two terms as Attorney General of the Commonwealth of Kentucky from January of 2008 to January of 2016. Mr. Conway was Kentucky’s 49th Attorney General and focused his efforts on making Kentucky a safer place to live, work and raise a family. Mr. Conway was recognized as a national leader among Attorneys General in standing up to those large corporate, banking and pharmaceutical interests that placed their own interests above those they served.

He is now a partner in the law firm of **Dolt, Thompson, Shepherd & Conway** in Louisville, KY.

Perhaps most importantly for the purposes of this Application, Mr. Conway is experienced in investigating pyramid schemes, and seeking restitution for consumers who have been harmed. He is well versed in the legal standards used to differentiate between an illegal pyramid scheme and an acceptable multi-level marketing (MLM) entity. During his tenure as Kentucky Attorney General, Mr. Conway’s office investigated and took enforcement action against Fortune Hi-Tech Marketing (FHTM), a company based in Lexington, KY, which claimed over 160,000 “members” but in fact was set up so 96% of people would lose money. During the last year of the investigation, Mr. Conway brought in the FTC’s Midwest Bureau to assist. After a year of successfully working together, then-Attorney General Conway and Steve Baker, director of the FTC’s Midwest Bureau, announced in January 2013 that suit had been filed and a receiver appointed to take over FHTM. Ultimately, millions of dollars were recouped with many members who lost money receiving partial restitution. This was perhaps the most significant joint state-FTC legal action against a pyramid scheme in the last decade. If selected as the ICA, Mr. Conway will bring high-level credibility with consumer groups who are closely watching the enforcement of the Agreed Order between Herbalife and the FTC.

Mr. Conway brought his perspective as a successful attorney to the role of Attorney General, and as a result, his office collected more than a half-billion dollars for the state treasury and consumers – far more than any previous occupant of the office. These collections included tens of millions of dollars against pharmaceutical companies that misrepresented the costs of drugs to the Kentucky Medicaid program. Even facing budget cuts of more than 40 percent during his time in office, Medicaid fraud collections increased by 600 percent, and an independent watchdog group twice named Attorney General Conway’s Medicaid Fraud Unit the most aggressive in the country.

Mr. Conway also fought to protect consumers. He sued Marathon Oil for allegedly violating anti-trust laws regarding the wholesale supply of gasoline in Kentucky. He led a national working group of 37 state Attorneys General reviewing the questionable practices of some for-profit colleges. He also participated in the historic national mortgage settlement that secured \$25 billion for consumers who had been wrongfully foreclosed on by one of the nation’s five largest banks. Consumers in Kentucky received almost \$64 million in settlement-related relief. In addition, Mr. Conway recovered \$23 million for the Kentucky Retirement System from Bank of America (BOA) for allegedly trading mortgage-backed securities to the system that BOA knew were toxic.

In January of 2014, he announced that \$32 million he secured in settlements with two pharmaceutical companies would be used to expand drug treatment in Kentucky.

As a former state Attorney General, Mr. Conway is well familiar with the process of setting up independent compliance monitors to enforce settlements between companies and government enforcement agencies. He employed monitors to ensure compliance with resolutions achieved in actions against several for-profit colleges, and as part of the state Attorneys General negotiating the aforementioned national mortgage settlement, he is familiar with the process that ultimately led to a former state banking regulator to serve as a compliance monitor.

Former Attorney General Conway served on the executive committee of the National Association of Attorneys General (NAAG). He previously co-chaired the substance abuse committee with Florida Attorney General Pam Bondi and co-chaired the consumer protection committee. He also co-chaired NAAG’s veteran’s committee. Mr. Conway served two years as a co-chair of the Democratic Attorneys General Association (DAGA). In November 2008, Mr. Conway was one of 24 elected public officials from across the country chosen to participate in the Aspen Institute-Rodel Fellowships in Public Leadership program.

The reputation Attorney General Conway enjoys amongst peers, former colleagues, and federal enforcement partners he has worked with in the past positions him well to help achieve the outcome sought here by both parties.

