

FEDERAL TRADE COMMISSION

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FEDERAL TRADE COMMISSION

ANPR WORKSHOP: BUSINESS OPPORTUNITIES

Thursday, November 20, 1997

Room 432

Federal Trade Commission

6th Street and Pennsylvania Avenue, N.W.

Washington, D.C. 20580

The above-entitled matter came on for public hearing, pursuant to notice, at 9:00 a.m.

APPEARANCES:

ON BEHALF OF THE FEDERAL TRADE COMMISSION:

STEVEN TOPOROFF, Attorney, Chairman

Bureau of Consumer Protection

Room 238

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For The Record, Inc. (301) 870-8025

1 ALSO PRESENT:

2 KEITH ANDERSON, FTC

3 MYRA E. HOWARD, FTC

4 ROBERT IRELAND, FTC

5 CRAIG TREGILLUS, FTC

6 MARTHA VERA, FTC

7

8 DELIA BURKE, Attorney, Jenkins & Gilchrist

9 ANDREW A. CAFFEY, Attorney

10 DALE CANTONE, Attorney, Maryland Attorney General's
11 Office

12 RICHARD CATALANO, Attorney, Island Automated Medical
13 Services, Inc.

14 SHERY CHRISTOPHER, Christopher Consulting, Inc.

15 ERIC ELLMAN, Direct Selling Association

16 ELIZABETH and MICHAEL GARCEAU, PRO Design and
17 Vending Technologies, Inc.

18 SUSAN GRANT, National Consumers League

19 ROBERT L. JAMES, State of Florida, Department of
20 Agriculture and Consumer Services

21 PHILLIP McKEE, National Consumers League

22 DAVID SILVERMAN, Sportsworld International/
23 Vendapreneur

24 DENNIS WIECZOREK, Attorney, Rudnick & Wolfe

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P R O C E E D I N G S

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CHAIRMAN TOPOROFF: Good morning. I'm Steve Toporoff. I'm in the Division of Marketing Practices at the Federal Trade Commission, and I'm going to facilitate the meeting today.

With me is Rob Ireland from Marketing Practices, Myra Howard also from Marketing Practices, and Keith Anderson, who is with our Division of Economics.

It is November 20th, 1997, and we are meeting in Washington, D.C. to discuss disclosure requirements for business opportunities.

This is the sixth and final workshop conference to discuss the Commission's franchise rule and the advanced notice of proposed rulemaking, which we will abbreviate as ANPR.

The meeting is open to the public. The meeting is being recorded, and a transcript will be made available and put on the public record. And we also intend to place a copy of the transcript on our Web site.

Because not everyone here is familiar with how we have conducted the workshops in the past, I'm going to review very briefly what has occurred.

The first meeting we held was in Washington, D.C., and that was in July. And the purpose of that meeting was

1 to discuss franchises and business opportunity sales
2 opportunities at trade shows.

3 The second meeting was held in August in Chicago,
4 some of you were there, to discuss business opportunities.
5 Among other issues, we discussed how the Commission could
6 distinguish between legitimate and fraudulent business
7 opportunities, why there appears to be low compliance with
8 the business opportunity rule, disclosures that business
9 opportunity sellers should make, possible exemptions to a
10 business opportunity rule, and alternatives to disclosure.

11 The third meeting was held in September in New York
12 City, and that was to discuss franchise issues. In October,
13 Commission staff made themselves available in Dallas again
14 to discuss business opportunities.

15 Unfortunately there wasn't that much interest in
16 that particular meeting, and in fact only a few people
17 attended and offered some comments in the record. But it
18 wasn't a formal meeting as such.

19 The fifth meeting was held just a few weeks ago in
20 Seattle, and again that was to discuss franchise issues.
21 And obviously we are meeting here today, and this is the
22 final meeting to discuss business opportunities.

23 At each of these meetings the Commission staff has
24 made themselves available the following day to discuss any
25 franchise or business opportunity issue with any interested

1 party, and we are going to do that again tomorrow.

2 Myra and I and perhaps some others are going to be
3 here from nine to three in this room, and members of the
4 public are welcome to stop by and to discuss any issue at
5 all involving franchises and business opportunities.

6 As I mentioned before, time is going to be allotted
7 at the end of today to enable anyone to offer additional
8 comments on business opportunity issues.

9 Also, the comment period is still open. The comment
10 period closes the end of December, literally December 31st.
11 So there still is time if anybody wants to add a comment or
12 supplement their comments, they certainly are able to do so.

13 Again, I hope everyone has a copy of the agenda. We
14 are basically going to focus on four issues: how to define
15 a business opportunity, appropriate exemptions from a
16 business opportunity rule, what disclosures are relevant in
17 the sale of business opportunities, and possible additional
18 prohibition that should be included in the business
19 opportunity rule.

20 At the outset, I want to make it clear that we are
21 going to make two broad assumptions. One is that the
22 Commission will continue to require disclosure on the part
23 of business opportunity sellers. And that's an assumption;
24 the Commission has not decided on that definitively at this
25 point.

1 And the other is that the Commission will have a
2 separate rule for franchises and for business opportunities;
3 they will no longer be identical.

4 The franchise rule will be tailored to franchises
5 and the business opportunity will be tailored for obviously
6 business opportunities. And again, those are assumptions.

7 Myra and I have put together the rough drafts of
8 various proposals that are the handouts outside on the
9 table. And they are just that; I want to emphasize that
10 they are very, very tentative rough drafts.

11 We put those together more as thought pieces.
12 They're not tentative proposals. No one has previewed them.
13 They're, again, just food for thought to enable us to have a
14 good discussion today.

15 As I mentioned before, we intend to move the
16 discussion along so that we will be able to offer you and
17 anyone else the opportunity to speak at the end of the day.

18 So again, to the extent that there are comments in
19 the record already or people have put in comments on
20 particular issues, again we don't intend to belabor the
21 point, we would like to move on.

22 So with that what I would like to do is briefly go
23 around the room and have everybody identify themselves, if
24 you would, your name obviously, what organization if any you
25 are representing, as well as any specific interest or

1 concern in particular that you have that motivated you to
2 come here today.

3 So with that, let's go around the room this way and
4 have Myra start.

5 MS. HOWARD: Myra Howard, Federal Trade Commission,
6 Division of Marketing Practices. I'm working with Steve on
7 this franchise rule project.

8 MR. IRELAND: I'm Rob Ireland, and I'm an
9 investigator in the Federal Trade Commission's Division of
10 Marketing Practices.

11 MR. WIECZOREK: I'm Dennis Wieczorek from Rudnick
12 and Wolfe in Chicago. I'm here on behalf of my firm and on
13 behalf of the International Franchise Association.

14 MR. CANTONE: I'm Dale Cantone, an Assistant
15 Attorney General with the Maryland Attorney General's
16 Office. And our office administratively enforces the
17 business opportunity law through our Securities Division.

18 MS. BURKE: I'm Delia Burke. I'm with the firm of
19 Jenkins and Gilchrist. And our firm represents a number of
20 franchisors and sellers of business opportunities.

21 MR. CAFFEY: My name is Andrew Caffey. I practice
22 law in Bethesda, Maryland. I represent a number of
23 franchisors and business opportunity sellers.

24 MR. ELLMAN: Eric Ellman with the Direct Selling
25 Association.

1 MR. GARCEAU: Michael Garceau with PRO Design out of
2 New Hampshire. We're concerned with the direction this is
3 going in, and we're here to gather more information of the
4 disclosure laws that we're unaware of at this point.

5 MS. GARCEAU: Elizabeth Garceau. I own part of
6 Vending Technologies in New Hampshire. Basically the same
7 thing Michael said.

8 We're here to gather more information, and we're
9 concerned about consistency between franchise and business
10 opportunity laws and regulations.

11 MR. CATALANO: Richard Catalano. I'm corporate
12 counsel for Island Automated Medical Services in St. Pete,
13 Florida, a nationwide seller of business opportunities.

14 MS. GRANT: I'm Susan Grant, Vice President of
15 Public Policy at the National Consumers League, which is the
16 oldest nonprofit consumer organization in the U.S.

17 We operate two programs in tandem, the National
18 Fraud Information Center and the Internet Fraud Watch that
19 provide advice to consumers about telemarketing and Internet
20 solicitations and take reports of suspected fraud from them
21 to route to law enforcement agencies.

22 Franchises and business opportunities, which we lump
23 together in one category, are prominent in the most frequent
24 fraud reports that we hear about both in telemarketing and
25 in Internet fraud.

1 I have got more extensive remarks, a copy of which I
2 stuck on the table out there. But we're really glad to be
3 here and to help you in these proceedings.

4 CHAIRMAN TOPOROFF: Thank you.

5 MR. JAMES: My name is Bob James. I regulate the
6 Business Opportunities Act in the State of Florida. I work
7 for the Department of Agriculture in Consumer Services.

8 MR. ANDERSON: I'm Keith Anderson. I am an
9 Economist in the Bureau of Economics here at the Commission.

10 CHAIRMAN TOPOROFF: Okay. Let's move on to the
11 first agenda item, and that is the definition of the term
12 business opportunity.

13 I just want to mention that we received many
14 comments to date that have offered various definitions. And
15 in particular, probably the most common theme when it comes
16 to the definition is that people have pointed us in the
17 direction of the Illinois business opportunity statute.

18 We have been told that that is that very good model
19 to use, and that in fact the Illinois biz op statute is
20 based on the model NASAA, the North American Securities
21 Administrative Association's model.

22 So many people have had input in creating that
23 model. And again we were pointed in that direction. So the
24 first handout, the one that talks about the draft definition
25 of the term biz op, is actually modeled somewhat again on

1 the Illinois statute.

2 I just want to mention also that we discussed this
3 issue of what the definition of a business opportunity
4 should be at length in Chicago. And many people have
5 voiced, at that time voiced various concerns about the
6 definition, how broad it is and issues like that.

7 In addition, members of the Illinois Securities
8 Department were present, and they gave us feedback on their
9 practical experience in administering a business opportunity
10 program and enforcing the Illinois Business Opportunity Act
11 in that state.

12 Our goal in developing a business opportunity
13 definition is to ensure that those opportunities that the
14 record and the Commission's law enforcement experience have
15 shown are prone to fraud or abuse are covered.

16 With that, again I hope everyone has a copy of the
17 handout that says Draft Definition. And again, I just want
18 to emphasize that this doesn't even rise to the level of a
19 draft. This is just food for thought, something that we put
20 down on paper that we could work from today.

21 So with that, I just want to start and look at
22 definition. Basically, the way it opens is a business
23 opportunity means a contract or agreement between a seller
24 and a purchaser wherein the seller or a person suggested or
25 recommended by the seller promises to provide to the

1 purchaser any products, equipment, supplies, or services,
2 enabling the purchaser to start a new business or add a new
3 line of business to an existing business.

4 As a general proposition, and before we even discuss
5 this further, I just want to say at this point what we are
6 interested in is discussion on whether this makes sense,
7 whether this is needed, the general concept.

8 What we're not focusing on right now is specific
9 language. We will have plenty of opportunity later on as
10 the Commission floats a proposed rule at the next stage for
11 this process to tinker with specific language. So at this
12 point let's just stick with the broad concepts that are put
13 forth here.

14 Does anyone have any concerns or any suggestions
15 about the first part of this definition?

16 Dennis Wieczorek.

17 MR. WIECZOREK: The language that would concern me,
18 or the concept that would concern me is the fact that it is
19 not just the seller that could be targeted in this kind of a
20 situation.

21 And by that I mean, both in section one and in
22 section two the seller isn't necessarily involved. There
23 could be somebody recommended by the seller that not only
24 provides the service but also provides a, excuse me, is the
25 recipient of the payment.

1 That seems to me to be too broad. So that even if
2 someone was publishing a book on recommended investments
3 that that would capture the publisher of the book for
4 recommending that Company X would be a good provider of a
5 business opportunity.

6 I think the regulation should focus on the seller
7 and not stretch to include persons suggested or recommended
8 by the seller.

9 CHAIRMAN TOPOROFF: Is your concern, Dennis, a
10 question of liability, who is liable for these disclosures
11 as opposed to who should be disclosed?

12 MR. WIECZOREK: Well, I think clearly the seller,
13 although I use the term advisedly here because it's not
14 really the seller that's involved, it's really,
15 theoretically in my example it's a third-party that is doing
16 the selling, that is doing the servicing, that is doing
17 everything.

18 And if the regulation applies simply because a
19 seller recommends a third-party, I think that's unduly
20 broad.

21 And again, in my example that would extend to
22 situations where a party who would not fit the traditional
23 notion of a business opportunity seller would be
24 recommending or suggesting third-parties, and in fact the
25 seller in this example really isn't a seller; the seller is

1 doing nothing other than recommending. The third-party is
2 doing all of the servicing, receiving the payment, et
3 cetera, et cetera.

4 CHAIRMAN TOPOROFF: Keith Anderson.

5 MR. ANDERSON: Dennis, I'm not sure I am following
6 your example because it isn't in any way, shape, or form a
7 business opportunity, maybe that's the problem. But who do
8 you see as the seller in your example?

9 MR. WIECZOREK: Well, let me go through the language
10 again. Section one starts with a contractor agreement
11 between a seller and a purchaser. Okay.

12 So there is a contract between a seller and a
13 purchaser. But then the contract goes on to say, for
14 example, that you will buy products from a third-party.

15 MR. ANDERSON: Right.

16 MR. WIECZOREK: And section two goes on to say that
17 the payment would be made to the third-party. So I guess
18 what I'm saying is that there may be situations where a
19 seller, although again the term doesn't really fit here
20 because the seller isn't doing any selling, where a person
21 called the seller is recommending or suggesting a
22 third-party.

23 And it doesn't really fit the notion of a business
24 opportunity because the seller is just not involved in that
25 transaction.

1 They enter into a contract, but the third-party is
2 the party that's receiving all of the funds and who is
3 providing the service.

4 An example would be, again to maybe take it a little
5 afield into the franchise area, is that if a company says we
6 have an interesting business concept for you, you should buy
7 your products from Party A over here, because there is no
8 payment being made to the franchisor, seller, whatever you
9 want to define it, that really wouldn't fit the definition
10 of a franchise or in most of the statutes I think a business
11 opportunity.

12 MR. ANDERSON: But this language is directly from
13 the existing rule.

14 MR. WIECZOREK: I understand that. Well, it's from
15 the existing FTC rule.

16 MR. ANDERSON: So your concern actually extends to
17 the existing FTC rule.

18 MR. WIECZOREK: Yes.

19 MR. ANDERSON: Okay.

20 CHAIRMAN TOPOROFF: Well, part of this also is it is
21 premised on the existence of a contract or an agreement
22 between the seller and the purchaser. So I think what we
23 are really, what your concern might be is specifically how
24 do you define seller; is that fair?

25 MR. WIECZOREK: Well, it might be, I guess the other

1 way to look at it would be that if the required payment in
2 section two is made only to the seller, then that probably
3 solves the concern.

4 I don't have a problem with setting up the
5 definition to say that a contract between a seller and a
6 purchaser where the purchaser, I'm sorry, where the seller
7 might recommend a third-party, but again the payment should
8 flow through the seller. That may make the difference.

9 CHAIRMAN TOPOROFF: Okay.

10 MR. ANDERSON: But, Dennis, if I can just follow up,
11 then why doesn't that allow somebody to get around the rule
12 by funneling the payment through a third-party?

13 I mean, you and I cut a deal where you're going to
14 supply the candy for the vending machine and I'm going to
15 sell the vending machines. And we just funnel it all
16 through you and you kick it back to me.

17 MR. WIECZOREK: I think the definition should be
18 able to account for those kinds of kickbacks or payments
19 that are made not directly but indirectly by the third-party
20 to the seller.

21 CHAIRMAN TOPOROFF: Susan Grant.

22 MS. GRANT: That's precisely my concern is that you
23 may create a loophole where people fashion their business
24 opportunity in such a way as to escape responsibility.

25 I think that if there is a financial relationship

1 between the seller and the party that's doing the
2 recommending then maybe that would be clearer. I don't know
3 if that resolves your concern.

4 CHAIRMAN TOPOROFF: Dennis?

5 MR. WIECZOREK: Well, I think it does. My only
6 concern, again, is that there are lots of relationships out
7 there where, commercial relationships that no one would ever
8 expect to be a biz op or a franchise.

9 And to the extent that a contracting party is
10 recommending a third-party, that should not be enough to fit
11 within the definition.

12 If the recommender is also getting some funds or is
13 affiliated somehow, then I don't see any concern with having
14 the definition capture that kind of a relationship.

15 CHAIRMAN TOPOROFF: Dale.

16 MR. CANTONE: Yes. I just want to note that the
17 definition appears to be similar, very similar to at least
18 Maryland's business opportunity law, probably Illinois'
19 business opportunity law, and therefore the NASAA model act.

20 And the thinking I'm sure is, certainly in
21 Maryland's case and probably in all the other cases, just
22 what we have pointed out, the loophole.

23 The business opportunity industry, based on our
24 experience there is a lot of interrelationship of different
25 organizations and funneling of money from one set, from one

1 company from another.

2 And nobody has any interest in going after an
3 advisor who gives general information bout an industry. The
4 idea is to target the companies that are making money and
5 having other companies involved with either the recommending
6 of a company that's doing all the work or some type of
7 relationship like that.

8 CHAIRMAN TOPOROFF: Thank you. Rob Ireland.

9 MR. IRELAND: I just wanted to note that I think if
10 you omit the language "person suggested or recommended by
11 the seller," many companies that should be covered probably
12 won't be covered.

13 An example might be a display rack, greeting card
14 display rack business opportunity where Company X, for
15 example, is selling a business opportunity. Company Y is
16 selling the display racks, and Company Z is selling the
17 greeting cards. Company X may not be covered if you take
18 that language out.

19 And the second thing is the kickback issue. That's
20 something that's probably very difficult to ascertain unless
21 you file a lawsuit.

22 CHAIRMAN TOPOROFF: Okay. Bob James.

23 MR. JAMES: I have the same feeling as Dale and Rob.
24 Our section four has taken out your issues. Selling in
25 Florida is a 10 percent ownership. We have a rule on that,

1 that the owner has 10 percent or greater and is classified
2 as the seller.

3 We also have the problem with the supplier, the
4 locators, for example, that are always hand-in-glove with
5 the seller of the vending machine. Ninety-nine percent of
6 the time the locator is involved.

7 There is no control if we don't know who the locator
8 is. The bulk of the complaints that come in from the sale
9 of the vending machine is generally against the locator, the
10 locations. They cannot get the locations.

11 So the seller of the vending machine will throw the
12 complaint back to the consumer and say, well, we supplied
13 you the machines. Your problem is with the locator.

14 But during the presentation at the sales event,
15 generally the seller of the machines will say we have 15
16 locations in X community. And in fact there is no locations
17 there.

18 They have to hire a locator, a second locator or a
19 second person. A second check is written to the locator.
20 And the consumer invariably ends up with a second-rate
21 location because there was none to start with.

22 CHAIRMAN TOPOROFF: Rich Catalano.

23 MR. CATALANO: Not following on that, but you had
24 mentioned in terms if this would be an appropriate time to
25 bring up the need, the underlying need for I guess the

1 expansion of the definition of business opportunity as it is
2 now in the franchise rule.

3 And the way I see it here appears to be a
4 significant expansion of it. And my concern is that, is
5 there really a need to do this, to expand the rule to the
6 point where it's going to cover a lot of people?

7 In other words, my biggest concern is this. There's
8 already laws on the books in 25, 26 states on biz op sales.
9 An example, in Florida the legislature of the state has
10 already spoken, they've already fashioned it.

11 They're well aware of the FTC franchise rule, of the
12 UFOC guidelines, Illinois, Model Act. They just came
13 on-line January 1st of '95 in doing, I believe it was '95,
14 maybe '96.

15 But my concern is that you already have, albeit half
16 of the United States, they've already gone through and
17 looked at this issue and fashioned their own biz op statute.