Mr. Conway will be assisted by professionals from **Deloitte Advisory** with deep experience working with companies and monitors to assist companies in enhancing the business processes, internal controls, and IT systems that support good compliance. In particular, he will work closely with Rob Biskup and Steve Stanton who will lead the Deloitte Advisory

team. As further described below, Mr. Biskup and Mr. Stanton bring extensive experience in serving as monitors, auditing and testing compliance related business processes systems and controls, and developing appropriate remediation and enhancement plans to help companies address the many root causes of compliance failures, and prevent future recurrence of those breakdowns. They will leverage the deep resources of Deloitte Advisory and other Deloitte practice areas.

With more than 70,000 employees in over 100 offices, Deloitte is the largest accounting and professional services provider in the United States. Deloitte's depth and breadth of resources and its reputation as one of the world's leading audit and risk advisory firms will provide access to a wide range of skills needed to assist the ICA.

Rob Biskup, is a Deloitte Advisory Managing Director, with over 30 years of international experience in the fields of regulatory compliance, forensic accounting, and law. He has deep experience working with large multi-national companies in regulatory enforcement proceedings, including companies operating under monitorships, consent orders, and deferred prosecution agreements. Before joining Deloitte in 2008, Rob served as the global Chief Compliance Officer at Ford Motor Company and was responsible for developing the compliance programs, systems and controls for Ford's worldwide operations. Rob also served as Ford's Assistant General Counsel and head of Regulatory Matters and has deep experience working with governmental agencies, at the federal and state levels.

Rob has been named by companies and federal agencies to assist businesses operating under monitors. He currently serves as the independent regulatory expert on behalf of a major global automotive company operating under a 3-4 year federal monitorship under a consent order. He also serves as an independent compliance consultant to a global manufacturing and services company operating under a 3-4 year federal monitorship under a deferred prosecution for FCPA violations. Rob also served as the lead independent forensic investigations coordinator for the Americas region on behalf of a global automotive company operating under a 4 year monitorship for FCPA violations.

Steven F. Stanton, CPA, is a Deloitte Advisory Managing Director who brings over 35 years of experience as an accountant, auditor, forensic investigator, expert witness and monitor. He spent 18 years in the audit practice of one of the leading international accounting firms where he focused on auditing financial information and testing internal controls and compliance with laws, regulations and contractual agreements. Over the past 16 years he has devoted his practice to forensic accounting. He is frequently called upon to assist boards of public companies and management teams in performing investigations into concerns about accounting fraud or violations of laws. In this capacity, he is frequently called upon to report the conduct of the investigation and findings to governmental bodies including the Securities Exchange Commission and the Department of Justice.

Mr. Stanton had been retained to serve as, or to assist, monitors that have been appointed in connection with the resolution of government enforcement actions. These have included

serving as the Independent Reviewer in connection with a settlement agreement by a major marketer of medical devices, assisting the Independent Consultant appointed to oversee the distribution of a \$75 million Fair Funds settlement to investors using a mutual fund marketing company, and serving as the Independent Consultant for a Real Estate Investment Trust to test compliance with commitments it made to the SEC to make improvements to its controls and governance procedures.

Michael Brien, PhD, is a Deloitte Advisory Managing Director who has extensive experience in complex data and statistical analysis. Dr. Brien has a PhD in Economics from the University of Chicago. He served on the faculty of the University of Virginia where he taught graduate level courses in labor economics and microeconomic analysis. Dr. Brien is frequently called upon to assist in designing testing approaches and analyzing findings regarding compliance with laws and regulations, and litigation contexts.

These Deloitte Advisory experts will be assisted by other personnel from their firm who are experienced in designing and testing the processes and controls that support compliance, statistical and data analysis, information technology, data management and analysis, as well as overall governance, organizational structures, and checks and balances that drive and sustain effective corporate compliance programs.

C. Qualifications

The ICA team will have access to professionals experienced in all of the areas contemplated in the Request. As described above, Deloitte has over 70,000 people in the US, many of whom possess the specific skills and experience needed to effectively and efficiently perform the work required for his assignment. Each of the specific areas identified in the Request are enumerated below.