18 My concern is, is this proposed statute in the
19 definitions here, and then the required disclosures, is it
20 the intent that this would be preemptive, preemptive of the
21 existing statutes on hand?

22 That's what's concerning me, that the states have
23 already, you know, there's differences going around the
24 country in each state's laws. And they have picked and
25 chosen what they felt appropriate. It's been a matter of

1 negotiation, a matter of the legislature looking at it.

2 So that's really my concern is in terms of is there
3 really a need. I know everybody has kind of already jumped
4 over that and you're talking about it. But you did mention
5 the need issue and that does, frankly, concern me.

6 CHAIRMAN TOPOROFF: Well, let me ask you, would you
7 be in favor of Federal preemption?

8 MR. CATALANO: No, I'm not. I wouldn't be favor of
9 it for the reason that if the states have already spoken on
10 it, if they've already spoken on it, and in Florida I'm on
11 the Franchise Law Committee of the Florida Bar and we give
12 input in terms of the business opportunity statute on
13 proposed changes and modifications.

14 We're well aware of the statutes in all of the
15 states that regulate it. Some of them we just don't agree
16 with. We just feel it's just onerous, it's unduly
17 burdensome. In other cases we don't think they go far
18 enough.

19 And so it's a matter of each state deciding on its
20 own. And if you've already got 25 or 26 states that have
21 already spent the great deal of time that they have on it,
22 they had the statutes on the books, they have enforcement
23 agencies in place, then my concern is that why then do we
24 need a Federal preemption of that?

25 CHAIRMAN TOPOROFF: Okay. Keith Anderson.

1 MR. ANDERSON: I guess I have got questions for both
2 Rich and for Bob, but I am going to go to Rich first because
3 this is more important and I might lose my thought one way
4 or the other.

5 You just said that this is a substantial expansion
6 of the existing regulatory framework. But my understanding
7 is that business opportunities are covered by the
8 Commission's existing franchise and business opportunity
9 law.

10 MR. CATALANO: If your particular business
11 opportunity meets the definition under the franchise rule,
12 you're covered. And a lot of sellers out there of business
13 opportunities are not covered by your current franchise rule
14 because they don't meet the necessary elements of the test.

15 If you do not license the right to the existing
16 product, you're going to knock out on the first element in
17 many cases. There are a lot of business opportunity sellers
18 that fall outside of the Federal franchise rule that do not
19 have to give the Federal franchise disclosures, et cetera.

20 MR. ANDERSON: Correct me if I'm wrong, Steve,
21 because I didn't bring my rule with me. But my impression
22 was that if you gave substantial assistance you were covered
23 provided you had \$500; is that it?

24 CHAIRMAN TOPOROFF: No. That's not exactly right.

25 MR. CATALANO: No.

1 MR. ANDERSON: Okay. I withdraw it. I have to
2 think about it.

3 My question for Bob was, you talked about the
4 locators. Are the locators unrelated to the sellers?
5 They're just, the seller is not getting any money back from
6 the, not making any money off of the location?

7 MR. JAMES: That's what the seller tells us. He'll
8 recommend ABC Locator as a separate entity from the
9 purchase. Joe Consumer will write a check to Joe Vending
10 Company and a separate check to ABC Locators.

11 MR. ANDERSON: And then the problem here would
12 really become if there is a \$500 limit or \$1,000 limit.

13 MR. JAMES: Most locations will exceed the \$500
14 threshold.

15 MR. ANDERSON: I understand that. I understand
16 that. But what I'm thinking is, if I entered a contract for
17 vending machines that cost \$600, the machines were \$600 and
18 then it was another \$250 to the locator, let's say, under
19 this definition as fully set out, I would be covered because
20 I've exceeded the \$500 threshold and the seller is promising
21 me location assistance. So that's not a problem.

22 MR. JAMES: Right.

23 MR. ANDERSON: The problem would arise where I only
24 paid \$400, but then paid another \$400 to the locator.

25 MR. JAMES: Yes.

1 MR. ANDERSON: Thanks.

2 CHAIRMAN TOPOROFF: Okay. Any other discussion on
3 the first paragraph of this proposed definition? Otherwise
4 we will move on.

5 MR. CAFFEY: Comment.

6 CHAIRMAN TOPOROFF: Andy.

7 MR. CAFFEY: Yes. My name is Andrew Caffey. A
8 couple comments. First, the overall pattern of regulation.
9 I think one of the drawbacks of the existing rule is it is
10 very narrowly defined.

11 Under the existing rule for a business opportunity
12 seller, if the seller is not locating vending machines or
13 providing assistance for location, the seller is virtually
14 not covered by the rule.

15 And that has been one of the mismatches in this
16 community is that there are 25 states with very broad
17 definitions akin to the one we are looking at, but the FTC's
18 definition for business opportunities is very narrow.

19 And I think it is right that the Commission is
20 looking at this again and is thinking about getting its
21 regulation maybe in step with what is being regulated by the
22 states.

23 There are a huge number of companies that are
24 regulated in the states that simply don't meet the FTC's
25 definition.

1 If I may comment on a couple portions of this first
2 paragraph, when I was an industry advisor to NASA when its
3 model was developed and when I was an industry advisor on
4 behalf of the franchise industry to the uniform law
5 commissioners when they developed their model, I have always
6 been bothered by the notion of adding a new line of business
7 as being part of a business opportunity definition.

8 And I think it would be worth the Commission
9 considering very carefully what it means by that and what is
10 a new line of business or what does it mean to start or to
11 add a new line of business to an existing business.

12 And I've always been, I've actually always been
13 amazed in the testimony I've delivered around the states on
14 business opportunity regulation that there are not more
15 companies that show up and say, wait a minute, I have a
16 hardware store and does this mean that if I take on a
17 photocopy center or I buy another rack presentation for new
18 hammers, is that a new, what is a new line of business?

19 I think that this whole area is elusive enough on
20 the concept of starting a new business that when you add,
21 and I know a couple of states have this language, adding a
22 new line of business, I think that the Commission should
23 maybe check its record carefully to see if this has been a
24 problem.

25 I have no idea whether it has been a problem, but I

1 think conceptually it adds a dimension to the definition
2 that is a little bit out of control.

3 CHAIRMAN TOPOROFF: Let me ask you a question on
4 that. Let's say you have, I'll use an example right down
5 the street from us. Let's say you have an Olson's Bookstore
6 and they decide that they want to, in addition to selling
7 books they want to put in a coffee bar, which they have done
8 recently.

9 Let's say it's not a coffee bar but they have coffee
10 vending machines. So they contract with some vending
11 machine supplier, and essentially they become a biz op
12 purchaser for the purpose of selling coffee even though
13 their primary business, an overwhelming business is the sale
14 of books and magazines.

15 In that situation would you say that they shouldn't
16 be considered a business opportunity because they already
17 are in business and they're just adding a new line?

18 MR. CAFFEY: What would be considered a business
19 opportunity is the seller of the coffee machine, the seller
20 of the espresso machine; is that right? That would be the
21 seller who is regulated by this definition.

22 Does the several of that coffee machine, it probably
23 does meet this definition. Whether it should, I doubt it.
24 I don't think so.

25 I would want to hear if it did meet the definition

1 whether a fractional franchise is going to apply, and the
2 Commission should think about whether someone who is in an
3 existing business, whether we need to be concerned about
4 protecting that business owner from a coffee machine
5 company.

6 Now, the coffee machine company may supply a
7 brochure, just a handout information about our new coffee,
8 whether it has a trademark on it or not. That's going to
9 satisfy this definition of marketing assistance.

10 CHAIRMAN TOPOROFF: Okay. Before we get to Michael,
11 I just want to mention that later on, if you flip the page,
12 the second page of this handout is a definition of marketing
13 assistance, which I hope will clarify some of these issues.

14 And the next topic that we have on the agenda for
15 discussion is exceptions. And in that discussion we will be
16 talking about issues like the equivalent of a fractional
17 franchise or others. So we will get to those issues.

18 But thank you for your comments.

19 Michael.

20 MR. GARCEAU: I think one of the biggest problems
21 right now in the industry is low compliance. There are laws
22 out there. There are companies that start up in June. They
23 run six months. They shut down. They know the rules.

24 The incorporate two or three companies at a time,
25 and they're always one step ahead of the agencies. So by

1 bringing Federal regulations to the industry where there are
2 very few companies that follow them right now, you're making
3 it tougher for the companies that follow the rules that want
4 to sell and last in this business.

5 And for the sharks out there that are sitting out
6 there, they know the rules, they don't care about the rules,
7 they don't disclose, they guarantee locations, and they're
8 in newspapers running nationwide in every paper in the
9 country.

10 And we shop the newspapers. We shopped the Boston
11 Globe in February of this past year. There was 23 biz op
12 display racks or vending companies in there. We reshopped
13 them in August; 20 of the 23 numbers were disconnected.

14 These guys are already up again running a business
15 again because we know who they buy from. You could say to
16 them you're going to go to jail for doing what you're doing,
17 and they'll keep on doing it over and over. They don't
18 follow the rules.

19 They're just noncompliant. They don't care. So if
20 you can't enforce the rules you have out there right now,
21 how are you going to enforce more rules?

22 CHAIRMAN TOPOROFF: Okay. That's why I started off
23 this discussion by saying we are going to make an assumption
24 here. And the assumption is that we have considered just
25 the issue that you have raised of compliance and whether

1 business opportunities have a high level of fraud and
2 whether disclosure makes sense or doesn't make sense.

3 In fact, that was an issue that we discussed at
4 length in Chicago. And it's a very valid issue. And as I
5 mentioned, hopefully we'll have time at the end of the day
6 where we can explore than a little bit more.

7 But right now what we're trying to focus on is
8 assuming the Commission decides that disclosure for business
9 opportunities remains a valid endeavor, what should those
10 disclosures look like?

11 But I do appreciate your comment. And as I
12 mentioned, hopefully we will be able to explore that a
13 little bit later. That's a very valid point.

14 Keith.

15 MR. ANDERSON: Can I just ask Michael to repeat the
16 statistic; 20 of 23 advertising in the Globe in April?

17 MR. GARCEAU: Either display racks or vending
18 machine opportunities where their toll free numbers were
19 disconnected. We have customers coming to our office. We
20 run buyer beware seminars on vending, don't buy until you
21 speak to us.

22 And we pulled the ads out. And they go, I called
23 that ad, I called that ad. And it's the same ad but a
24 different phone number six months later. So it's the same
25 guys running the identical ads with different phone numbers,

1 different company names.

2 And 20 of them were disconnected, meaning they shut
3 down, left one to a thousand people with no customer
4 support, no parts for the machines, no support whatsoever.

5 So you have every customer that bought from that
6 company is now out in the dark calling the FTC, calling the
7 states, saying I got ripped off, there is no one here to
8 help me.

9 MR. ANDERSON: They probably didn't want parts for
10 their machines because the machines probably didn't work
11 anyway.

12 MR. GARCEAU: Well, most of them don't. That's a
13 good point. But some of them do.

14 CHAIRMAN TOPOROFF: Okay. Thanks for the comment.
15 I'd like to move on though. The second part of the
16 definition really is not a change, and that is the purchaser
17 agrees to make a required payment of more than, and I put in
18 brackets, \$500.

19 The reason that I put \$500 in brackets is there is
20 considerable debate, and we have discussed this in Chicago,
21 what the threshold should be. Right now the rule requires a
22 \$500 threshold. Commentors have said everything from there
23 should not be any threshold, the threshold should be \$200,
24 \$300.

25 Some have suggested that we increase the threshold

1 to a thousand dollars. And there are many other thoughts on
2 that. I really don't want to focus too much on the
3 particular threshold today.

4 The record I think is pretty well established on
5 what people's views are on that subject. And I would like
6 to really move on.

7 Again, at the end of the day if we have time
8 certainly we could revisit that. And again as I mentioned
9 before, you're certainly free to update your comments or
10 submit additional comments on the record on that issue until
11 the end of the year.

12 The next item is, well, let me give a little bit of
13 background here. What we tried to do was take the Illinois
14 statute. Again, we are going to use that as the model and
15 try to narrow it down to its essence so that basically we
16 have a very streamlined, easy to understand rule.

17 And basically what came out of our discussion in
18 Chicago I believe was two points, what are the critical
19 points that defined a business opportunity that should be
20 covered by a rule.

21 One is the making of some kind of earnings
22 representations. That seems to be a dominant feature in
23 many of the states' business opportunity laws. And the
24 second is some kind of marketing program or marketing
25 assistance.

1 And that's again what we are focused on. So the
2 first part of the definition, again, the third paragraph,
3 the seller represents directly or indirectly, orally or in
4 writing, that the purchaser will derive a specific level or
5 range of income from the business which exceeds the price
6 paid to the seller, or the seller or a person suggested or
7 recommended by the seller will provide to the purchaser
8 marketing assistance.

9 Let's hold off on marketing assistance in a second
10 because there is a whole other definition on the second page
11 that explores that in more detail.

12 But I would like to ask generally if anyone has any
13 comments on this third paragraph. But more specifically,
14 why is it that in many of these statutes it says that the
15 purchaser will derive income that exceeds the price paid?
16 Why is it that it has to exceed the price paid?

17 Again, that seems to be a common element in many
18 state statutes and I'm just not sure what that is intended
19 to target or what the derivation of that limitation really
20 is. Does anybody have any thoughts?

21 Dennis, do you know where that comes from?

22 MR. WIECZOREK: Well, I think probably the
23 background is that business opportunity sellers say to
24 buyers that the investment is \$5,000 or \$10,000 or \$1,000,
25 and don't worry, you'll make that money back within the

1 first month, two months, six months, whatever it is.

2 So I think that's the common belief in terms of what
3 biz op sellers are saying. Whether that's an accurate
4 statement or not, whether that makes sense in terms of the
5 statute, I don't know.

6 But I guess it would concern me a little bit if the
7 language would say that the purchaser will derive some
8 income from the business or some level of income from the
9 business because, you know, that would mean that they could
10 make a dollar, they could make fifty cents.

11 And I think it's at least some benchmark against
12 which maybe in a different kind of way there is also sort of
13 a minimum performance requirement before the statute comes
14 into play.

15 CHAIRMAN TOPOROFF: Dale, do you have any thoughts
16 on that? Does Maryland's statute have this requirement?

17 MR. CANTONE: It does have a requirement. And I
18 think what Dennis is saying is right. It's an issue of
19 fairness.

20 Obviously the generic statements aren't going to hit
21 it or statements that are not intended to entice a buyer
22 into thinking they're going to make more than they're
23 investing, which is obviously, if they were honest about it,
24 which is usually the case where they don't end up making
25 more than they're investing there is not an issue.

1 But I will tell you that it's never been an issue,
2 that part of the definition has never come into play in
3 Maryland.

4 CHAIRMAN TOPOROFF: Rich Catalano.

5 MR. CATALANO: My concern -- And I agree. I think
6 that the reason it's in there is the idea that why would I
7 be getting into this if I'm not going to make more than I'm
8 investing? Okay. That's the basis of it, I believe.

9 The thing that concerns me about the language on the
10 proposed definition, if you look at the statutes across
11 America right now there is two varieties that I think that
12 you will find.

13 One is like you have here, that the seller
14 represents directly or indirectly, and a lot of the states
15 don't use that language.

16 They use the term guarantees. And I think that the
17 reason they use guarantee is, if you use the language
18 represents directly or indirectly, what does that mean?

19 That is subject to tremendous interpretation. It's
20 kind of like the old floodgate of litigation. What is that?
21 That's what keeps us lawyers making what we tend to make.

22 If you have a guarantee on it, then it's clear. You
23 know, did they guarantee it? You must put that. You know,
24 if there's a guarantee, not only does that have to be stated
25 whether there is a guarantee of earnings. But the moment

1 you guarantee earnings, in most of the statutes it says a
2 bond has to kick in.

3 And Bob James is shaking his head in agreement
4 because that's exactly what we have. If you guarantee a
5 range of earnings or a specific range of earnings or
6 anything like that and make those representations, then you
7 must have a bond, a \$50,000 bond, \$30,000 bond, whatever.

8 CHAIRMAN TOPOROFF: Keith.

9 MR. ANDERSON: Keith Anderson. Rich, I mean, what
10 does it mean to guarantee?

11 MR. CATALANO: It means exactly that.

12 MR. ANDERSON: But then if I'm a seller and I give
13 you a sheet that says, you know, that shows some examples
14 and they're all way up in the high end, nobody ever sells,
15 you know, if you sell 2,000 a day you will make a million
16 dollars in a month -- or let's not make it that.

17 Let's say that it's a vending machine and I say if
18 you sell 10 candy bars a day on average you will make so
19 much money. That's not a guarantee, I imagine.

20 MR. CATALANO: It is not a guarantee. However, it's
21 an earnings claim. The moment you make a projection,
22 anything like that is an earnings claim. That's why I say
23 the statutes already deal with this.

24 And the moment you make an earnings claim on those
25 kinds of things, you must give a separate earnings claim

1 document. Under the FTC franchise rule you've got to give a
2 separate earnings claim document.

3 Under the state business opportunity statutes, the
4 moment that you make it--like California's statute is very
5 clear on that--the minute that you make any kind of a
6 representation that let's just take X dollars per claim
7 times 500 claims and then you have X number of doctors,
8 don't you see you're going to make \$50,000 in the first
9 month. Earnings claim city.

10 The minute you do that you have got a problem.
11 You've got to furnish a statement of bases and assumptions
12 very similar to the FTC franchise rule.

13 MR. ANDERSON: Okay. But then does that suggest
14 that what we ought to be doing here is saying either
15 guarantees -- well, does this suggest that instead of this,
16 what we ought to be saying is makes any earnings claim.

17 Because the way this is set up at the moment, I
18 could make the earnings claim. I wouldn't be covered, at
19 least as I read it quickly, I wouldn't even necessarily be
20 covered by -- I wouldn't be a biz op. I wouldn't meet the
21 definition. And therefore I wouldn't have to make any
22 disclosure because I'm not covered by the rule.

23 MR. CATALANO: But -- I agree with your analysis.
24 The thing is that part (b), 3(b) is going to get the lion's
25 share of people even in that scenario because you've got

1 there "the seller or person suggested or recommended by the
2 seller will provide to the purchaser marketing assistance."

3 And the whole reason people are buying, you must
4 understand the reason why people buy a biz op to begin with.
5 First off they have this idea of financial freedom and
6 independence which they can achieve.

7 But the thing is that they're buying the seller's
8 expertise to an extent. They have been doing this for
9 years. They've got this operation. They know how to do it
10 and that's why you're paying a premium.

11 You know, you can buy the components cheaper than
12 you can buy the total package for. And the idea is they're
13 paying for the seller's expertise, years of expertise in
14 developing the program, the tools, et cetera.

15 So whether you put there the seller guarantees it or
16 represents directly or indirectly, I think you're still
17 going to scoop people up by part 3(b) of the definition.

18 My only worry is frankly, and the point that this
19 gentleman was making in terms of the people out there are
20 going to be, you know, the unscrupulous are going to make
21 their assertions, they're going to make their statements, et
22 cetera.

23 But if you say here "guarantees orally or in
24 writing," at least that's a clear thing; was there a
25 guarantee or not.

1 Because a lot of times the FTC, if they get involved
2 in this, there's going to be battles, well, is this covered
3 or not?

4 Did they represent directly or indirectly? It's
5 like significant assistance; what is significant assistance?
6 And that's where the lawyers get in. Well, you say it is,
7 we say it's not and let's litigate for two years. That's my
8 problem with it.

9 MR. ANDERSON: Are you suggesting that we could
10 actually knock (a) out and just say represents directly or
11 indirectly that the seller or a person suggested will
12 provide significant assistance, or marketing assistance?

13 MR. CATALANO: I'm simply -- That's really not what
14 I'm saying. All I'm really saying is I think that the way
15 you have it currently that the seller represents directly or
16 indirectly, orally or in writing, is just too broad.

17 It's making it too broad. It's leaving too much
18 gray area. It would be better to use a term like
19 guarantees. "Guarantees" everyone understands. Did they
20 guarantee you, yes or no? Were you guaranteed it, yes or
21 no?

22 Disclosure is going to have to state right in there.
23 Was this guaranteed? Is there any kind of guarantee that
24 has to be put in the disclosure. Whereas represents
25 directly or indirectly, well, no I didn't. Yes, you did.

1 Now here we go. Bring in the lawyers; two years, three
2 years litigation.

3 MS. HOWARD: If I can just follow up on that. What
4 about the business opportunity seller who specifically says,
5 okay, here is our information. We will not guarantee that
6 you're going to make X amount of dollars but, you know, odds
7 are really good that you will or everyone else does or
8 you're an idiot if you can't. But we won't guarantee it.

9 MR. CATALANO: The minute you go over that line, and
10 this is why I keep coming back to this point, the statutes
11 already provide that for the most part.

12 If you guarantee it, there you go with the bond. If
13 you talk about earnings then it kicks in the earnings claim
14 statement and what have you.

15 But even if we, even if you do that, you're still
16 going to scoop people up with 3(b) because that's what
17 they're buying. That's what a business opportunity is all
18 about; you're buying expertise.

19 CHAIRMAN TOPOROFF: Bob James.

20 MR. JAMES: I'm Bob James from Florida. On your
21 item three, is this saying you have to do one or the other
22 or you have to do both?

23 CHAIRMAN TOPOROFF: One or the other.

24 MR. JAMES: Okay. That's not clear the way I read
25 this.

1 MR. ANDERSON: "Or," after (a).

2 MR. JAMES: All right.

3 MR. JAMES: In Florida, as Rich points out, if the
4 seller makes a guarantee in writing that does trigger a
5 bond, I have 1,800 companies filed with us currently, I have
6 three bonds.

7 Yet we go to a trade show or we go to a newspaper
8 and you will see earnings claims that are in every issue.
9 And the human emotion here is why is somebody going to lay
10 down \$8,000 for a vending machine if he can't conceive
11 through the sales presentation how he's going to make money
12 off of it?

13 It's a human endeavor. Why should I give you
14 \$8,000? Tell me how I can make money with this. So I don't
15 have a problem with (a). The problem I see is the bonding,
16 that you folks don't require a bond.

17 CHAIRMAN TOPOROFF: Right.

18 MR. JAMES: But most sellers have to give some
19 earnings claims. You go to a trade show, you go to Booth A,
20 the fellow selling a vending machine says I can't make you
21 any earnings claims. You go to Booth B, the fellow says I
22 got people making \$65,000 a year. Who is going to make the
23 sale? Booth B.

24 CHAIRMAN TOPOROFF: Okay. Susan Grant.

25 MS. GRANT: I'm concerned that using the word

1 guarantee would be too limiting, that it would actually
2 prevent the FTC from going after companies that we are all
3 concerned about for maybe not using the word guaranteeing
4 but in their representations virtually guaranteeing through
5 a variety of implications a level or range of income that
6 the person can expect.

7 I think this needs to be broad precisely to have a
8 big enough net to catch the bad guys. And if the net is too
9 narrow, you'll have a lot of people fall outside the edges.

10 CHAIRMAN TOPOROFF: Okay. Let's move on. Within
11 paragraph three that we just read, there are two concepts.
12 One is required payment and the other is marketing
13 assistance.

14 What we have done is set out definitions, proposed
15 definitions for those two terms. So for required payment,
16 let me just add, required payment, there is no magic to
17 this.

18 Our rule already addresses the issue. The
19 interpretive guides address the issue of what is a required
20 payment. So I don't think that there is that much that's up
21 for debate.

22 But let me just read the definition and open it up
23 for further discussion. A payment, or a commitment to pay,
24 the seller, an affiliate of the seller, or any person
25 referred or recommended by the seller within the first six

1 months of signing the contract, for product, equipment,
2 supplies, or services as a condition of obtaining or
3 commencing the business. A payment is "required" if the
4 purchaser is obligated to make the payment by contract or by
5 practical necessity.

6 I just want to mention the last sentence, "by
7 payment or practical necessity," comes right out of our
8 interpretive guides so that there is a long history of a
9 what the term "required" means.

10 So any comments on the definition of required
11 payment?

12 Keith Anderson.

13 MR. ANDERSON: Just a question since Eric's out of
14 the room. And I read the Chicago transcript the other day
15 so I remember his point.

16 CHAIRMAN TOPOROFF: Okay.

17 MR. ANDERSON: Is inventory covered here or not?

18 CHAIRMAN TOPOROFF: The purchase of inventory?

19 MR. ANDERSON: The purchase of inventory.

20 CHAIRMAN TOPOROFF: That we will get to in the
21 exemptions. We propose an exemption for the purchase of
22 reasonable amounts of inventory at bona fide wholesale
23 prices for resale.

24 I mean, that is a concept that is already in our
25 rule. And we are proposing to just move that from the

1 interpretive guides into the text of the rule itself as an
2 exemption.

3 MS. HOWARD: So the answer is yes.

4 CHAIRMAN TOPOROFF: The answer is yes, but--

5 MS. HOWARD: But it will be exemption.

6 CHAIRMAN TOPOROFF: --as an exemption.

7 MR. ANDERSON: Okay. I have got to see how that
8 works, but that's okay.

9 CHAIRMAN TOPOROFF: And we can get to that at that
10 point.

11 Dale Cantone.

12 MR. CANTONE: I think it's a very good definition.
13 I think you need to have the language in there about
14 payments within the first six months because of the concern
15 that we've seen in the past where an initial payment is
16 small.

17 Once the buyer gets involved in the business, a
18 large payment is required days, weeks, months, a short time
19 thereafter. So I think it's a good definition.

20 CHAIRMAN TOPOROFF: Any other comments on the
21 proposed definition?

22 Elizabeth.

23 MS. GARCEAU: What is exactly the meaning of first
24 six months? What does that six months give you?

25 CHAIRMAN TOPOROFF: That's a concept that's already

1 in our rule. And basically what it's designed to do is
2 avoid the situation where a seller might say, oh, don't pay
3 me anything today, sign the contract. But boom, the next
4 week the payment hits.

5 So obviously you have to have some kind of time
6 frame that makes sense. You just can't say, well, if you
7 pay us 20 years from now then, you know, right now it's
8 going to be considered a required payment.

9 So the Commission has used the time frame of six
10 months. That's a concept that's very well known and used in
11 business opportunities now, at least under our rule, as well
12 as well as in franchising.

13 And again, somewhat we have to be arbitrary and pick
14 some kind of date so that, again, either you make the
15 payment at the time that you sign the contract or shortly
16 thereafter. That's where the six months comes in.

17 Dennis Wieczorek.

18 MR. WIECZOREK: Just to reiterate what I said
19 earlier, I am concerned about the language about person
20 referred or recommended by the seller in this section.

21 I don't have a problem with language that would say
22 a payment is made to the seller if a person referred or
23 recommended by the seller pays over a portion of the
24 proceeds to the seller or it pays referral fees or
25 kickbacks, so to speak, to the seller.

1 CHAIRMAN TOPOROFF: Okay. Andy Caffey.

2 MR. CAFFEY: There is hidden in this definition of
3 required payment yet another holdover from the franchise
4 rule, and that is the assumption that these packages are
5 sold with the signing of a written contract.

6 And that is not what is going on in the marketplace.
7 The first line of the definition refers to a contractor
8 agreement. I presume that that distinction is an agreement
9 does not have to be written.

10 I suppose the same could be said of a contract. And
11 that is an underlying assumption. But you may have
12 difficulty applying this definition of required payment when
13 there is no contract.

14 CHAIRMAN TOPOROFF: Okay. So would your suggestion
15 be in paragraph one, the very first paragraph, we say
16 include some language that basically says a contractor
17 agreement whether orally or in writing?

18 MR. CAFFEY: Well, I think the place to engineer
19 this is going to be defining with some specificity when that
20 six months commences. And it may commence upon the payment
21 of the first of any required payment.

22 CHAIRMAN TOPOROFF: Ah. I see what you're saying.
23 Okay.

24 MR. CAFFEY: Or it may commence upon the signing a
25 binding obligation to pay.

1 CHAIRMAN TOPOROFF: Okay. That's a point very well
2 taken. I hadn't thought of that. So in essence what you're
3 saying is if the trigger of six months is tied to a
4 contract, that might be difficult to enforce because of the
5 fact it might not be a contract as such.

6 MR. CAFFEY: There won't be a contract for these
7 programs.

8 CHAIRMAN TOPOROFF: Right. So there won't be a
9 bright line to be able to identify when the six-month period
10 is.

11 MR. CAFFEY: Not if you're looking for a contract.

12 CHAIRMAN TOPOROFF: Keith Anderson.

13 MR. ANDERSON: Just a follow-up on Andy's question.
14 So these things are being sold without a contract. What
15 does this do for any kind of required disclosure?

16 I mean, imagine if we did a disclosure that said you
17 have to attach a contract. You're telling me that
18 oftentimes there aren't contracts, that drawing up a
19 contract is burdensome to legitimate sellers? Is that what
20 you're telling me, or?

21 MR. CAFFEY: No. I'm saying my impression of the
22 marketplace is that contracts are not being used by sellers
23 in business opportunities. These are not transactions where
24 you will find a contract in anyone's file.

25 My impression is that this is essentially an impulse

1 purchase. It's essentially a consumer transaction, which is
2 to say it is paid for on a credit card. It's often sold
3 over the telephone. And there may or may not be presale
4 disclosure provided leading up to that sale.

5 CHAIRMAN TOPOROFF: Okay. Rich Catalano.

6 MR. CATALANO: I would say that some sellers of
7 business opportunities don't have written contracts. I
8 think that -- and in certain industries maybe they don't.
9 And vending is notorious for things like that.

10 But I don't want the panel to be under the
11 impression that all sellers of business, there's no
12 contract, it's all done over the phone, it's wham-bam, give
13 me the credit card and let's go.

14 At least in our industry of the players that have
15 been around and will be around, everyone is registered. I
16 mean the good players, the players that have been around are
17 registered. They give the disclosures.

18 I mean, I'm in-house corporate counsel. We are
19 registered in all the states that require it. We send out
20 the disclosure and the contract.

21 The written contract must be included as part of the
22 disclosure. I mean, those are the laws. They are often,
23 most times, I would say, contracts.

24 MR. ANDERSON: Let me follow up, if I'm not taking
25 it too far afield at this point.

1 CHAIRMAN TOPOROFF: Sure.

2 MR. ANDERSON: I mean, I would be concerned if we
3 were to write a rule that says you have got to give a
4 written contract or a disclosure if that's going to
5 interfere in significant ways with legitimate businesses.

6 Are these people that are doing it over the phone
7 where there is no contract, is this a legitimate, socially
8 beneficial business or is this just a technique that's used
9 by the con guys?

10 MR. CATALANO: I think if you're asking me, anybody
11 that is selling a business opportunity that meets the
12 definition of a business opportunity either under the
13 Federal franchise rule or under the state statutes who meets
14 that definition and who is doing it over the phone and not
15 using a written contract, they are in violation of the law
16 right now.

17 So I think it's clear that under the state laws if
18 they're meeting the definition they have to, (a) be
19 registered where registration is required, (b) send out the
20 presale disclosures attaching the contract and, (c) most of
21 the states statutes make it a violation not to have a
22 contract.

23 (A) it's a violation not to send out the disclosure
24 to which the contract is attached; (b) it's a disclosure
25 that all representations not be in writing embodied within

1 the express terms of the written agreement.

2 So anybody who meets the definition of a business
3 opportunity under franchise rule or under state biz op law
4 who is not putting it in writing is already running afoul of
5 the law.

6 MR. ANDERSON: But I guess there is sort of, there's
7 two questions here. One is they are running afoul of the
8 law. But it could be that the law is overly strict, that
9 there are some legitimate kinds of things going on here.

10 I mean, I know that Eric made the point in Chicago
11 over and over again that--or maybe not over and over
12 again--but it came through very clearly in the transcript
13 that his people don't have contracts.

14 I mean, his people generally aren't covered, as I
15 understand it, because they come under the \$500 exemption.
16 But that, you know, when one Tupperware lady signs up
17 another Tupperware lady, there is no contract there.

18 And to have to have a contract would significantly
19 interfere with his business. So I guess I'm wondering
20 whether a requirement of a contract does interfere with
21 legitimate businesses.

22 CHAIRMAN TOPOROFF: Okay. Elizabeth.

23 MS. GARCEAU: Well, I would just have to agree with
24 Rich Catalano because I just feel that like the people that
25 we shopped that weren't, you know, that were closed down out

1 of those 23 and 20 of them weren't in business, I mean, to
2 me, I don't know what types of clients he represents, but
3 those are the people, they're not coming off their
4 contracts, they're not disclosing people.

5 We, too, are registered in every state that requires
6 registration. We disclose every single one of our
7 customers. We wait the 10 days or whatever it may be. Then
8 we sit down with the people and do the contracts.

9 And I think by them having a contract in the
10 disclosure and that they can go show their attorney, and
11 it's a big thing. Because a lot of people that we sell at
12 shows or that come into our office that are local customers
13 in New Hampshire, we give them a contract.

14 We had customers in the other day. They left with
15 the contract; it wasn't filled out with their disclosure.
16 And they wanted to go show it to their attorney so they
17 could look over everything and try and make sure that they
18 were being covered in every aspect and that we were standing
19 behind them.

20 I'm not sure as far as how Tupperware people and
21 things like that. I think that may be the fine line. But I
22 think most people that are in the industry that are doing
23 shows, that are doing magazine, newspapers, they should be
24 required to do a contract, a disclosure.

25 Because I think it should be not just some states; I

1 think it should be across the country. I think somehow or
2 what you're doing here today could make at a Federal
3 regulation that everyone follow the same agenda.

4 I think it's really important because then that gets
5 rid of some of the bad guys in this industry if you really
6 crack down on them and it protects the good people like us
7 that aren't following the rules and that these customers do
8 have a contract in front of them so if there is a problem in
9 six months they can go back and say, well, you warrantied
10 this or you didn't. So I think it's important. That's my
11 feedback.

12 CHAIRMAN TOPOROFF: We're going to hear from Eric
13 then Michael then Shery Christopher, who just joined us.
14 And then we're going to move on to the next topic.

15 Eric.

16 MR. ELLMAN: Thanks. Perhaps the record from
17 Chicago wasn't that clear about whether or not we have
18 contracts and let me see if I can clarify.

19 When Tupperware, for example, when a Tupperware lady
20 recruits another Tupperware lady, the new recruit does not
21 sign a contract. The contract is with the Tupperware
22 Corporation, not with the other director seller who actually
23 did the recruiting.

24 All of our direct sellers have contracts. In fact,
25 Federal Law 26 USC 3508 says that for direct sellers to be

1 independent contractors, for Federal employment tax purposes
2 they have to have a written contract which says they are
3 independent people.

4 MR. ANDERSON: Okay. So your point in Chicago was
5 more, I'm recalling now, it was in this discussion about a
6 first face-to-face meeting.

7 And your point was, well, if one Tupperware lady had
8 to have the contract in her back pocket to give to you at
9 that point that would be a problem.

10 MR. ELLMAN: That's correct. That's correct.

11 MR. ANDERSON: Thanks, Eric.

12 CHAIRMAN TOPOROFF: Michael.

13 MR. GARCEAU: I have a question. The way I'm
14 hearing this, if a vending machine promotor or a display
15 rack promotor, if their sale is \$495 do they not fall under
16 this rule at this point? Are they evading falling under the
17 disclosing the contract and so forth?

18 CHAIRMAN TOPOROFF: Right now, yes.

19 MR. GARCEAU: What's going to happen is you're going
20 to take a lot of these promoters from selling five, ten
21 thousand dollars, you make these rules so strict you're
22 going to have thousands of people coming out of the woodwork
23 having \$495 packages.

24 They're going to be on every radio station. They're
25 going to be doing their infomercials, they'll be at the

1 trade shows, they'll have credit card machines, swiping them
2 right there, no contract, no disclosures.

3 You're going to take a lot of the people, they're
4 going find a loophole. whatever you do here today or in the
5 next six months, they're going to try to find a way around
6 it. And if the way around it is sell a smaller package,
7 they're going to do that.

8 CHAIRMAN TOPOROFF: I understand and appreciate your
9 concern. But hidden in there is a recommendation. And it
10 sounds like, I just want to make it clear myself, are you
11 suggesting that there be no minimum payment?

12 MR. GARCEAU: Depending on the type of I guess
13 opportunity in the vending machine business, no, there
14 should be none. If you're going to have these kind of rules
15 set forth, it should be one dollar.

16 If you're going to buy a sending machine or a
17 display rack or anything, I know it's hard for you to sit
18 here and develop a rule for each category. But the
19 promoters of the vending machines in particular are going to
20 create a \$495 package.

21 And they're going to sell a lot of machines that
22 way. The consumer only spends X amount of dollars, but it
23 doesn't change the fact that they found a loophole in your
24 law.

25 CHAIRMAN TOPOROFF: Shery Christopher.

1 MS. CHRISTOPHER: Yeah. Hi, Michael.

2 MR. GARCEAU: Hi, Shery.

3 MS. CHRISTOPHER: I apologize for being late. I was
4 stuck in Atlanta last night. Because I came in a little bit
5 late on this, but I just was listening to what Michael was
6 saying and what's been said at the table.

7 And I think that you and I spoke about this and I
8 sent some things in before. The issues that happened
9 because Michael is one operator and has done, they have done
10 quite well with their business in trying to stay within the
11 rules, is that I see lots of different clients.

12 I see across the board people who do everything from
13 selling a package of manuals on how to go out and do
14 mortgage loans to coffee shop franchises. I think what the
15 issues we want to look at that are really my concern most of
16 all is that the definition doesn't cover these little guys
17 who do these kinds of things.

18 And that really \$500 is not accurate across the
19 entire U.S. There are some states that have a \$250 and a
20 \$300 cap, meaning if it's at that rate, below that, then
21 they do not fall under the rule.

22 CHAIRMAN TOPOROFF: Under the state rule, but they
23 would still be subject to the Federal rule.

24 MS. CHRISTOPHER: Right. But I'm just saying so you
25 have both to deal with. The problems that we have are that

1 some people try to get around it by not taking the money up
2 front or by saying that we don't help them set up their
3 business but then doing it some other way, alternative way.

4 They do locations by referring them to someone else
5 or referring them to some sort of company or association.
6 So I think that the issues need to be looked at a little
7 more closely as defining the definition to say that really
8 if you're going to sell someone one vending machine, they're
9 not going to put that in their house.

10 No one is going to put a vending machine or a
11 balloon stuffing machine in their house for fun and for
12 their kids. That machine is going to be put out somewhere
13 for someone to make money with it, period, final. That's
14 really what it is.

15 So unless someone goes and buys that machine from
16 Sam's Wholesale Club independently, on their own, they're
17 going to buy it from someone who is going to represent to
18 them that they can go out and make a business out of it.

19 And I think what happens with people like the PRO
20 Designs is they register, they go to a show and exhibit, and
21 across the aisle from them is a company that's selling
22 vending machines and they're making guarantees and they're
23 doing locations and they're giving promises and they're not
24 even giving out disclosures.

25 And they somehow got past the rule or they just

1 decided to see if they could get away with it. And so it
2 needs to be more defined.

3 And the biggest problem that I see also is that not
4 enough people understand it. I get people all the time
5 saying, well, my lawyer said I wasn't a franchise, I wasn't
6 a business opportunity.

7 CHAIRMAN TOPOROFF: Well, part of what we're hoping
8 to do is split the rule, businesses opportunities from
9 franchises so it won't be called generically the franchise
10 rule.

11 There will be a very specific business opportunity
12 rule that should help I would imagine both business
13 opportunity sellers know that there is the rule and also
14 consumers to know that there is a rule that could protect
15 them as well.