- Monitoring, auditing and evaluating performance / experience in monitoring settlements – Mr. Conway and Messrs. Biskup and Stanton are both experienced in monitor roles and will bring that experience to bear in designing and executing a testing approach, and analyzing and reporting on the results of that testing. They are accustomed to working through the delicacies and intricacies inherent in these types of assignments. Their objectivity and credibility will provide the FTC the candid feedback it seeks in its oversight of the Order, while performing the work in an efficient and cost effective manner and providing practical recommendations and suggestions for improvement to Herbalife.
- Statistical and data analysis – Dr. Brien is highly experienced in this area and we expect to draw upon his audit and investigation experience that frequently requires these skills. Dr. Brien will draw upon the approximately 1,800 personnel in Deloitte Advisory's Analytics team to bring the best skills, tools and techniques to gather and analyze relevant data.
- Information technology – Our team will have access to the vast and leading edge information technology capabilities of Deloitte. Deloitte Consulting is one of the

leading firms in IT systems implementation and Deloitte Advisory has extensive resources in testing information systems controls and effectiveness. The Deloitte team also has access to a wide range of IT tools that will enable us to leverage those capabilities to automate relevant parts of our testing and analysis, as well as providing Herbalife with insight on ways that compliance can be sustained through the selective deployment of automated controls and processes in key risk areas.

- Data management – Here again, Dr. Brien’s extensive experience in obtaining and managing large volumes of data from a variety of sales and marketing, human capital and financial systems, in conjunction with other experts for Deloitte, will provide top tier expertise in this area.
- Completing projects within anticipated deadlines and budgets – Effective project management is a hallmark of Deloitte. They will assign an experienced project manager who will work closely with Mr. Conway and other members of the leadership team. This project management function will establish clear timetables for information requests from Herbalife, key work steps and deliverables and continuously report on progress toward those deadlines. We will also establish budgets of hours and fees for each major task and provide monthly reporting to Herbalife on progress toward those budgets.
- Preparing for and participating in court proceedings – As a current litigator, former prosecutor and Kentucky Attorney General, Mr. Conway is very capable in participating in court proceedings. Messrs. Biskup, Stanton and Brien are all experienced in testifying in courts and / or before regulatory bodies.
- Report writing – Our leadership team brings deep experience in writing legal briefs, expert reports, audit papers, and other reports to governmental bodies. This experience will enable us to provide clear, comprehensive and objective reports that will be developed with the logical organization, attention to detail and factual support that this serious endeavor warrants.

D. Prior Experience

Our team has direct, on point experience is serving as a monitor in connection with a variety of settlement arrangements entered into with government agencies and other parties. All of these situations are unique as is the Order for Herbalife. Our prior experience gives us experience, skills and perspective that will enable us to effectively design, execute and report on the testing plan that will best suit the needs of both Herbalife and the FTC.

Fiat Chrysler Automobiles – Mr. Biskup and a team from Deloitte Advisory and Deloitte Consulting are presently serving as the Independent Regulatory Expert to Fiat Chrysler Automobiles (FCA), in connection with FCA’s 3-4 year federal monitorship and Consent Order under the Motor Vehicle Safety Act. Under Mr. Biskup’s guidance and leadership, the Deloitte team has worked with FCA in assessing key business processes and controls supporting compliance with the Safety Act, and developing remediation and enhancement strategies to assist FCA in identifying and driving industry leading practices in regulatory compliance.

SEC Independent Consultant – Mr. Stanton assisted the Independent Consultant for an investment firm appointed by the SEC staff to test the distribution of a \$75 million settlement to several million customers who invested in mutual funds recommended by the investment firm. Mr. Stanton worked with the investment firm to develop the methodology for allocating and distributing the settlement amount to the affected customers. This plan was reviewed and approved by the SEC staff. Testing was performed and once the distribution process was complete a report was issued to the SEC. He also served as an Independent Consultant in connection with an SEC enforcement matter which entailed testing the effectiveness and operation of newly established board governance procedures and internal control procedures.