16 MS. CHRISTOPHER: Because everyone thinks if you're
17 not a franchise you don't fall under anything. And that's
18 the biggest problem.

19 CHAIRMAN TOPOROFF: Susan.

20 MS. GRANT: At the risk of beating a dead horse, I
21 just want to add our strong endorsement for eliminating the
22 dollar threshold and requiring written contracts.

23 You're not just selling somebody a book on how to
24 make money for 24.95 and people are expecting that they're
25 going to get all kinds of assistance in actually making a

1 living.

2 We know from experience that whatever dollar
3 threshold you put, con-artists will structure their pricing
4 just under it, maybe set up their program in a way that
5 there's incremental prices that somehow are not described as
6 being part of the, as the price of buying in.

7 And I can't imagine why any legitimate seller of
8 business opportunities would find it burdensome to provide a
9 contract that would have a description of the basic terms of
10 the agreement.

11 CHAIRMAN TOPOROFF: Okay. We're going to hear from
12 Keith and then we are going to move on.

13 MR. ANDERSON: I got to play economist, I'm sorry.
14 It seems to me that what I'm hearing here is people saying
15 require this thing across the board.

16 But it's got to be true--I guess I have to disagree
17 with Susan--depending upon what the disclosure requirement
18 is they're going to impose costs on business.

19 And I guess what I am wondering is are there no
20 legitimate businesses out there at 250 or 300 for whom
21 imposing this cost really raises their costs and in essence
22 consumers who are trying to deal with these legitimate
23 businesses are disadvantaged.

24 I mean at some level it seems to me I wonder
25 whether, you know, if a consumer is putting up \$250 and

1 that's the extent of it whether they're putting enough money
2 on the line to justify the cost that would be imposed by
3 requiring all this disclosure. I mean, that's the side of
4 the issue to me.

5 CHAIRMAN TOPOROFF: Elizabeth.

6 MS. GARCEAU: I just think to answer that, Keith, I
7 think one, I think it's important because it would keep the
8 real people again, I mean if they're serious and they're in
9 this business, no matter what they're selling, I saw
10 something on T.V. as far as this was the thing these people
11 were selling.

12 They shut them down. They went after them. I guess
13 it was the Federal, I'm not exactly sure, but it was on
14 20/20 or one of those things.

15 And it was like a \$50 or \$100 package. And they
16 were just completely, if you made these beads, you'd send it
17 in, it was just kind of too --

18 MR. ANDERSON: Sure, there are a number of frauds.

19 MS. GARCEAU: But what I'm trying to say is I think
20 that no matter if it was \$200 or \$100 or whatever it may be,
21 if someone had to disclose and tell a little bit more about
22 their company or even sign a small contract, whatever it may
23 be, I think that it would keep the people that are
24 misleading and ripping people off, it would help get them
25 out of the marketplace.

1 MR. ANDERSON: And there aren't any legitimate ones
2 out there for whom the cost would go from 100 to 120 or
3 whatever?

4 Dennis, what's our estimate range in terms of what a
5 franchise, if you have to do a complete franchise disclosure
6 document what kind of money are we talking?

7 MR. WIECZOREK: Quite a bit.

8 MR. ANDERSON: Yeah. So if these guys, if the
9 requirement as it is now is basically the same--

10 MR. WIECZOREK: We are talking about thousands of
11 dollars.

12 MR. ANDERSON: These guys are going to have to spend
13 thousands of dollars.

14 MS. GARCEAU: But if they're selling thousands of
15 dollars worth of cards across the country I think it's worth
16 it.

17 MR. GARCEAU: Well, network marketing for instance,
18 they don't fall under the rule, correct, Shery? Network
19 marketing companies--

20 MS. CHRISTOPHER: Not usually.

21 MR. GARCEAU: --that would spend \$495 to get into
22 it, well, they start up and write hundreds of millions of
23 dollars in the course of a year. And some people, we were
24 victims at one time. We bought Nuskin and we front-end
25 loaded a lot of product.

1 There was no disclosure law. I understand it's all
2 a down line of people with a lot of different registrations,
3 but there are people running around even at the trade shows
4 doing network marketing, they fall under the law, they come
5 to a show and they take John Smith's \$500, it's all John
6 has.

7 That's only \$500, but it is \$500. So how do they
8 evade the laws and the rules? I mean, if it's going to
9 apply, it's got to apply across the board.

10 MS. CHRISTOPHER: There are multilevel marketing
11 laws that do apply. And they are required to specify
12 certain things. They cannot front-load people. It's
13 illegal to do that in most states. That's to answer that
14 question.

15 But what Keith is saying is true. I mean, the
16 problem is there are people out there who have \$100, \$150
17 investment things that actually do have legitimate
18 businesses.

19 But there are people who have \$5,000 ones who are
20 legitimate businesses. So the problem is where you draw
21 that line because there is going to be a hundred of those a
22 hundred to two hundred dollar ones who are good, and three
23 hundred that are total scams.

24 And the same thing goes with everything else. It's
25 a real tough one to do. But I think the object of at least

1 providing some sort of disclosure on the company or on the
2 individuals selling it would be beneficial maybe not so much
3 in a registration because business opportunity documentation
4 and filing does not run in the thousands and thousands of
5 dollars.

6 It just doesn't, unless you're doing it straight
7 across the board. It's nothing like a franchise document.
8 It's not as involved, it's not as detailed.

9 All the states that require audited financials. And
10 I did send Myra some, if she wanted some samples of them,
11 I'd be happy to give her some.

12 But it's not that type of investment. But the key
13 is that there has to be some sort of definition that is
14 across the board that says specifically separates it from
15 franchising and says this is what business opportunity is,
16 this is what you're required to do.

17 The difference is that there are states that require
18 filings as well under business opportunity. And there are
19 more states that require filing as a business opportunity
20 seller than they do franchise filings.

21 CHAIRMAN TOPOROFF: Thank you. On that we are going
22 to have to end the discussion at this point because we are
23 scheduled to take a break. What I would like to do is, we
24 still have to discuss the definition of marketing
25 assistance.

1 Actually, Myra is correcting me. We have until
2 10:30. Okay. Well, good. We'll move along then. Moving
3 to the definition of marketing assistance, because this is
4 really the blood and guts I think of what a definition would
5 be.

6 There is three parts, one, two, and three. The
7 first part really goes to location assistance and accounts.
8 There is nothing new here. This is what the rule already
9 requires, but let me just read it.

10 The seller, or a person suggested or recommended by
11 the seller, will provide or assist the purchaser in finding
12 outlets or accounts for the purchaser's products or
13 services, will provide or assist the purchaser in finding
14 locations for the use or operation of vending machines, rack
15 display cases, or other similar equipment on premises
16 neither owned or leased by the seller.

17 Again, this is straight from the rule. Is there any
18 discussion on this point?

19 (No response.)

20 CHAIRMAN TOPOROFF: If not, we are going to move on.
21 The second part, this gets to what somebody mentioned before
22 about beads or work at home.

23 The seller, or person specified by the seller, will
24 purchase any or all products made, produced, fabricated,
25 grown, bred, or modified by the purchaser.

1 So the first part of the definition that we just
2 talked about talks in terms of buying goods or supplies
3 inventory. This is if you modify them, construct something,
4 that's also covered.

5 MR. ANDERSON: And this is specifically crafted, I
6 presume, to address the issue that arose in Chicago about
7 buy back plan.

8 If you're willing to buy back inventory that the guy
9 purchases for resale, he doesn't modify it and therefore he
10 don't get caught under this; right?

11 CHAIRMAN TOPOROFF: Two different issues. One is
12 the buy back we are going to get to when it comes to
13 exemptions. Buy back is limited to inventory. It's not
14 modified. There's nothing that is attached to it.
15 Literally you buy the inventory and then you give it back.

16 Here what we're talking about is really obtaining
17 supplies or equipment or whatever so that the purchaser then
18 manufactures something.

19 MR. ANDERSON: Right, right.

20 CHAIRMAN TOPOROFF: And it is the seller who
21 promises or some other designated person buys that back. So
22 we're talking about where you buy beads to construct
23 necklaces or earrings or other kinds of work at home.

24 MS. CHRISTOPHER: Earth worms. They're out there.

25 CHAIRMAN TOPOROFF: Earth worms. I mean, whatever.

1 Ostrich farming, whatever it might be. So is there really
2 any discussion on this particular point?

3 (No response.)

4 CHAIRMAN TOPOROFF: The third part --

5 MR. ANDERSON: Does Craig get to comment?

6 CHAIRMAN TOPOROFF: Well, if Craig Tregillus from
7 the Division of Marketing Practices wants to comment, he's
8 welcome to do so by taking a seat.

9 MR. ANDERSON: You've got to come up here.

10 CHAIRMAN TOPOROFF: The third part is literally
11 taken I think verbatim with a few modifications. But the
12 concept is taken straight from the Illinois statute again.

13 The seller, or person suggested or recommended by
14 the seller, will provide a marketing plan to the purchaser
15 in the form of advice or training, including but not limited
16 to preparing or providing, (a) promotional literature,
17 brochures, pamphlets, or advertising materials, (b) training
18 regarding the promotion, operation, or management of the
19 business opportunity, or (c) operational, managerial,
20 technical, or financial guidelines or assistance.

21 Does this do it? Are we missing anything? Will
22 this definition work? Before we get to Keith I'd like to
23 hear from --

24 MR. ANDERSON: Well, let me just expand this
25 question a little bit.

1 CHAIRMAN TOPOROFF: Sure.

2 MR. ANDERSON: Specifically I guess in looking at
3 this I'm wondering whether A is too broad, whether somebody
4 that just provides some advertising assistance should be
5 swept in. So just put that question on the table.

6 CHAIRMAN TOPOROFF: Sure. Michael.

7 MR. GARCEAU: My feeling is it is too broad because,
8 again, we are in the vending machine business. Going back
9 to Sam's Club, BJ's Club, when they sell a vending machine
10 and they give color brochures of the picture of the machine,
11 do they fall under the rules?

12 CHAIRMAN TOPOROFF: So let me just make sure I
13 understand your point correctly. Your comment right now is
14 addressed to (3)(a), the promotional literature, brochures,
15 pamphlets, or advertising materials. And it's your concern
16 that that might be too broad.

17 MR. GARCEAU: Too broad. Because I guess the basic
18 concern is if you went to any vending machine manufacturer
19 in the country and you bought machines from them and they
20 told you to go employee break rooms, here's a color picture
21 of the machine, go try to locate it, do they fall under the
22 franchise rule right now? Obviously not.

23 But without the whole packaging involved it's the
24 same thing. If we were to sell a machine to a customer and
25 sold him color brochures, I mean, that's really the argument

1 here is we don't give out locators' names. We don't
2 recommend locators. But if you give them a color brochure
3 of the pictures of the machine, you fall under the rule.

4 CHAIRMAN TOPOROFF: I'm not going to answer that. I
5 am just going to note that that is a concern that we need to
6 think about.

7 Shery Christopher.

8 MS. CHRISTOPHER: Yeah. This is a real -- same
9 thing as everything else we're talking about today, isn't
10 it, because in a lot of cases I have clients who have
11 service businesses, who have billing businesses, and they
12 provide sample marketing materials and brochures.

13 And they do fall and they would fall under it
14 because they are promoting the service, they are promoting
15 the business. The person who buys machines from PRO Design
16 is not going to go out and resell those machines.

17 So whether they have pictures of the machines or not
18 is irrelevant. They're going to go out and put stuff in the
19 machines and they're going to then hope someone goes and
20 puts their quarters or dimes in and buys that stuff.

21 So the promotional literature I think needs to be
22 maybe more clearly defined that it's actually promoting the
23 service or the product that the purchaser is selling to the
24 general public that they are buying from the seller. Do you
25 see what I'm saying?

1 MR. ANDERSON: Yeah. But, Shery, I mean, in
2 Michael's case you would use the promotional brochure,
3 right, because --

4 MS. CHRISTOPHER: He uses it to sell his machines.

5 MR. ANDERSON: No. But then the guy that buys the
6 machine isn't going to carry a machine around when he tries
7 to locate it; he's going to carry the brochure around.

8 MR. GARCEAU: They want a color brochure. But
9 again, Sam's Club, BJ's Wholesale Club, every vending
10 manufacturer in the country supplies color brochures. And
11 they're all selling the machines to make money.

12 MR. ANDERSON: So what I'm envisioning is you buy
13 ten machines from Michael, you have got them in your
14 basement right now. He doesn't provide you with location
15 assistance so you have to do your locating yourself.

16 You have got to go visit the little law firm down
17 the street and convince them that they ought to put your
18 machine in their office. Well, you've got to have a
19 picture, you've got to be able to tell them something about
20 the machine so that's what the brochure does.

21 MS. CHRISTOPHER: Yes. In that case it does. And
22 you're right. That is a different thing. But then you're
23 saying to the individual, in Michael's case he's selling a
24 package that includes -- because they have actually run
25 their own business. They actually have machines out

1 themselves so they know how this works.

2 But when you're at a show and you're representing,
3 when a vending person is at a show and they're representing
4 to someone that you're going to buy these machines, they are
5 specifically representing this is a business opportunity
6 show.

7 They are representing that they can put you in a
8 business. Now, whether it's a business doing medical
9 billing, doing ceiling cleaning, running a coffee shop or
10 putting out espresso machines or candy machines, they're
11 representing they can put you into a business and you're
12 going to get all these brochures.

13 The problem is I think their statement, obviously
14 Sam's Club sells machines too and they don't have to
15 disclose.

16 CHAIRMAN TOPOROFF: Well, let me ask a question.
17 What happens if what we are talking about is not a product
18 but a service. Let's say, I'll just pick a service at
19 random, utility bill auditing.

20 If somebody buys a business opportunity in that
21 field and they want to go -- whether they're given accounts
22 or not, but let's say they want to go out and gin up
23 additional accounts, if the seller provides them with
24 brochures or advertising or pamphlets or samples or
25 something like that so that they in turn could go out and go

1 to different businesses and say I could be your bill
2 auditor, are those the kinds of promotional literature
3 brochures, whatever, that should be included in this rule?

4 MS. CHRISTOPHER: Absolutely.

5 MS. GRANT: I would think so. It's part of the
6 service that you're buying. It's part of the promise that
7 they're making to you that will help you foster this
8 business and promote yourself by having these materials to
9 do it.

10 MS. CHRISTOPHER: Oftentimes those materials have
11 like a little space for the new little operator to stamp his
12 name or to put a sticker on and then the services are
13 defined as billing is.

14 In fact, in those services, which is the utility
15 bill auditing, medical billing, ceiling cleaning, and all
16 these other ones that are out there, they actually provide
17 training on how to go out and market those services.

18 They provide information on where the best markets
19 are to sell those services, how to do the actual business to
20 them and to do the medical billing.

21 MR. ANDERSON: But then it seems to me that you
22 don't need (a) because what you're telling me is these guys
23 are providing training. They're providing operational,
24 managerial, or technical experience.

25 What you want to think about here is somebody who

1 just, who says, well, I've got this idea. You know, I do
2 utility billing and here's in essence a promotional brochure
3 that you could use.

4 But I'm not going to provide you with training, I'm
5 not going to provide you with operational, any help. Do we
6 need to sweep them in? Because the people that we're all
7 thinking about are providing more substantive help. They
8 get caught under (b) and (c).

9 MS. CHRISTOPHER: Well, first of all, Keith, I have
10 been in this business for 15 years. And I started out
11 working for a franchisee.

12 And I can tell that you nobody is going to go out
13 and say I've got this great idea and I'm going to give you
14 these brochures, here you go, because they're never going to
15 sell it.

16 Because there's going to be a guy in the next booth
17 or the next ad that's going to say, you know what, we're
18 going to train you.

19 It's the same thing with medical billing; they're
20 not going to do that. They may say to avoid the rule, oh,
21 well, we don't do that. But they will.

22 MR. ANDERSON: Okay. But then it seems to me that
23 we can take, you could take (a) out. You avoid Michael's
24 problem.

25 MS. CHRISTOPHER: I don't think taking (a) out so

1 much is defining, but put in writing a clearer definition of
2 exactly what type of promotional literature. I don't think
3 taking it out is an advisable thing. I think just being
4 more definitive on what it is.

5 CHAIRMAN TOPOROFF: Eric Ellman.

6 MR. ELLMAN: Thank you. The last part of this
7 definition, which is I guess three, raises the important
8 reason why we are suggesting a significant, I shouldn't say
9 significant but a raising of the threshold.

10 Were it not for a \$500 threshold, or any threshold
11 for that matter, there are a lot of income earning
12 opportunities that would fall under the definition of a
13 business opportunity, many of whom are small and could
14 ill-afford the burdens of filing disclosure documents or
15 providing disclosure documents. And I want to point that
16 out when you go through the rulemaking procedure.

17 CHAIRMAN TOPOROFF: Okay.

18 MR. ANDERSON: Can I make just a quick request?

19 CHAIRMAN TOPOROFF: Sure.

20 MR. ANDERSON: Whatever evidence you have got that
21 would help us understand who these people are, if you could
22 submit that for the record I'd really appreciate it, because
23 one of the problems that we have is sort of, we know who the
24 frauds are but we don't know who the --

25 MR. ELLMAN: I think in my comments there were some

1 demographic profiles of the typical direct seller. But if
2 you don't feel those are sufficient, I'd be happy to provide
3 you more.

4 MR. ANDERSON: Okay. Thanks.

5 CHAIRMAN TOPOROFF: Okay. Well, it's 10:30 and we
6 ended this discussion exactly on time, which I think is
7 amazing in and of itself. So we're going to take a break
8 for 15 minutes and we're going to resume at 10:45 and we're
9 going to talk about exemptions.

10 (A short break was taken.)

11 CHAIRMAN TOPOROFF: The next item is exemptions.
12 And let me just say before we get into that, I don't know if
13 we are going to need all the time we have allotted for
14 exemptions.

15 If we get through relatively soon, what I would like
16 to do is then go into the next major topic which is required
17 disclosures because I have a feeling that that's going to be
18 a lengthy discussion.

19 And again, the quicker we finish with these issues,
20 to more time we will have at the end of the day to open this
21 up to business opportunity issues generally.

22 By way of introduction to exemptions, as I mentioned
23 before we are trying to focus our rule on where there are
24 real problems, either problems that consumers have
25 complained about or where our law enforcement history shows

1 that there are problems, or other issues that have been
2 identified in our record.

3 We really do not have any interest in regulating
4 businesses that have not been shown to be prone to fraud or
5 abuse, or in those situations where Section 5 of the Federal
6 Trade Commission Act may already suffice as sufficient
7 oversight for those kinds of opportunities.

8 So accordingly, when we consider what a business
9 opportunity law should look like, we are also interested in
10 appropriate exemptions.

11 Right now there are a number of exemptions in the
12 rule, and I don't think that the Commission has any interest
13 in abandoning those exemptions. And we'll get to those in a
14 minute.

15 Also, after the meeting in Chicago I asked Dennis to
16 supply us with a copy of some of the state exemptions, and
17 he supplemented his comment with those.

18 So what we are going to talk about are some
19 exemptions but by no means all exemptions that might wind
20 its way into a business opportunity rule.

21 Again, we have focused on some. There are certainly
22 others. And, obviously, I'm going to open up the discussion
23 by discussing them, but then we will have time if anybody
24 else wants to offer any ideas for additional exemptions,
25 that would be fine.

1 So moving along, the first two exemptions that are
2 listed in the handout are matters that we more or less have
3 touched on before. And that is the first one, an offer or
4 sale of an ongoing business operated by the seller that will
5 be sold in its entirety.

6 This is not where there is a continuing
7 relationship. This is a one-time deal. An individual owner
8 just wants to sell his business to another party and get
9 out. I think that that makes sense. Is there anyone who
10 would disagree with that proposition?

11 Shery Christopher.

12 MS. CHRISTOPHER: I don't disagree. But I think
13 that should be limited as to how many they can do that with.
14 There are people who go out and set up a little business and
15 sell it, set up one and sell it, set up one and sell it.
16 You know about those.

17 I think there needs to be a limit as to how many
18 because a lot of people will just get them going and then
19 sell them off. And they're going to say, well, it's an
20 existing business. Florida has a limit, which I'm sure Bob
21 will discuss.

22 CHAIRMAN TOPOROFF: Well, I'd be very interested in
23 hearing about that, Bob.

24 MR. JAMES: In Florida we have a limit of five. And
25 we have caught vending people, I hate to say that word

1 again. But people will get a vending route up, they'll
2 advertise in the paper.

3 And it was a pure, a pure sale. It was not even an
4 existing business many times. The machines weren't even in
5 place. Sometimes they didn't even have candy in them. We
6 limit that to five.

7 MR. ANDERSON: Five in what, in a year?

8 MR. JAMES: That's the problem. It doesn't say in a
9 month, a year, or in a decade. I've asked for a rule. I
10 cannot get a rule on it. But I consider, I always take the
11 optimum, it's a limit of five total.

12 MR. ANDERSON: Five for a lifetime is the way you
13 would --

14 MR. JAMES: Yes, that's the way I interpret it. I
15 don't have the rule on it.

16 MR. ANDERSON: Is that reasonable?

17 MR. JAMES: I think so.

18 CHAIRMAN TOPOROFF: Dale, in Maryland is there
19 anything in your business opportunity statute that addresses
20 this issue? Is there alternative language?

21 MR. CANTONE: No, there isn't anything that -- The
22 language in Maryland's act is somewhat similar to the
23 proposal. And it's interesting because we have run into
24 that situation and in the vending scenario where you have an
25 existing route already set up and the issue becomes whether

1 or not that's covered. So it is a concern.

2 CHAIRMAN TOPOROFF: Okay. We will note that.
3 That's an important point. Thank you for bringing that to
4 my attention. I wouldn't have necessarily thought about
5 that.

6 Any other comments on the first point?

7 (No response.)

8 CHAIRMAN TOPOROFF: Okay. The second point. This
9 is somewhat the equivalent of a fractional franchise
10 exemption or a limited purchase exemption. Or another way
11 to look at this is perhaps even a sophisticated investor
12 exemption.

13 Any offer or sale of a business opportunity to an
14 ongoing business where the seller will provide products,
15 equipment, supplies, or services which are substantially
16 similar to the products, equipment, supplies, or services
17 sold by the purchaser in connection with the purchaser's
18 ongoing business.

19 So if you are up and running and somebody just
20 happens to sell you some additional equipment or supplies,
21 you're already in the business, you're already the vending
22 machine purchaser and it's just a question of getting a few
23 more machines or products that that should suffice and that
24 there wouldn't be a disclosure requirement. Any thoughts on
25 this one?

1 Dennis Wieczorek.

2 MR. WIECZOREK: I think it's a good idea. But
3 again, not to rehash my letter, but my letter also mentioned
4 several exemptions where a buyer is already operating a
5 business and takes on products or services not supplied by
6 the seller and which are not utilized with the products or
7 services of the seller. And the Nebraska and Texas statutes
8 have that exemption.

9 I guess this goes to the coffee shop in a book store
10 example that you gave before. If the person is in business
11 and the new business represents a small portion of their
12 operation, it seems to me that they are, because of their
13 experience, quote, sophistication, that they are in a
14 position to evaluate that and they're not necessarily
15 required to be protected in this situation.

16 CHAIRMAN TOPOROFF: Anyone agree with that or
17 disagree?

18 Andy Caffey.

19 MR. CAFFEY: As a practitioner, the challenge of
20 this sort of exemption is always substantial similarity. A
21 couple of examples come to mind. One example would be a
22 service station owner who takes in a packaged repair program
23 of some sort.

24 Another example would be an automobile body shop who
25 buys a package to learn how to do dent repair work and

1 receives training and receives a package for business that
2 can be conducted there.

3 Are those substantially similar? I think that falls
4 into the logic of the exemptions. The experience of the
5 purchaser, if the purchaser is in a position to evaluate
6 whether this would be a good addition to his or her
7 business, and that purchaser probably doesn't need to
8 receive disclosure or the protections that are built into
9 this rule.

10 But I have not seen an exemption along these lines
11 that is this sort of narrow and relying on substantial
12 similarity. I would, I mentally put this side by side with
13 the fractional franchise and wonder why we don't have the
14 same sort of two-pronged analysis that's built into the
15 fractional franchise concept which is comfortable for
16 practitioners, the same question is vague. What is
17 substantial similarity? What sort of experience is
18 necessary before we can trust the situation?

19 How can we describe it in the rule? I don't suppose
20 it can be very carefully described. But this language seems
21 very sort of linear to me. It doesn't seem like, as a
22 practitioner, there would be very many circumstances where
23 it would apply.

24 CHAIRMAN TOPOROFF: Would you think that the
25 language that we currently have in the fractional franchise

1 exemption is superior?

2 MR. CAFFEY: Yes.

3 CHAIRMAN TOPOROFF: Should we just wholesale adopt
4 that?

5 MR. CAFFEY: It strikes me that way.

6 CHAIRMAN TOPOROFF: Anyone else? Shery Christopher.

7 MS. CHRISTOPHER: No, I was saying that I'm familiar
8 with the dent repairs and the glass repair things. And they
9 may not, because it's substantially similar, they sell to a
10 auto repair shop who already is doing other stuff then you
11 could say, well, they probably wouldn't have to disclose the
12 person.

13 But on the whole those companies who sell to people
14 who aren't in the business. They do sell to some people who
15 are existing.

16 But the decision is do they have to disclose even
17 though they already have a disclosure, because most of those
18 companies do have disclosures because they sell across the
19 board through advertising and do trade shows as well.

20 CHAIRMAN TOPOROFF: One thing I should mention is
21 what a good possibility is when the Commission publishes a
22 proposed business opportunity rule, an option is that we
23 will simultaneously disclose revised interpretive guides
24 that would go along with that rule. And those would also be
25 published for comment.

1 So it could very well be that in interpretive guides
2 that might be the place to put in some examples that would
3 really help to clarify exactly the type of issue that Andy
4 has raised, what's similar, what's not. So that's an option
5 for the future.

6 Keith Anderson.

7 MR. ANDERSON: Maybe just to quickly address Shery's
8 concern. I mean, I guess basically if all you're talking
9 about is giving somebody a document, then that would be
10 true.

11 But if there's other parts of the rule, like a
12 cooling off period, then that may be unnecessarily
13 restricted where you're selling to an ongoing, so on and so
14 forth.

15 MS. CHRISTOPHER: Yeah, because I went through this
16 with an attorney I do disclosures for in California. And he
17 doesn't understand all of the rules and so his question was
18 if they're already in this business or they have this much
19 investment, do we have to disclose them?

20 I said, well, you already have a disclosure, so you
21 might as well just eliminate it and give it to them. At
22 that point it's not like you're, well, should we register
23 and provide a disclosure and put one together; you've
24 already got one put together.

25 MR. ANDERSON: Right, right.

1 MS. CHRISTOPHER: So at that point you just
2 eliminate a lot of things and questions that a person has
3 anyway.

4 MR. ANDERSON: The thing that some of the other
5 meetings have brought up is that there is this, generally
6 certainly in the current franchise rule there is this 10-day
7 waiting period. And that while that is probably necessary
8 and useful when you're dealing with somebody who is not in
9 the business, that can get in the way.

10 MS. CHRISTOPHER: Exactly, of someone who already
11 is. But in most cases people don't, especially if somebody
12 is in a business, they're not going to make an instant
13 purchase.

14 I mean, I used to sell franchises and business
15 opportunities 15 years. And most people, I mean, you can
16 try and slam-dunk people, and at the shows they certainly
17 do; but in most cases an intelligent business person isn't
18 going to make a decision that day anyway so they're going to
19 look at the contract and look at the paperwork.

20 But I think, too, you need to understand, Keith, is
21 that in the States not every state has a ten-day disclosure.
22 So under a business opportunity, if they don't fall under
23 the FTC definition of business opportunity, which is the
24 location assistance, et cetera, and they fall under, say,
25 the Florida rule, you've only got three days to disclose, in

1 some states you can just give them disclosure and sign them
2 up that afternoon. So it doesn't have a ten day in every
3 state under business opportunities.

4 CHAIRMAN TOPOROFF: Susan Grant.

5 MS. GRANT: I have heard of situations where, for
6 instance, an auto garage that does mechanical repairs has
7 purchased what I would call a business opportunity to do van
8 conversions, something that they had no experience with
9 doing before and have been misled about what to expect in
10 the way of training and support.

11 And I guess my feeling is that we should err on the
12 side of making sure that disclosures are given. And to me,
13 if it looks like a business opportunity and smells like a
14 business opportunity and squawks like a business
15 opportunity, it should be treated as one.

16 CHAIRMAN TOPOROFF: Okay. The next item, number
17 three, is taken straight from, again, the Illinois statute,
18 which again is based upon the NASAA business opportunity
19 model.

20 For sales by an executor, administrator, a sheriff,
21 a marshal, a trustee, a receiver, conservator, judicial
22 officer. Again, I assume these are not-for-profit sales or
23 at least the intent is not necessarily to make a profit but
24 just to sell it for some other purpose.

25 So is there any real concern on this point?

1 (No response.)

2 CHAIRMAN TOPOROFF: Okay. Fourth, we have bracketed
3 sophisticated investor. We're not really going to talk
4 about that one at this point for a very simple reason. In
5 the franchise context we are also currently working on
6 various proposals that might address if disclosure is
7 necessary where you have a sophisticated purchaser.

8 And we really don't have any specific proposal to
9 offer at this time. So I noted it here. If anybody has any
10 specific suggestions on it, fine. But what we will try to
11 do in the future is probably coordinate whatever we're going
12 to consider in the business opportunity context with that in
13 the franchise context.

14 MR. ANDERSON: Let me just throw out one question.
15 In mean, is it true that whatever we decide in the franchise
16 area ought to apply similarly to business opportunities, or
17 are there differences between franchises and business
18 opportunities--

19 MS. CHRISTOPHER: Differences, absolutely.

20 MR. CAFFEY: Yes.

21 MR. ANDERSON: --that would maybe mean a
22 sophisticated investor should get an exemption on one side
23 and not on the other?

24 CHAIRMAN TOPOROFF: Any comments on that?

25 MS. GARCEAU: I think there is definitely

1 differences. And it should be noted as far as franchise and
2 business opportunities, a lot of franchises, people are
3 spending a lot more money than they are with business
4 opportunities so I think there definitely should be
5 differences. As far as what differences, I'm not really
6 sure. But there should be definite noted differences
7 between them.

8 MS. CHRISTOPHER: And what defines sophisticated
9 investor of a franchise versus a business opportunity.

10 MR. ANDERSON: It may in fact be that sophisticated
11 investors aren't really relevant when you get to business
12 opportunities if they're the kind of -- just because they
13 don't --

14 CHAIRMAN TOPOROFF: Let me ask that. Let me ask
15 that directly. When it comes to buying a business
16 opportunity, is there really ever a sophisticated investor?

17 MR. ANDERSON: Who buys one?

18 CHAIRMAN TOPOROFF: Who buys one.

19 MR. ANDERSON: Now, wait a minute. Let me clarify
20 this, Steve. Are you suggesting that by definition anyone
21 who buys a business opportunity is not sophisticated?

22 CHAIRMAN TOPOROFF: By sophisticated I don't mean
23 intelligent, or if they're not sophisticated that means that
24 they are lacking something upstairs.

25 What I mean is as a general proposition, people who

1 by business opportunities, are they really experienced in
2 the field that they are going to enter so that they have
3 some knowledge of what they are getting themselves into
4 beforehand?

5 Dale Cantone.

6 MR. CANTONE: It depends on how you define
7 sophisticated investor. I will share that I have a
8 complaint about a business opportunity where the purchaser
9 is an individual with a significant amount of money but is
10 mentally impaired.

11 So if you would, for example, define it on that
12 basis, as some states might do, you know, you certainly
13 can't say this person is a sophisticated investor. It might
14 be the same with people who are elderly and they have
15 significant assets, yet they might be vulnerable to some of
16 these purchases. And they may or may not need the money.

17 So I think it really depends on how you define
18 sophisticated investor. It's kind of difficult to discuss
19 it without some working basis.

20 CHAIRMAN TOPOROFF: I appreciate that. Michael.

21 MR. GARCEAU: We have had experienced vendors come
22 back and buy machines from us, especially out of Mediquick
23 Medicine Service. So if sophisticated means educated in the
24 business, we have had attorneys buy from us, lawyers buy
25 from us.

1 But we've had people that are already in the
2 business come back and buy from us. So it does happen. Is
3 it common? No, it's not. But it does happen.

4 CHAIRMAN TOPOROFF: So in those situations where
5 somebody has some experience in the field, they have some
6 perhaps net worth, they have experience, let's say, with the
7 products or services that are going to be sold, do you think
8 in a situation like that disclosure makes sense?

9 MR. GARCEAU: They should be exempt. Because they
10 don't understand why they have to wait five, ten, or even
11 two days. They get frustrated. They just want to buy the
12 equipment.

13 CHAIRMAN TOPOROFF: So for somebody like that, you
14 would be in favor of an exemption.

15 MR. GARCEAU: Yes.

16 CHAIRMAN TOPOROFF: Shery Christopher.

17 MS. CHRISTOPHER: As long as they could validly
18 prove that they have that. Because you're going to have the
19 sellers who are going to say, oh, well, just tell them
20 you're already in the business.

21 Unfortunately, this industry is rampant with those
22 kind of people out there. We know it. We have watched them
23 on television, I mean, between the Disney toys and
24 everything else that's been out there.

25 In California it is if you have a certain net worth

1 you're exempt from certain things. And this is what Dale is
2 talking about. Sophisticated investor really is exactly
3 what Michael is saying.

4 Someone who comes to you and says I already have a
5 hundred vending machines, I really like yours and actually
6 has that valid proof, because the burden is going to be on
7 them, isn't it.

8 If in fact the guy says that or they believe it and
9 then he comes back and said, well, I really didn't have that
10 and you didn't ask for proof and you didn't give me
11 disclosure and I want my money back and you have those
12 headaches, so the thing is is a sophisticated investor
13 defined under business opportunity isn't going to be the
14 same as under franchising. And then the definition has to
15 be clearer. And that's certainly what you want to look at
16 down the road.

17 CHAIRMAN TOPOROFF: Well, let me clarify a second.
18 I didn't mean to say or suggest that the exact definition of
19 sophisticated investor in franchising would apply
20 necessarily to business opportunities.

21 What I'm saying is we are considering the whole
22 issue in the context of franchises. And in that dialogue
23 and in that debate we can carve out specifics where it might
24 apply to franchises, where it might apply to biz ops.

25 I mean, we have had the general discussion in the

1 franchise context. We have not yet had it in a business
2 opportunity context. So I wasn't prepared to put anything
3 in writing as such to discuss.

4 Myra, did you have a comment?

5 MS. HOWARD: Well, I was just going to follow up by
6 saying that I think this is a good discussion to have,
7 because what we're hearing is that there are some crucial
8 differences. And I'd like to just start noting these.

9 Dale, you suggested that a dollar amount alone is
10 insufficient. Is there some agreement for that proposition
11 in general?

12 Delia?

13 MS. BURKE: Yeah. I think not only a dollar limit,
14 but it strikes me that a sophisticated investor should be
15 somebody with some type of experience in either the specific
16 business or perhaps even with some other business
17 opportunity investment.

18 Because obviously you can have somebody who may be a
19 very experienced business person but not aware of the
20 pitfalls of buying a business opportunity.

21 And I think that may be similar to two in some way.
22 So I don't know whether you want to think about combining
23 those, but in any event I think experience is probably a
24 good element to consider.

25 MS. HOWARD: When we talk about experience, because,

1 Michael, you brought this up, do you think that in this
2 arena the experience should be very specific, meaning in
3 that, say--

4 MR. GARCEAU: In that industry.

5 MS. HOWARD: --substantially similarly field or in
6 that industry, or do you think it could be broader to
7 include a previous business opportunity purchaser?

8 MR. GARCEAU: Experience in that industry I think
9 would be fair way of doing it.

10 MR. ANDERSON: What about either? Because what
11 Delia is suggesting is that if you bought, or at least maybe
12 I'm putting words in her mouth, but basically if you've
13 bought business opportunities in the past, then you kind of
14 know how business opportunities work.

15 MR. GARCEAU: Yes and no. Because someone bought
16 vending machines six years ago doesn't mean when they go
17 look at medical billing is the same animal. it's two
18 totally different opportunities.

19 MS. CHRISTOPHER: Yes, it's totally different.

20 MR. CATALANO: Yes, absolutely.

21 MS. CHRISTOPHER: You can't say that.

22 MR. GARCEAU: I mean, my wife and I bought a
23 business opportunity at a trade show five, six years ago.
24 We're a product of this business. Does that mean if we want
25 to go buy medical billing tomorrow we are exempt? We don't

1 know about medical billing.

2 MR. ANDERSON: But maybe all it says is you bought
3 vending machines, you bought business opportunities, you
4 know what pitfalls, what questions to ask.

5 MR. GARCEAU: The problem here, I think it's hard to
6 realize there are some people that buy a business
7 opportunity that make good money. And those people that had
8 good luck and bought from us, like when we bought our
9 machines, we bought from a bad company.

10 The company went out of business. But we bought
11 machines from them and we made it work. We had no negative
12 comments. We were a referral for that company in the
13 beginning.

14 So my point is we had no pitfalls. We made it work,
15 we made money. Does that mean because we were lucky that
16 one time that next time it's going to go the same way? No,
17 they shouldn't be exempt.

18 CHAIRMAN TOPOROFF: A number of people have put up
19 their placards to speak. So what I'm going to do is I'm
20 going to start with Susan Grant and we're going to go around
21 the table clockwise.

22 MS. GRANT: Thanks.

23 CHAIRMAN TOPOROFF: Susan.

24 MS. GRANT: This is a pandora's box that I wish the
25 FTC would not open either for franchises or business

1 opportunities. I really don't think it's necessary or wise.

2 Let me make a few observations. One is that in
3 research that ARP has done of telemarketing fraud victims,
4 not only does their vulnerability to fraud not go down the
5 more educated they are and the higher income bracket, but in
6 many cases it actually goes up because they have more for
7 somebody to try from them and because they may think that
8 just because they're a well educated, smart person they know
9 more than they really do, especially about a business that
10 they're not familiar with.

11 In terms of somebody who has had experience in the
12 business, I would remind the FTC about all the cases they
13 have worked on where people have been reloaded either by the
14 same vendors or others, the gemstone cases and the other
15 situations where just because people have had experience and
16 even if it was bad experience, they have been strung along
17 to buy more or to buy new opportunities, whether it's to
18 invest in gemstones or some sort of business because they
19 are promised, well, that didn't work out but this time your
20 ship really is going to come in.

21 I think it's a fallacy to suggest that just because
22 somebody has X amount of income, X amount of education, or X
23 amount of previous experience buying some kind of franchise
24 or business opportunity it means that they don't need the
25 basic disclosures that I think that every consumer is

1 entitled to and really needs in making a business decision.
2 So I couldn't be more strenuous in my recommendation that
3 you not get into that.

4 CHAIRMAN TOPOROFF: Thank you. Bob James.

5 MR. JAMES: Susan said everything I was going to
6 say. She must have read my script. I agree totally with
7 her.

8 CHAIRMAN TOPOROFF: Rob Ireland.

9 MR. IRELAND: Yeah, I agree completely, although I
10 will sort of elaborate a little bit. I think it's going to
11 raise too many questions about what is a sophisticated
12 investor and what is not. And that debate could go on
13 forever.