Healthcare IRO – Mr. Stanton was appointed by the US Health and Human Services Office of Inspector General (“HHS OIG”) to serve as an Independent Review Organization in connection with a Corporate Integrity Agreement entered into by one of the largest marketers and distributors of mechanized wheelchairs in the US. This role had a three-year term that entailed establishing a scope of testing that was approved by the HHS OIG. During the initial year the scope of work involved evaluating and testing newly established control procedures. The work also included testing a statistically valid random sample of transactions in all three years to test for compliance with the established control procedures and the applicable laws and regulations.

References for any or all of these engagements can be provided upon request. Additionally, FTC Chairwoman Ramirez should be generally familiar with Mr. Conway’s work in the area of consumer protection, and former FTC Midwest Director Steve Baker should be generally familiar with the partnership in the FHTM case.

E. Proposed Activities / Scope of Work

Our initial task will be to develop a proposed work plan for activities in the initial year, which will be done in consultation with Herbalife management who would be most knowledgeable about the operations under review and how best to obtain the information and data to be tested. This work plan will address each of the requirements set forth in Section II of Request for Application to Serve as Independent Compliance Auditor for Herbalife. A timetable will also be developed that will enable us to meet the reporting deadlines set forth in the Order.

The proposed work plan and timetable will be discussed with the Commission staff to get their input and concurrence prior to commencing the testing. Based on our experience in similar situations, we would expect that much of our work would be “front end loaded” with extensive assessment activity during the first year in particular. We anticipate that the work plan prepared for the first year will be detailed and that conceptual work plans for subsequent years will be developed at the outset of the engagement. The subsequent year work plans will be modified and refined as appropriate based on testing and findings in the first year.

F. Potential Conflicts of Interest or Bias

Mr. Conway and Deloitte Advisory believe that they are free of any potential or perceived conflicts of interest. As a large global entity, other parts of Deloitte have provided services to Herbalife in recent years. However, those services are unrelated to the conduct at issue in the Order and are not material to Deloitte. Furthermore, none of the Deloitte personnel who will be assisting the ICA will have provided any services to Herbalife or the FTC and will not provide any services to Herbalife during the term of Deloitte’s service in assisting the ICA. Those individuals will also commit to not provide services to Herbalife for two years after the conclusion of the engagement.

G. Estimated Costs



H. Closing

For all of the aforementioned reasons, Mr. Conway and the Deloitte Team are confident that we can provide the services sought by the FTC and Herbalife to effectuate the terms of this Agreed Order. We very much consider this response to the FTC’s Request for Applications

to be a preliminary one, but hope that it conveys our sincere interest in working on this matter. We look forward to working with both parties in the future. Should the FTC need additional information, Mr. Conway's contact information is as follows:

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JACK CONWAY BIO

Jack Conway served two terms as Attorney General of the Commonwealth of Kentucky from January of 2008 to January of 2016. Jack was Kentucky's 49th Attorney General and focused his efforts on making Kentucky a safer place to live, work and raise a family.

During his tenure, Jack created a Cybercrimes Unit that launched almost 500 child pornography investigations and seized more than 1 million images and videos from the Internet. The unit had a 100 percent conviction rate and became a national model. The Cybercrimes Unit began processing digital forensic evidence for law enforcement agencies across the Commonwealth. Before General Conway created the unit, agencies were waiting up to one year for evidence to be processed at the state or federal crime lab. General Conway's Cybercrimes Unit processed evidence for law enforcement in under one week.

Attorney General Conway worked tirelessly to combat illegal drugs, educate teens about the dangers of abuse and expand access to substance abuse treatment. He created Kentucky's first statewide prescription drug task force. The task force participated in the largest drug bust in the state's history and coordinated efforts with federal, state, and local law enforcement partners. Jack received the "Soaring Eagle" award from Operation UNITE for his efforts to fight prescription drug abuse. The Office of the Attorney General also received UNITE's "Most Valuable Agency" award for its participation in joint investigations.