14 And just because someone has some experience or has
15 some money or has a fancy degree, that doesn't mean that
16 they can't be deceived. And I can think of two anecdotes
17 right off.

18 The first case I worked on, the biggest victim, the
19 one that was paid the most money in a display rack scam was
20 an attorney in Florida. She spent \$60,000 and basically got
21 a business that was worthless.

22 In a recent case I worked on, one of our victims was
23 an individual who had owned vending machines for snacks and
24 sodas for about five years and it's been very profitable for
25 him. But he was talking to a business opportunity for

1 fragrances and was completely victimized. So these are
2 supposedly two sophisticated investors who were completely
3 taken.

4 Additionally, if you look at mutual fund companies,
5 they provide prospectuses to everyone. There is no question
6 about how smart are you, what's your income, what is your
7 background; everyone gets one. That might be a good analogy
8 to consider.

9 CHAIRMAN TOPOROFF: Thank you. Dennis Wieczorek.

10 MR. WIECZOREK: I disagree with most of what's been
11 said. First of all, in the securities laws there are
12 significant exemptions for sophisticated investors.

13 Secondly, in the business, state business
14 opportunity laws there are exemptions. In a number of them
15 there are exemptions for sophisticated investors typically
16 focusing on income or net worth.

17 In the franchise laws, likewise, there is an
18 increasing, recent changes to franchise laws have added
19 exemptions for that. And I think at some point the
20 government has to take the position that some people want to
21 be deceived, are going to be deceived, and some people are
22 just stupid and there is nothing you can do that's going to
23 help them.

24 And, you know, this concept that everybody deserves
25 protection, if a person is well off, they have either the

1 experience and knowledge to take care of themselves or they
2 can hire people to do that.

3 And I think that is the way the rule should be
4 written and I don't think that everyone should be equally
5 protected in this context.

6 CHAIRMAN TOPOROFF: Dale Cantone.

7 MR. CANTONE: I guess we can tell that to the
8 40-year-old mentally impaired person who pretty much
9 depleted a lot of the assets that he had based on a lot of
10 unfortunate buying.

11 This is somebody who does deserve protection. A lot
12 of people deserve protection. Some people are going to buy
13 no matter what. That's not the issue. The issue is what do
14 you give them in making this decision?

15 Then if they want to make a stupid decision, that's
16 fine. We're not talking about outlying business
17 opportunities. We're talking about an exemption I suppose
18 under the rule.

19 I agree a hundred percent with what Susan said and
20 what some of the other people have said. I envision a
21 situation where it's called reloading. Somebody buys ten
22 displays racks, vending machines, whatever you have.

23 Even before delivery, at that point does the
24 exemption then kick in? Do they then get another offer?
25 Look, you've got ten, they're not delivered yet. Here's 50

1 more at this bargain price.

2 Do they become subject to that exemption or not? I
3 think it's an illusory concept in the area of business
4 opportunities which I think are very different than
5 franchises that it's going to be impossible to quantify a
6 real exemption in this area and that it's probably not worth
7 going down that road.

8 CHAIRMAN TOPOROFF: Delia.

9 MS. BURKE: I'd just like to also add to what I had
10 said earlier, that perhaps -- well, let me say this first,
11 that I agree with Dennis to the extent that I agree that
12 there is room for some type of exemptions under these rules.

13 And it may be that it has to be carefully crafted.
14 And perhaps one thing that you should also consider is the
15 experience of the seller of the business opportunity in
16 conjunction.

17 I mean, if you've got an experienced seller who has
18 been around for a long time, has a certain amount of net
19 worth, there are a number of elements that indicate that
20 that seller is not a fly-by-night organization, and you have
21 a purchaser that has the wherewithal, either experience or
22 money or, you know, certain elements that indicate that that
23 person has sufficient experience, they should be able, it
24 seems to me, to negotiate without being required to provide
25 the disclosures or whatever that will be required under this

1 rule. So that's another element to think about.

2 CHAIRMAN TOPOROFF: Andy.

3 MR. CAFFEY: Thank you. Andy Caffey. I would like
4 to address the question that kind of started this ball
5 rolling, I think Keith Anderson's question, and that is are
6 there inherent differences between the franchise and
7 business opportunity communities. You should lead the
8 Commission to different considerations for a sophisticated
9 investor exemption.

10 There is one glaring difference and that is that by
11 and large the size of the investment is much smaller for a
12 business opportunity than for a franchise. And that
13 suggests to me that there is probably less rationale for a
14 sophisticated investor in the business opportunity rule than
15 there is in the franchise rule simply on the size of the
16 investment.

17 The second point I'd like to make is that because
18 under the proposed regulatory scheme all a seller would have
19 to do is provide timely disclosure, that there is reduced
20 need, especially compared to a registration state like
21 Maryland, for instance, that has a sophisticated investor
22 exemption, there is reduced need when all a company has to
23 do to comply is provide disclosure in a timely fashion.

24 There is no expensive registration or the 30- or
25 60-day delay that would be involved when taking an offering

1 through a registration process. I have clients that have
2 filed in Maryland for the sophisticated investor exemption,
3 but they were in the arena with very expensive retail
4 restaurant businesses in the half million dollar area and up
5 dealing with existing multilevel dealers.

6 And it made a lot of sense because they wanted to
7 move quickly, we went through the registration process. But
8 for the FTC rule, it's an interesting exercise and an
9 illuminating discussion. But as a practical matter a
10 sophisticated investor exemption is going to have to be so
11 carefully defined.

12 And that's what the message I think from around the
13 table is, as a practical matter it's not going to be made
14 available to anyone or be relied on by anyone.

15 CHAIRMAN TOPOROFF: Shery Christopher.

16 MS. CHRISTOPHER: A couple of things. One is
17 Delia's experienced seller and their net worth, because we
18 all know that in experience that there are sellers out there
19 who are extremely experienced in taking people's money and
20 have an exceptional net worth and have been around for a
21 long time and they find people who have lots of money who
22 are, you know, independent business people but it turns out
23 the whole idea and the concept is a fraud or they don't get
24 what they want or they're not going to get it.

25 So what's going to happen is, and we just sort of

1 like briefly discussed this is that it's going to all be
2 interpretation, isn't it, how everyone interprets what an
3 experienced investor is or what a sophisticated buyer is.

4 And secondly, I think that the concept that business
5 opportunities are not as expensive or the investment is not
6 as high as franchising is very wrong because there are
7 business opportunities out there where people are spending,
8 buying a master distributorship and they're still considered
9 business opportunities and they're spending a hundred and
10 fifty thousand dollars for it.

11 So that is not the case. I mean, I worked with a
12 guy as a consultant who had bought \$150,000 worth of
13 equipment in England. This guy had travel agencies here and
14 in Europe. And he got these machines and was sitting there
15 and didn't even know what to do with them.

16 And basically I was over there doing some work and
17 he hired me to help him go out and set up this program for
18 him. But he was someone who was in business. And the
19 company was a huge manufacturing company and they were
20 experienced.

21 So I think the thing is that disclosure needs to be
22 done, period. Because first of all, people want to know
23 what their royalties are or what their ongoing relationships
24 is. They want to know what they're going to get for their
25 investment.

1 All of those things go in a disclosure document.
2 That's all defined in there, and people need to see that no
3 matter how experienced they are or how much money they have
4 to invest into it.

5 They need to know those things. They're going to
6 want to know. I mean, I sold franchises. I sold Uniglobe
7 Travel franchises for years. And I have to tell you, we
8 always gave a disclosure document.

9 We had over 700 agencies while I was working for
10 them. And they were sophisticated. Gary Charwood had
11 already done Century 21. He had a lot of experience.

12 But the key is people want to know what they're
13 getting for their investment. They're going to want to see
14 a disclosure anyway. And most of these companies have them
15 already.

16 CHAIRMAN TOPOROFF: Elizabeth.

17 MS. GARCEAU: I basically agree with Shery. I know
18 Michael when we started out was making the point that maybe,
19 you know, certain people. But from listening to everybody
20 around the room, owning a business, and so I can say from my
21 point of view, you know, disclosing people, I think that
22 it's definitely worth it because it's going to be very hard
23 to define a sophisticated investor.

24 I think clearly it's too hard to define. I mean,
25 there might be some exceptions, but I don't think it's worth

1 putting your time and effort into because it would be really
2 a very fine line.

3 And I think that it's not really that big of a deal
4 that someone really deserves no matter what to getting a
5 disclosure document because, you're right, they need to know
6 what they're getting.

7 And even if they bought a business before, they need
8 to know what they're getting themselves into. So I think as
9 far as a business opportunity, even though we have sold to
10 people, they have bought a hundred thousand dollars' worth
11 of equipment from us.

12 We sold massive distributorships. We don't just
13 sell \$15,000 packages. We sold some large packages. But
14 these people have a lot of money. We have sold to
15 attorneys. We have sold to doctors. But I still think that
16 they really need clearly -- I don't know if you agree as far
17 as that point.

18 MR. GARCEAU: My point goes back, again, I keep on
19 going back to vending machines. Vending Times Magazine, if
20 I run an ad in that magazine and there's literally 17,000
21 circulation and all those who read the magazine are in the
22 vending business, if we run an ad in there to sell our
23 convenience center, these guys are already in the vending
24 business, you're saying every advertiser in that magazine
25 has to disclose because they're selling vending machines?

1 MS. CHRISTOPHER: No, Michael.

2 MS. HOWARD: Let me just ask --

3 MS. CHRISTOPHER: I'm sorry. That's already an
4 existing business.

5 MR. GARCEAU: But we're talking about that. An
6 experienced investor, what everybody is saying here is they
7 should not be an exemption, but if you're already in the
8 vending business.

9 My point is there's already hundreds of thousands of
10 companies now violating all these rules because they're
11 selling vending machines to make money in trade
12 publications. And a lot of people are already in the
13 business to try a new machine.

14 So if they're trying a new machine, a new
15 opportunity for them, should they fall into that category?
16 ANA Parkways right in Baltimore, Maryland, where Cantone is
17 from, they are one of the biggest suppliers in the country
18 for vending machines. And they don't disclose anybody.

19 And they mail out brochures. They have color -- and
20 they're a good company. They've been around for thirty or
21 forty years. But they advertise in every publication out
22 there.

23 We know the vending business. What I'm trying to
24 say is how could you not have an exemption for a guy that's
25 already in the business, in that particular business with a

1 couple year history?

2 MS. CHRISTOPHER: Look at number two.

3 MS. HOWARD: Let me just ask a couple quick
4 questions on this, and I know Steve wants to move on. I
5 think what I'm hearing is that the benefit to having some
6 type of exemption has to do with the waiting period; is that
7 correct, or are there other benefits?

8 Because the flip side of the question is what is the
9 cost to giving even a so-called sophisticated investor a
10 disclosure document?

11 MR. CANTONE: Well, I was going to make the point
12 that that's not just what we're talking about. We are not
13 just talking about -- my understanding is we're not just
14 talking about triggering the requirement to get a disclosure
15 document but also the waiting period and the other
16 provisions of the law.

17 MS. HOWARD: Right.

18 MS. GARCEAU: Myra, I think Michael's whole concern,
19 and it's kind of a touchy situation, but I think that he's
20 right in the fact that we have a lot of people calling our
21 office and they own hundreds of vending machines and they
22 want to try ten Mediquicks.

23 They have huge vending routes out there. So for
24 them to wait ten or fourteen days or whatever, they don't
25 understand it and they don't want to. So then they hang up

1 on us and then they pick up the phone and they try to find a
2 similar medicine machine.

3 So that situation there, you know, it is, it's kind
4 of hard. But I think number two, does number two touch upon
5 that as far as they're buying a similar business; right?

6 MR. CATALANO: That covers it.

7 MS. HOWARD: I think that number two -- exactly.
8 Exactly.

9 MS. GARCEAU: That's what I thought. So then that
10 would be right into that guideline.

11 MS. HOWARD: That's right.

12 MS. GARCEAU: If they're buying a similar business
13 you don't need a disclosure; right?

14 MS. HOWARD: That's right.

15 CHAIRMAN TOPOROFF: Okay. Let's move on. Number
16 five is an exemption if you offer or you -- any offer or
17 sale of a business opportunity which is a franchise which is
18 defined in the franchise rule; meaning if what you're
19 selling is already covered by the franchise rule then
20 obviously you don't need to give out a second disclosure
21 document under the business opportunity rule.

22 Six. Well, for six and seven, these are not
23 exemptions as such. But as a practical matter they work as
24 exemptions under current Commission policy. These aren't
25 exemptions that are in the rule as such, but they are

1 certainly statements that the Commission has set forth in
2 the interpretive guides.

3 So basically what we would be proposing is merely
4 just taking what's already existing in the interpretive
5 guide and putting it into the text of the rule. So number
6 six is required payments for the not-for-profit sale of
7 sales demonstration equipment, materials, or samples.

8 MR. ANDERSON: And six and seven really go to the
9 issue of what payments count against the \$500 minimum or
10 whatever the minimum is.

11 CHAIRMAN TOPOROFF: That's right. That's right.
12 These are qualifications for the minimum payment. And let
13 me just read number seven, payments for the purchase of
14 reasonable amounts of inventory sold to the purchaser at a
15 bona fide wholesale price for resale.

16 Are there any comments on this before I go to Eric?

17 Shery Christopher.

18 MS. CHRISTOPHER: When I have had people call me
19 about these, you know, they know there is an exemption for
20 wholesale, the only thing I usually tell them is that as
21 long as they're not also charging them some sort of fee to
22 show them how to then go out and resell that stuff. So
23 that's the key, isn't it, you know.

24 It's, okay, you're going to buy all this stuff
25 wholesale, but I'm going to charge you \$1,500 to show you

1 how to go out and do all that stuff wholesale. Because
2 vending candy is bought wholesale.

3 CHAIRMAN TOPOROFF: Right. Obviously the only, what
4 we are contemplating by six and seven is literally where the
5 only payments that are made are for not-for-profit sales
6 kits or for inventory for resale.

7 MR. ANDERSON: Excuse me. Is that it?

8 CHAIRMAN TOPOROFF: And let me just finish the
9 thought. And also keep in mind that this does not mean that
10 these people who operate businesses that have payments this
11 way run scot-free.

12 It does mean that they're also subjected to Section
13 5 of the Federal Trade Commission Act. It just means that
14 in this particular situation they wouldn't have to give out
15 specific disclosures.

16 Keith, you were going to add?

17 MR. ANDERSON: But is it that this is the only
18 payment that's made or is it that you don't have another
19 payment that exceeds the five hundred, the limit?

20 I mean, in Shery's case, they could buy the candy
21 wholesale if they paid them \$400 for training. Then they
22 would be exempt; right? They could pay \$400 for training
23 and \$600 for the candy--

24 CHAIRMAN TOPOROFF: That's right.

25 MR. ANDERSON: --and we said the candy doesn't

1 count, you're under the \$500 limit.

2 MS. CHRISTOPHER: It depends on the state.

3 MR. ANDERSON: Right. Well --

4 MS. CHRISTOPHER: But yes, that's what would happen.

5 CHAIRMAN TOPOROFF: So if, for example, you bought
6 not-for-profit demonstration kits but then you also paid
7 \$600 or \$500 for some kind of training, that would take you
8 and you would be --

9 MS. CHRISTOPHER: You'd fall, you'd go into it,
10 yeah, sure.

11 CHAIRMAN TOPOROFF: I know Eric is chomping at the
12 bit here.

13 MR. ELLMAN: We had suggested in our comments that
14 these exemptions, that they will be elevated from the
15 interpretive guides to the exemptions. So we're happy.

16 CHAIRMAN TOPOROFF: Okay. Keith Anderson.

17 MR. ANDERSON: Just ignore me if this isn't a
18 concern to anybody else. But I'm curious as to what does it
19 mean to say payments for not-for-profit sale of sales
20 demonstration, et cetera, et cetera?

21 CHAIRMAN TOPOROFF: Well, I think the best one to
22 address that issue is Eric. So, Eric?

23 MR. ELLMAN: Your question is what does that mean?

24 MR. ANDERSON: Yes. How do I figure out whether one
25 of your members, their sales kit is not-for-profit?

1 MR. ELLMAN: Well, the only way to do that is
2 presumably to, you are conducting some kind of investigation
3 of that company and in the course of that investigation find
4 out how much their sales kits cost.

5 And based upon that, upon your knowledge as to the
6 products or whatever is in that sales kit, you would have a
7 general idea as to how much that might cost the company, and
8 then you can investigate further.

9 And of course you can inquire with the company how
10 much does it cost for these things to produce. Most of our
11 companies, if not all of them, their sales kits are sold at
12 cost. In fact, some of them have probably taken a loss on
13 their start-up kits, their sales kits.

14 MR. ANDERSON: And so this is a real exemption for
15 you guys.

16 MR. ELLMAN: Yes. And the sales kits usually
17 contain a couple product samples, brochures, things like
18 that, flyers.

19 CHAIRMAN TOPOROFF: Okay. The last item, this gets
20 to a buy back. The seller's contract includes a repurchase
21 provision, wherein the seller promises to buy back from the
22 purchaser, for at least 90 percent of the purchase price,
23 all ordinary inventory, demonstration kits, sales kits,
24 material or samples if the purchaser is dissatisfied.

25 So this would be a contractual requirement. If the

1 seller has a contractual obligation to buy back, again the
2 sales kits are in inventory, for at least 90 percent, then
3 this would be considered fine and the risk of losing money
4 would be considered low. And therefore there shouldn't be
5 presale disclosure.

6 MS. HOWARD: And I'm just going to throw out as a
7 question on top of this, should there be any kind of time
8 period requirement or cap on this?

9 CHAIRMAN TOPOROFF: Eric Ellman.

10 MR. ELLMAN: This is also a good idea because we had
11 suggested it. But even if we hadn't suggested it, it would
12 still be a good idea.

13 One of the benefits to being a direct seller is
14 that, with a company in our industry, is that we offer and
15 all of our companies are required to adhere to a 90 percent
16 repurchase, which applies not just to inventory but also to
17 sales kits, demonstrations, and things likes that to
18 minimize the risk of getting involved in a direct selling
19 company, which serves a number of purposes, not the least of
20 which is to prevent people from getting loaded down to a
21 garage full of inventory which they cannot eventually sell.

22 And I think that the exemption number eight is a
23 good start. It does I think need a little bit of fine
24 tuning. And let me see if I can explain where I think some
25 monitoring of that --

1 CHAIRMAN TOPOROFF: Can I interrupt a second?

2 MR. ELLMAN: Sure.

3 CHAIRMAN TOPOROFF: In an effort to move this along,
4 if what you're going to suggest is short and to the point,
5 fine. If not, I would maybe prefer that you send us a
6 supplement to your comment.

7 MR. ELLMAN: Okay. Can I just give you a couple
8 very quick highlights and then I'll more fully.

9 CHAIRMAN TOPOROFF: Sure.

10 MR. ELLMAN: The last clause, if the purchaser is
11 satisfied, in our industry it doesn't matter whether the
12 purchaser is dissatisfied or not. In the direct seller
13 quits, whether he was totally satisfied or not, he or she is
14 still entitled to get their inventory --

15 CHAIRMAN TOPOROFF: On that point, if we take out if
16 the purchaser is dissatisfied and put in something like upon
17 demand, would that work?

18 MR. ELLMAN: That would be fine. Another point to
19 consider is that, in our code of ethics and a lot of state
20 laws, Maryland is three months, our policy is 12 months,
21 that we will repurchase any inventory or sales aides on hand
22 if purchased within 12 months prior to termination.

23 And I think that's a fairly reasonable accommodation
24 because if a direct seller has been in the business for five
25 or six years and they have got a five- or six-year-old

1 product line in their garage, we should not, our direct
2 selling company or any company should not feel obligated to
3 buy that stuff back. And as I said, that 12 months, our
4 policy of 12 months exceeds the Maryland three-month policy.

5 One other quick point is that anything that is
6 repurchased should be returned in a commercially usable,
7 commercially resalable condition.

8 If we get shampoos or soaps back and there is
9 nothing left in the bottle or the jar because they have been
10 used, then there should be no obligation for companies to
11 have to buy that back. So everything has to be returned in
12 a commercially resalable condition.

13 CHAIRMAN TOPOROFF: Okay. Dale Cantone.

14 MR. CANTONE: With regard to Maryland's three-month
15 requirement, I will share that we have had several
16 complaints from people who are, obviously not against people
17 who are in the Direct Selling Association, but network
18 marketing companies where the buyer doesn't realize or is in
19 a position to realize in those three months that they want a
20 refund.

21 And beyond the three months there is no state law in
22 Maryland that protects them and the buy back doesn't apply.
23 If they're not a member of the Direct Selling Association,
24 then there is no direct requirement that there be a buy
25 back.

1 You might want to consider whether or not a company
2 to get this exception should have any time frame. I mean,
3 if the company stands behind the products and the equipment
4 and if they are in a resale position, then maybe there
5 shouldn't be a time frame at all.

6 CHAIRMAN TOPOROFF: Shery Christopher.

7 MS. CHRISTOPHER: I think that this is real, real
8 concise when it applies to direct selling like Tupperware
9 and Mary Kay and all those other things.

10 But there are business opportunities who go out
11 there and, the case that Dale and I discussed, one of the
12 reasons that this company actually got into the problems
13 they got into was because they had a salesperson who was out
14 there.

15 And on the contracts he would write, which was not
16 what the company had written, but what he would write was,
17 well, if you're not happy within 90 days we'll refund your
18 money. If you're not happy with your earnings we'll buy
19 back everything.

20 So in that case when most states, under business
21 opportunity if someone actually makes that kind of a
22 guarantee, they're required to post a bonds in most states.
23 And absolutely that would, I don't think an exemption should
24 be allowed for that kind of situation.

25 So do you say the exemption is if it's a direct

1 selling multilevel marketing type of company where you're
2 selling those products and you're buying those products and
3 they're going to buy them back, but there is a lot of
4 business opportunity sellers who go out there, and as I said
5 I went into a show where a guy was saying if you're not
6 happy in 90 days with your earnings, we'll buy everything
7 back from you, you know. And so in that case, that would
8 pose a problem.

9 CHAIRMAN TOPOROFF: I just, on that point I just
10 want to ask Eric a question. If we didn't have the proposed
11 exemption eight for the buy back and we had exemption seven
12 for the reasonable amount of inventory, and six, six and
13 seven, would that help in most of your association's
14 members? Do we really need to have eight, or would six and
15 seven cover your folks?

16 MR. ELLMAN: I think six and seven would probably
17 cover our people. But the reason we had suggested it before
18 in our comments is when the notice of proposed rulemaking
19 initially went out, the ANPR, we weren't as far along in the
20 process as we are now.

21 If six and seven are elevated as an exception as
22 opposed to any interpretive guides, we would feel somewhat
23 more confident than just having six and seven laying in an
24 interpretive guide without any other additional exemptions.

25 But one of the things we had talked about before I

1 think perhaps in Chicago is that it was discussed that there
2 be some type of two-tiered economic threshold, dollar
3 threshold.

4 And you might want to consider as we discussed there
5 that if you're between, for example, 501 and 1,000, as we
6 discussed before, that you can either disclose or have a buy
7 back or something along those lines.

8 CHAIRMAN TOPOROFF: Keith Anderson.

9 MR. ANDERSON: I'm wondering, Dale and Bob, do the
10 states have this kind of thing? Because I can see a real
11 problem with this kind of a buy back guarantee. I mean,
12 maybe it's not a problem with the states if you have got a
13 bond behind it.

14 But somebody comes out and says, well, we will offer
15 you a 90 percent buy back. And as Michael observed, six
16 months later 90 percent, I mean, it's not Eric's members.
17 And Eric's members are legitimate.

18 But the vending machine guys, we will promise you,
19 give you 90 percent of your money back if you send your
20 vending machines back. And then six months later Michael
21 reports that almost all of them are gone. So I guess I'm
22 not sure this one will work.

23 MS. CHRISTOPHER: Exactly.

24 MS. HOWARD: Well, can I just throw something out?
25 The way I read number eight, vending machines or equipment

1 wouldn't necessarily be included. And/or if it does read
2 that way, if we made sure that that was not --

3 MS. CHRISTOPHER: But you can't say just vending
4 machines. There are business opportunity sellers who will
5 go out there and say if you're unhappy with this, we will --
6 and that's why a lot of the states have that if you make
7 that kind of buy back guarantee, even a little state like
8 Louisiana has, if you go out there and promise that if
9 they're unhappy with the investment, you will refund them,
10 then that's going to fall under it.

11 MR. ANDERSON: Yeah. I mean, any of our pyramid
12 cases where you buy jewelry, say, how do you know they're
13 going to be there six months from now?

14 CHAIRMAN TOPOROFF: And in fact, I should add, to
15 make the record clear, that what we're proposing here as an
16 exemption under certain state laws would get you in the rule
17 in the first place; that would be the offer of a buy back
18 would be a factor for rule coverage. It would be part of
19 the definition --

20 MR. ANDERSON: It makes you more suspicious.

21 CHAIRMAN TOPOROFF: It would make you even more so.

22 MS. CHRISTOPHER: But then you're in states that
23 don't have that.

24 CHAIRMAN TOPOROFF: What I want to do is go around
25 the table.

1 MR. ANDERSON: Well, I guess, can we ask Dale and
2 Bob to address the question of whether states have that kind
3 of a thing in their law?

4 CHAIRMAN TOPOROFF: Sure. Dale?

5 MR. CANTONE: We don't have that exemption in our
6 law. We're one of the states that you're talking about
7 where a guarantee of a buy back would trigger our state
8 requirements.

9 And we do see that a lots of times in the seminar
10 context. That's one of the hooks, very impulse buy,
11 guarantee. If you have any problem, we will buy back the
12 inventory. And then they might may not be around in six
13 months.

14 MR. JAMES: Florida doesn't address it because in
15 the case of the direct, the MLM sellers, their fee is less
16 than \$500 to be a distributor so they're exempt from us
17 anyway. I have tried to lower the fee but I can't never get
18 it off the table.

19 MR. ANDERSON: But you don't provide an exemption
20 for a guarantee, a buy back somehow gets you out from under.

21 MR. JAMES: And I might say this. On my section of
22 written complaints received, about 60 percent of them are
23 against a direct selling company. Not members of his
24 association, but they're MLM companies. The bulk of our
25 complaints are against those people. They last about six

1 months and they're gone.

2 CHAIRMAN TOPOROFF: Okay. We're going to go around
3 the table this way, counterclockwise. Susan Grant.

4 MS. GRANT: I share Keith's misgivings about the
5 potential for abuse with this. And if Eric feels that six
6 and seven take care of his members' problems and that eight
7 isn't necessary, that's music to my ears.

8 I didn't want to comment right away because I wanted
9 to learn from the practitioners how this would work for
10 them. But I would be happy if this couldn't be used as just
11 a way of people escaping coverage and making false promises
12 of refunds.

13 CHAIRMAN TOPOROFF: Okay. Thank you. Eric.

14 MR. ELLMAN: Just very quickly. No matter what this
15 rule says and what this rule does, whether number eight is
16 in there or not, there will always be fraud.

17 And one of the things that there are I guess five or
18 six states out there in the context of antipyramid or
19 multilevel marketing laws that require a buy back, Maryland
20 being one of them, of course, but one of the things that law
21 enforcement does in those states and that we do, that our
22 code administrator does who is in charge of the enforcement
23 of code, is that you look to, if in fact the buy back is
24 really a subterfuge, and if you -- and this is something, if
25 you choose to go with number eight, this is something that I

1 think would be ripe for comment in your interpretive guide,
2 that if in fact the buy back is being used as a subterfuge
3 and people are being given empty promises, well, not only is
4 that potentially a violation of the proposed rule but it is
5 certainly, of course, a violation of Section 5.

6 CHAIRMAN TOPOROFF: Andy.

7 MR. CAFFEY: Thank you. Andy Caffey. That triggers
8 a thought, and I'm sure we are going to get to the substance
9 of the disclosure soon, this afternoon, but remember that a
10 document is being provided that contains financial
11 information about the seller.

12 And it may be that, although this is a proposed
13 exemption, that this exemption could somehow be linked to
14 the net worth of the seller as demonstrated in audited
15 financial statements that may be resolved in some of the
16 concerns related to number eight.

17 CHAIRMAN TOPOROFF: Delia Burke.

18 MS. BURKE: My comments I think are generally along
19 the same lines as things that have already been mentioned.
20 But let me just point out that it seems to me this is the
21 one exemption that you've got listed here where there is not
22 the way to draft it some demonstration of ability, that in
23 fact you meet the terms of the exemption other than a simple
24 representation.

25 I mean, in all these other exemptions it's pretty

1 easy to verify that you're going to do what you're going to
2 do. But in this exemption you don't, it's the same problem
3 I think that everybody has mentioned, that you don't know --
4 It's an easy representation to make, and how do you verify
5 that that's something that the seller can actually do?

6 CHAIRMAN TOPOROFF: Dennis.

7 MR. WIECZOREK: This provision is contrary to
8 probably 70 to 80 percent of the state business opportunity
9 laws because they flip the presumption the other way. If
10 you're doing this, you're doing something wrong.

11 And obviously if this is something you're interested
12 in, you have got a preemption or nonpreemption issue to
13 worry about.

14 But I think it's a good idea coupled with a
15 performance standard on the part of, as Andy and Delia have
16 mentioned, on the part of the seller to show that they do
17 have the ability to buy it back at some point.

18 And that might necessitate some sort of
19 sophisticated seller exemption that would be coupled with
20 this where if a seller has a net worth above a certain level
21 and if they make a buy back promise that that would enable
22 them to be exempted

23 CHAIRMAN TOPOROFF: Well, let me ask, since Dennis
24 raised it and I touched on it before, should we do the
25 reverse, and that is in the definition of business

1 opportunity include these types of arrangements where if a
2 company promises to buy back in some form inventory that
3 that would be included as a business opportunity?

4 And I might add that the model, the NASAA model from
5 which this was drafted be it the Illinois statute, takes
6 that approach.

7 MS. HOWARD: Let me ask a follow-up or a
8 clarification.

9 CHAIRMAN TOPOROFF: Sure.

10 MS. HOWARD: If those such sellers would be
11 included, would they still be able to be exempted by, say,
12 for instance, number six or number seven?

13 CHAIRMAN TOPOROFF: Sure.

14 MS. HOWARD: Okay.

15 CHAIRMAN TOPOROFF: Yeah, that wouldn't be affected.
16 Because conceivably they could sell unreasonable amounts of
17 inventory and not at bona fide wholesale prices. They could
18 sell other equipment that's not inventory.

19 Eric Ellman.

20 MR. ELLMAN: I think that's a bad idea. And here's
21 why. The purpose of a buy back, assuming that it is in fact
22 a legitimate buy back, is to provide some degree of
23 protection to consumers.

24 The purpose of a business opportunity rule is also
25 again to provide some degree of protection. Because of the

1 pejorative nature of a business opportunity, you are
2 essentially saying that anyone who offers a consumer
3 protection, such as a 90 percent inventory repurchase or 90
4 percent buy back, is automatically presumed to be a business
5 opportunity coupled with all of the pejorative terms that
6 come with being a business opportunity. And I think that
7 would be a mistake for the Commission to take. I think
8 that's the wrong way to go.

9 CHAIRMAN TOPOROFF: Dale Cantone.

10 MR. CANTONE: I think I disagree with Eric. I think
11 that there is a significant industry of business
12 opportunities. And to fit Susan's definition, they
13 certainly look, smell, and act like business opportunities.
14 But more importantly, they hurt a lot of people. A lot in
15 the seminar context.

16 They will come to town, have a seminar. And one of
17 the things is they grab people and allow people some comfort
18 in buying them is a promise of a buy back, a guarantee. And
19 it may or may not happen.

20 And I think that Dennis has an interesting idea.
21 But I think to take those category of business opportunity
22 sellers out of the new rule I think is a mistake.

23 I think it's something that there is a reason why
24 state law covers them that way. And I think it's something
25 that the Commission should think about.

1 CHAIRMAN TOPOROFF: Before we move to Keith and
2 Eric, I just wanted to ask Bob James, in Florida, do you
3 have this exemption?

4 MR. JAMES: No.

5 CHAIRMAN TOPOROFF: You don't.

6 MR. JAMES: No.

7 CHAIRMAN TOPOROFF: Based upon your experience,
8 though, in working with or dealing with business opportunity
9 sellers, how would you feel? I mean, is this something that
10 should be on the exemption side or is this a factor that
11 should be more on the inclusions side?

12 MR. JAMES: I think it should be on the inclusions
13 side.

14 CHAIRMAN TOPOROFF: Keith Anderson.

15 MR. ANDERSON: I guess I come close to Eric's
16 feeling here. Because it seems to me what you don't want to
17 do is discourage legitimate businesses from providing that
18 option.

19 And what I guess I'm not clear from what Dale said
20 was, are you saying they should not be exempted or do these
21 seminar guys only get caught because they offer the buy back
22 or are they caught on other grounds? If you just were sort
23 of neutral on the question of a buy back, would they still
24 not fall under the law?

25 MR. CANTONE: A lot of these seminar sellers,

1 business opportunities, fit the definition of a business
2 opportunity under state law but I understand not necessarily
3 the definition of a franchise under the current franchise
4 law.

5 And these are the category of sellers that are
6 hitting the same target of consumers. They're doing the
7 same issues. They're doing the same fraudulent, making the
8 same fraudulent claims and earnings claims.

9 In some cases they're more difficult to catch.
10 They're very hit-and-run. They don't follow the ten-day
11 rule in many cases. And especially in the seminar context,
12 they come to town, they leave town. They're difficult for
13 consumers to go after.

14 MR. ANDERSON: Okay. Let me ask you this. Would
15 they -- and obviously you can't play complete lawyer on this
16 one because you can't do it off the top of your head.

17 But off the top of your head, the definition that
18 we're talking about this morning that expands it beyond
19 location, would that bring most of these people under
20 coverage?

21 MR. CANTONE: Most of these deals are not vending
22 machine deals. A lot of them are real estate foreclosure
23 deals, also very touchy-feely, difficult --

24 MR. ANDERSON: But are they providing substantial --
25 are they providing assistance in setting up a business that

1 you could capture them under the Illinois statute?

2 CHAIRMAN TOPOROFF: If I could add on to what Keith
3 is saying, basically I have a similar curiosity. And that
4 is, by not including the buy back as a trigger to cover the
5 rule, are we going to miss the opportunity to cover people?

6 Meaning, are people going to be able to slip through
7 if we don't have this buy back provision included in the
8 first part?

9 Does it really add anything on or the exact same
10 people that would be covered would be covered anyway because
11 the seller offers marketing assistance? So is it just
12 overkill to put in a buy back provision in the definition of
13 the rule?

14 MR. ELLMAN: Can I respond to that?

15 CHAIRMAN TOPOROFF: Eric.

16 MR. ELLMAN: I think it is overkill, and I don't
17 think you're covering anyone additionally. If you're
18 including as business opportunities people who are
19 advertising a 90 percent buy back and they're not intending
20 to keep it, then they're not likely going to file disclosure
21 documents or provide disclosure documents anyway.

22 And if they're not fulfilling their buy back
23 obligation which they're advertising, that is a Section 5
24 violation. So what good is it doing by including an
25 inclusion of people who offer a buyout into the definition

1 of business opportunity?

2 CHAIRMAN TOPOROFF: Andy Caffey.

3 MR. CAFFEY: Thank you. I think if the Commission
4 adopts a definition, especially the definition pertaining to
5 market assistance, I think we would be hard pressed as a
6 group to come up with an example or an offering that would
7 miss marketing assistance and be snagged by some sort of buy
8 back definition.

9 And I think this is a very important question in
10 fashioning this rule because I think it's fair to say that
11 the offer of a refund, the offer by a seller to say you have
12 three days or 30 days or 90 days to get a refund for this
13 purchase if you're unhappy with it is one of the hallmarks
14 of legitimacy in the marketplace.

15 And it is very difficult advising companies who are
16 legitimate and make those sorts of offers to say, well, this
17 is going to trigger a bond requirement in this state, in
18 this state, in this state, in this state; an extraordinary
19 expense, to which the company says merely because I want to
20 be fair with my purchasers and offer them the right to get
21 their money back, the answer is yes.

22 Because I suppose there have been historic abuses, I
23 don't want to run on on this, it is an important point for
24 consideration.

25 And the other question I would raise is whether

1 there is a record for this rule that the Commission would be
2 relying on that has been developed since the rule was
3 adopted in 1979 or whether you think that's part of the
4 process.

5 I mean, it's one thing to have specialists and
6 experts in the room and interest groups represented, you
7 know, slice this up. It's another thing to have a record
8 say, well, have there been abuses in this area?

9 How many examples do we have in the record of
10 companies who have offered to make a refund and then weren't
11 there, they disappeared. We have anecdotal evidence only.
12 So it would be, that is a very important point.

13 CHAIRMAN TOPOROFF: Shery Christopher.

14 MS. CHRISTOPHER: Some states do have like a
15 cancellation type of thing where they have a two-day
16 disclosure and then the person can sign the contract and
17 give a deposit or pay and then they have so many days to
18 cancel it and get their money back.

19 So that's a little bit of a different structure.
20 This whole section eight, I just really don't think that it
21 should be an exemption, but I don't think it should be
22 considered in the rule.

23 In the terms that most people that do this, and I
24 don't know, in fact, all the companies that I have ever
25 dealt with in the whole time I have been in this, if they do

1 this they're also doing something in marketing or they're
2 representing you can make an income or they're providing a
3 manual, they're providing something else.

4 So it's really hard to say that if a company comes
5 out, say, like Mary Kay and says we're going to buy back the
6 product if you're unhappy or you just don't want it anymore
7 and they say, well, you're going to fall under the rule, now
8 you're going to have to register and disclose, we're always
9 defining this, aren't we?

10 I think everything that's happened today, we have
11 said how is it going to be defined. And really in this case
12 if someone says, if a business opportunity goes out there
13 and says whether it's vending machines, whether it's ceiling
14 cleaning, whether it's medical billing, whether it's blue
15 sky and then also offers to buy it back if they're unhappy,
16 they're at a seminar, they're representing to those
17 individuals who are attending that seminar that you can go
18 into business and they're going to show you how to do it.

19 And that's a business opportunity. So they're going
20 to fall under the rule under all the other reasons. And
21 this isn't really going to make that big of a difference.

22 CHAIRMAN TOPOROFF: Okay. Dennis.

23 MR. WIECZOREK: I think it is overkill to include
24 this in the definition because the definitional elements are
25 already very broad. And I can give you an example of

1 several large franchisors who have gone to the market and
2 advertised the fact that a franchisee can become a
3 franchisee and try it out for six months, a year, and get
4 their money back if they don't like it.

5 That has created a crazy problem in certain business
6 opportunity states where exemptions for franchisors are lost
7 if the franchisor then offers a buy back.

8 So I don't really see that it adds anything. And I
9 think it stifles some very laudatory, albeit marketing
10 initiatives, but initiatives that really take care of the
11 buyer in terms of where the buyer will be after a period of
12 time. And if they don't like it, they can walk away.

13 CHAIRMAN TOPOROFF: Okay. Anything else on possible
14 exemptions?

15 (No response.)

16 CHAIRMAN TOPOROFF: If not, we have managed to get
17 through the second item exactly on time. So it's twelve
18 o'clock. It's lunchtime.

19 Let's be back at 1:15 or as close to 1:15 as
20 possible, because the next item on the agenda is what
21 disclosures are appropriate. And I have a feeling that
22 that's going to be a lengthy discussion. So the sooner
23 we're back, the sooner we can get into that.