General Conway travelled to schools across Kentucky with parents who lost their children to prescription drug overdoses. He educated more than 45,000 students, parents and teachers about the dangers of prescription drug abuse through his "Keep Kentucky Kids Safe" initiative.

In 2012, he worked with leadership in the Kentucky House and Senate to craft House Bill 1, a law that closed half of the state's rogue pain clinics and drastically reduced the number of painkillers prescribed in the state. In 2015, he worked to craft and pass comprehensive legislation to address the resurgence of heroin. It increased penalties for traffickers, expanded access to treatment, provided overdose treatment kits to hospitals and responders, and provided a Good Samaritan provision for those who called to report heroin overdoses.

In January of 2014, General Conway announced that \$32 million he secured in settlements with two pharmaceutical companies would be used to expand drug treatment in Kentucky. The settlement funds helped build a new treatment center for adults near Ashland, fund treatment scholarships, build drug-free housing for recovering addicts, kept open three treatment centers for expecting mothers, and created a grant program for new juvenile treatment beds and/or centers in every region of Kentucky.

As Kentucky's Attorney General, Jack also fought to protect consumers. He sued Marathon Oil for allegedly violating anti-trust laws regarding the wholesale supply of gasoline in Kentucky. Jack led a national working group of 37 state attorneys general reviewing the questionable practices of some for-profit colleges. He also participated in the historic mortgage settlement that secured \$25 billion for consumers who'd been wrongfully foreclosed on by one of the nation's five largest banks.

Consumers in Kentucky received almost \$64 million in settlement-related relief. In addition, Jack recovered \$23 million for the Kentucky Retirement System from Bank of America (BOA) for allegedly trading mortgage-backed securities to the system that BOA knew were toxic.

Even facing budget cuts of more than 40 percent during his time in office, Medicaid fraud collections increased by 600 percent, and an independent watchdog group named Attorney General Conway's Medicaid Fraud Unit one of the most aggressive teams in the country. Jack recovered more than \$300 million on behalf of taxpayers for the Kentucky Medicaid Program, intervened to halt more than \$1 billion dollars in proposed utility rate increases and for every General Fund dollar received by the agency, three dollars were returned to the state treasury.

General Conway served on the executive committee of the National Association of Attorneys General (NAAG). He previously co-chaired the substance abuse committee with Florida Attorney General Pam Bondi and co-chaired the consumer protection committee. General Conway also co-chaired NAAG's veteran's committee. Jack served two years as a co-chair of the Democratic Attorneys General Association (DAGA).

In December, 2012, General Conway received the Leadership Award from The Century Council for his efforts to combat drunk driving and underage drinking. He received the same award from the Foundation for the Advancement of Alcohol Responsibility in 2014. Jack is a recipient of the Friend of Affordable Housing award from Frontier Housing, and the Neighborworks Alliance of Kentucky honored him as an Affordable Housing Champion. In 2014, he received the Ernesto Scorsone Political Leadership Award.

In November 2008, Jack was one of 24 elected public officials from across the country chosen to participate in the Aspen Institute-Rodel Fellowships in Public Leadership program. The institute works to enhance American democracy by convening the nation's most promising young, bipartisan political leaders to explore the underlying values and principles of western democracy, the relationship between individuals and their community, and the responsibilities of public leadership.

Prior to his election as Kentucky Attorney General, Jack worked as a private attorney. He spent six years in senior-level cabinet positions in former Kentucky Governor Paul Patton's administration. Jack worked closely with lawmakers to craft higher education reform and comprehensive school-safety legislation.

Jack is a graduate of St. Xavier High School in Louisville, KY. He holds an undergraduate degree in public policy from Duke University. While in college, he studied at Cambridge University in England. He graduated with honors from the National Law Center at George Washington University. While in Washington, D.C., he worked with the U.S. Attorney's office on criminal justice issues and for the House Banking Committee.

Jack is a member of the Kentucky Bar Association and the Louisville Bar Association. He previously served on the boards of the Muhammad Ali Center and the African American Heritage Center.

Jack is married to Elizabeth Davenport Conway. He and Elizabeth are the proud parents of two daughters, Eva and Alex.