24 MS. GRANT: Steve, I would just like to say and
25 apologize for the fact that I have to leave to go to another

1 meeting. I have a previous commitment.

2 And representing the League in the afternoon will be
3 Phillip McKee, who is the coordinator of our Internet fraud
4 watch but is also very knowledgeable about the
5 telemarketing-related abuses that we hear about. So he will
6 ably represent us in the afternoon.

7 CHAIRMAN TOPOROFF: Thank you. I appreciate your
8 being here this morning. With that, we are off the record.

9 (A lunch recess was taken.)

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A F T E R N O O N S E S S I O N

(1:20 p.m.)

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3 CHAIRMAN TOPOROFF: The next agenda item is the
4 disclosures. And basically, let me give you a little bit of
5 background. When we were in Chicago at the first business
6 opportunity meeting, what we did was beforehand we took the
7 franchise rule, disclosures, as well as the disclosures in
8 the UFOC and we outlined them.

9 And when we got to Chicago, we went around the room
10 and we literally went item by item and asked does this item
11 make sense in a business opportunity context?

12 Certain ones I think everyone would agree do not
13 make sense, such as the celebrity endorser. I have yet to
14 see a business opportunity that had a celebrity endorser.
15 If there are some that have a celebrity endorser, it really
16 isn't that big a deal.

17 I can't remember any complaints involving business
18 opportunities that had a celebrity endorser involved. To
19 the extent that there are celebrity endorsers, that seems to
20 be much more of an issue for franchises.

21 There are other issues that are like that. Our goal
22 is to have a good rule and a streamlined rule where
23 possible. So when we got back from Chicago and some of the
24 other meetings, Myra and I took a fresh look at this.

25 We looked at the NASAA model and the Illinois model

1 and some other state statutes, plus our own law enforcement
2 experience to come up with disclosures again that would be
3 relevant and that would make sense in a business opportunity
4 context.

5 Now, we are not necessarily wedded to all of these
6 disclosures. Perhaps some of them aren't necessary. And
7 again, we're thinking the big concepts here, not necessarily
8 specific language.

9 So with that, what I would like to do is just go
10 through these and highlight certain issues that we had and
11 ask for your input as well. And again, the big questions
12 that we are asking are are these disclosures, the specific
13 disclosures necessary?

14 Are the costs justified or not, or whether there's
15 other ways to approach these problems. And certainly we
16 would entertain and we'd like to know if you think that
17 there are additional disclosures that should be mandated for
18 sellers of business opportunities.

19 So with that I hope everyone received the handout
20 that's marked disclosure requirements for business
21 opportunity ventures and we will get right to it. The
22 introductory part is standard language that comes from our
23 rules. I don't think that we really need to go through
24 that.

25 Basically if you're a seller, if you meet the

1 definition, as we discussed this morning, whatever the
2 definition ultimately will be, then you must disclose and
3 here are the various items.

4 The first one, (a)(1), is disclose the name of the
5 business opportunity seller, whether the seller is doing
6 business as an individual, partnership, or corporation, the
7 names under which the seller has conducted or is conducting
8 or intends to conduct business, the name of the parents or
9 affiliated company that will engage in business transactions
10 with the purchasers or which will take responsibility for
11 statements made by the seller.

12 Okay. So it's a basic disclosure, who is the seller
13 here. Are there any concerns about this definition?

14 Dennis Wieczorek.

15 MR. WIECZOREK: Can I go up to the introductory
16 language in (a)?

17 CHAIRMAN TOPOROFF: Sure.

18 MR. WIECZOREK: We skipped over that. And there are
19 just a couple of comments to confirm something we talked
20 about before. First of all, ten business days, is there
21 some thinking that we might go to a 14-day period because
22 franchisors routinely, I can't speak for business
23 opportunity sellers, franchisors routinely miss, like
24 Veterans Day a couple weeks ago, I had several companies
25 call me and ask me is this really a business day or not a

1 business day? I told them it's not a business day.

2 CHAIRMAN TOPOROFF: Okay. Can I interrupt you on
3 that one?

4 MR. WIECZOREK: Yes.

5 CHAIRMAN TOPOROFF: We have discussed this issue
6 before. And our thinking was sure, let's get rid of
7 business days because that is somewhat confusing. Is Martin
8 Luther King included? Is it not included? Let's just have
9 a bright line 14-day rule.

10 Dale Cantone and some others from franchise
11 registration states have brought to our attention that their
12 statutes speak in terms of ten business days.

13 And depending upon what we do, if we have 14
14 business days, it might make it that a person who complies
15 with the state statute, the ten business days under the
16 state statute might run afoul of our requirement if we had a
17 14-day provision. So I don't want to get into that. I note
18 that it's an issue. I think that we can work on that.

19 MR. WIECZOREK: Okay. I will note just as an aside
20 that there are business days in the states that are not
21 business days under Federal law, too. So we already have
22 confusion.

23 CHAIRMAN TOPOROFF: Okay. I will speak for myself.
24 It is my preference to have a clear 14-day rule, bright
25 line. You know what it is; basically two weeks and that

1 solves the problem.

2 But we will have to iron it out and tinkering
3 perhaps if there are questions that our rule will run afoul
4 of state law.

5 MR. WIECZOREK: One other minor comment, and that
6 is, I mean, maybe I'm missing something but it says ten
7 business days prior to execution of a contract or payment of
8 any consideration, et cetera.

9 And, you know, again maybe the earlier of would be
10 the appropriate language here. Also, we have heard from
11 before that the execution of a contract may not be such a
12 routine experience in the business opportunity field. So
13 there may just be some wordsmithing that needs to be done
14 there.

15 CHAIRMAN TOPOROFF: Sure. I appreciate that.

16 Rich Catalano.

17 Oh, I'm sorry. Andy.

18 MR. CAFFEY: Thank you. Andy Caffey. It sounds as
19 if, and maybe I'm reading too much into this language and
20 your presentation of discussions that occurred in Chicago,
21 but I hope the Commission has not made a decision or its
22 staff is not convinced that a ten business day presale
23 disclosure scheme is the best approach to business
24 opportunity community.

25 I have always thought that if the goal of the

1 Commission is to increase compliance, it should think hard
2 about where this scheme comes from and why it was put in
3 place originally.

4 I think this is a holdover from franchise
5 regulation. And I think if you are making an investment of
6 a quarter million dollars or one-and-a-half million dollars
7 or even fifty thousand dollars, then a ten day presale
8 disclosure scheme makes sense and it may be justified by the
9 size of the transaction.

10 If you're making a \$550 purchase, I wonder if ten
11 business days is still the correct measure. I don't think
12 it is. I'm not sure what it is. But it suggests to me, the
13 size of the investment suggests that it should be shorter.

14 I also suggest that ten business days may be
15 necessary to review a complex 50-page franchise agreement
16 and a complex 40-page disclosure statement and the form of
17 the UFOC but may not be necessary to review the much shorter
18 contracts that are typically used in the business
19 opportunity community and the much shorter disclosure
20 statements that I am sure the Commission will devise.

21 It's even occurred to me that if you really wanted
22 to tailor this regulation to the practices of the industry,
23 you may want to consider in some circumstances or some
24 limitations a post-sale cooling off period rather than a
25 presale disclosure scheme.

1 This is a golden opportunity for the Commission to
2 think hard about this, and I'd hate to see the staff at
3 least gallop right by this concept simply because it was
4 born 20 years ago in the development of the franchise
5 regulation act.

6 CHAIRMAN TOPOROFF: As I started off this morning, I
7 said that we're making two assumptions. One is that we are
8 going to continue to have a business opportunity rule pretty
9 much the way the business opportunity rule has been all
10 along, and the second is that it would be split from
11 franchises.

12 So what I'm hoping to do is to get through the basic
13 disclosures so that we have a framework in place. And my
14 hope is, as time allows at the end, that we could pick up
15 and discuss traditional issues like whether a disclosure
16 regime even makes sense for business opportunities.

17 You're not the first to have mentioned the
18 possibility of a cooling off period post-sale, and we
19 discussed a little bit about that in Chicago. And my hope
20 is again to get through these so we will have time to pick
21 up on them.

22 But right now what I would really like to focus in
23 on and what would help staff at this point is to the extent
24 that the Commission wants to have a presale disclosure law,
25 we have to figure out what disclosures make sense in the

1 business opportunity context.

2 MS. HOWARD: And just so you're aware, this isn't a
3 dead issue for us. This is something that we are still
4 discussing and thinking about.

5 CHAIRMAN TOPOROFF: Right.

6 MR. CATALANO: And ditto his comments. I feel
7 exactly the way he says.

8 CHAIRMAN TOPOROFF: Okay. So on the first
9 disclosure item, the name of the company, is there any real
10 concern here? Or if not, we'll move on.

11 (No response.)

12 CHAIRMAN TOPOROFF: Okay, (a)(2) is provide a
13 description of the nature of the business opportunity being
14 sold, including a description of any license or permit that
15 will be necessary in order for the purchaser to engage in or
16 operate the business opportunity. Okay?

17 So basically what we're saying is that the person
18 has to disclose the nature of the business. And just like
19 in the new UFOC, franchisors are required to state laws and
20 general applicability that might be relevant here.

21 We have incorporated that provision about licenses
22 and permits. So if you're doing real estate, you might have
23 to disclose that you need a real estate license or some
24 other kind of license. Is there any concerns? Let me just
25 get Dennis' opinion here.

1 MR. WIECZOREK: Well, the terminology is not the
2 same as the UFOC. The UFOC does focus on governmental
3 regulations of general application. And the disclosure that
4 covers this issue is usually a very brief disclosure that
5 says this is real estate brokerage business, for example,
6 that you may need to be licensed under state law. And
7 that's all it says.

8 So I would be hesitant to include something in here
9 that says disclose all licenses or permits, because
10 literally in a given municipality, state, county, whatever,
11 you may need a whole laundry list of business licenses,
12 drivers' permits, chauffeurs' licenses, whatever it is.

13 So I'd be careful with the language just to make
14 sure that it's a generally applicable law as opposed to
15 local regulation type thing.

16 CHAIRMAN TOPOROFF: On this one I also want to
17 mention that this language is taken from the Illinois
18 statute, the biz op statute as well, almost verbatim. We
19 just moved it around. It was stuck further on in the list
20 of disclosures, and we thought at least as an initial step
21 maybe to move it up and just include it into what the nature
22 of the business is.

23 So any other thoughts? Keith.

24 MR. ANDERSON: I was going to raise the same issue
25 Dennis raised.

1 CHAIRMAN TOPOROFF: Any other thoughts on this
2 particular disclosure item?

3 (No response.)

4 CHAIRMAN TOPOROFF: Okay; (a)(3), disclose the prior
5 business experience of the seller relating to the business
6 opportunity, including the name, address, and the
7 description of any business opportunity previously offered
8 by the seller, the length of time the seller has offered
9 each such business opportunity, and the length of time the
10 seller has conducted the business opportunity currently
11 being offered to the purchaser.

12 And again, that's fairly typical of our disclosure
13 law as well as some of the other states. Any comments?

14 Keith?

15 MR. ANDERSON: Those of you that represent biz ops,
16 is doing something like this burdensome? Would it make
17 sense to limit it to the last five years, or is this the
18 sort of thing that everybody has got their fingertips into
19 so it's only a little more paper to --

20 MS. CHRISTOPHER: Well, in some states it varies.
21 Some want a five-year history, some want seven and some want
22 ten. I just have my clients do a ten-year; it's easier.

23 MR. ANDERSON: Because this, as I read it, would
24 require infinite.

25 MS. CHRISTOPHER: But no one has ever gone past ten

1 years.

2 CHAIRMAN TOPOROFF: Okay. Would it be helpful to
3 include a ten-year limit?

4 MS. CHRISTOPHER: Yes.

5 MR. ANDERSON: Should it be shorter than ten years,
6 or does the fact that some states require --

7 MS. CHRISTOPHER: Some states require ten. No one
8 has ever asked for more, so I think ten is a real fair,
9 equitable time frame.

10 CHAIRMAN TOPOROFF: Anybody else?

11 (No response.)

12 CHAIRMAN TOPOROFF: Thank you. That's helpful.
13 Okay; (a)(4) Disclose the names, addresses, and titles of
14 the seller's officers, directors, trustees, general
15 managers, principal executives, agents, and any other person
16 charged with responsibility for the seller's business
17 activities relating to the sale of the business opportunity.

18 Any comments? I think it's pretty straightforward.

19 MR. ANDERSON: Too broad? Wasn't there some
20 discussion in Chicago about limiting this one to like the
21 president or something, Dennis?

22 MR. WIECZOREK: Well, of the term "officers" is a
23 little broader--I know it's from Illinois because I have
24 Illinois here--but it's a little broader than the UFOC, the
25 franchise rules.

1 And I suspect there aren't too many business
2 opportunity sellers out there that have lists of officers
3 like banks where you have a hundred people from assistant
4 vice president on up.

5 But theoretically this could require listings of
6 officers who are very low down, low down the totem pole.
7 And it might be better to specify CEO, COO, CFO, senior
8 people like that, because you do have the follow-on
9 language, any person charged with responsibility for the
10 business activities relating to the sale.

11 So I think that would be a better way of doing it so
12 that you don't cover officers who really aren't that
13 relevant to the buyer.

14 CHAIRMAN TOPOROFF: Shery Christopher.

15 MS. CHRISTOPHER: Yes. One thing is the addresses.
16 In Maryland they require that you put the actual address of
17 the office, and some states they actually want the home
18 address of the officers.

19 A lot of officers don't like to give their home
20 address in their disclosures. And a lot, and now we have
21 some states who are requiring home addresses of sales
22 people.

23 Florida has rewritten, I'm sure you've gotten the
24 information from Bob, on requiring date of birth and social
25 security numbers on sales people.

1 We have been lucky enough to convince them that we
2 don't want to include this in documents that are going out
3 to the general public because it gives people access to
4 someone's name, address, social security number, and date of
5 birth, which means they could go out and get credit cards in
6 their name. So we have just only been sending it into the
7 states.

8 The issue on the agents is what agents? I mean, if
9 we are going to be listing -- in a lot of these business
10 opportunity sellers, the agents would be their sales
11 representatives.

12 Well, oftentimes their sales representatives come
13 and go. And so they'd be redoing their disclosure all the
14 time. What we now do is we have an exhibit that we include
15 that says and these are the sales representatives.

16 CHAIRMAN TOPOROFF: Well, if you could do it --

17 MS. CHRISTOPHER: But not disclosing them, we don't
18 disclose the sales representatives in the actual body of the
19 disclosure document and we do not put a history on those
20 sales people.

21 We just list their names in an exhibit to the
22 disclosure document, otherwise they'd be redoing them and
23 refiling them every month.

24 CHAIRMAN TOPOROFF: Sure. And actually we are going
25 to get to the salesmen or the sales rep. force.

1 MS. CHRISTOPHER: So the definition of what's an
2 agent really.

3 CHAIRMAN TOPOROFF: Right. Well, here it
4 contemplates, I think, agent or some of the, whoever, a
5 principal or a manager that's involved in the actual sale of
6 the business opportunity or responsibility for the business
7 opportunity.

8 If it's just some vice president who is in charge of
9 who knows what that really doesn't have any direct
10 connection with the buying and the selling or the operation
11 of the business opportunity, I don't know if it would
12 necessarily be included.

13 Also, I should add that under our current rule, I
14 mean we do require the disclosure of the names of not just
15 CEOs, but officers, people who are involved in training, the
16 training managers, and others. So I think that that's the
17 intent here.

18 Rob Ireland.

19 MR. IRELAND: Yeah. I was just going to ask about
20 the addresses, whether that involves home addresses,
21 business address, or if P.O. boxes would be sufficient. I
22 lean towards requiring the home address, but that's I see
23 been discussed.

24 CHAIRMAN TOPOROFF: This is an issue. And I just
25 want to mention that Shery mentioned that state statutes are

1 inconsistent. Some want the business address, some want the
2 home address. Any thoughts on that?

3 MS. CHRISTOPHER: P.O. boxes, they have never
4 accepted them. They won't. No state will accept a P.O.
5 box.

6 MR. IRELAND: That's probably a good idea.

7 MS. CHRISTOPHER: Yes. It's just, anyone can go out
8 and rent one. We have been really lucky so far because it
9 hasn't been in a specific rule in any of the statutes to put
10 the home address inside the disclosure.

11 Even in the State of California we have at least
12 been able to just include it. So what we do with the copy
13 they send to the state is we include the home addresses and
14 what we they get, as well as including the addresses of all
15 the manufacturers that they buy from.

16 So we don't include that in the one that's given to
17 the general public. So if the state has a copy, it's on
18 their files but we don't give it to the general public that
19 way.

20 CHAIRMAN TOPOROFF: Now, in the disclosure document
21 that's actually going to the public, as far as addresses and
22 telephone numbers go, should it be home addresses or
23 business addresses?

24 Bob James.

25 MR. JAMES: I was going to address the issue that

1 Shery brought up. With the salesman disclosure, we started
2 this in July of '93. Right now I have about 1,200 salesmen
3 that are independent contractors that were determined.

4 If they're an employee of the company, they can be a
5 minimum wage employee, we don't consider them to be an
6 independent contractor. We purposefully did not put it
7 under 803, the disclosure section; we put it under 805.

8 That information is only gathered by our department,
9 that's our business between the seller and the department.
10 That information does not go to the public. We have put out
11 a letter to all sellers and to all reps. and all the lawyers
12 that this is not part of the disclosure.

13 It has helped so far. Now, I have not had any
14 unnecessary activity for refileing, and I know that these
15 fellows do move around. But either the seller is
16 lackadaisical is removing that person's name, and we again
17 put a letter out to that effect. But we have had very
18 little maintenance on that issue.

19 CHAIRMAN TOPOROFF: I still would like to get
20 clarification on home addresses or business addresses.

21 MR. JAMES: In Florida we use the business address.

22 CHAIRMAN TOPOROFF: Okay. Shery.

23 MS. CHRISTOPHER: I feel that the business address
24 should be sufficient. I don't feel that -- I think it's
25 really inappropriate to put someone's home address on those

1 documents.

2 CHAIRMAN TOPOROFF: Rich.

3 MR. CATALANO: I would agree completely with both of
4 them. I think the issue of an address is service of
5 process. Why else do you have it there? And if a business
6 is there at the business address, you can serve them.

7 CHAIRMAN TOPOROFF: Rob Ireland.

8 MR. IRELAND: I think one point is if you're only
9 going to require a business address, you may not need it at
10 all because it's just probably redundant to previous filing
11 and where the company is located. So I would lean towards
12 that, requiring the home address.

13 CHAIRMAN TOPOROFF: Dennis Wieczorek.

14 MR. WIECZOREK: I would say that business address
15 should be sufficient. If the idea is to capture brokers,
16 independent sales agents who are not necessarily employees
17 and are not necessarily located at the headquarters site,
18 that that, their business address will be 123 Main Street in
19 this other city.

20 It will not be the same address as the business
21 opportunity seller. And that's fine to cover that. Just
22 like under the franchise rule, franchise brokers are covered
23 separately and are required to provide separate disclosure.

24 So I think that business addresses are fine across
25 the board, and that would cover brokers who are used as

1 outside sales agents.

2 CHAIRMAN TOPOROFF: Okay. Andy Caffey.

3 MR. CAFFEY: I think it's entirely inappropriate to
4 put a personal address in a disclosure document that's
5 required by the Federal Government to be given out to
6 purchasers.

7 CHAIRMAN TOPOROFF: Dale Cantone.

8 MR. CANTONE: I think there are a significant number
9 of so-called independent sales people that are utilized by
10 business opportunity sellers. They are not at the location
11 of the business address. They could be sales agents for any
12 number of companies.

13 And I can tell you that the purpose of
14 investigations, when it comes to subpoenaing, those sales
15 people having the residential address is the only way you
16 will get ahold of them because the business address is not
17 going to get the sales people. In many cases it's the sales
18 people that are doing some of the acts out there that are
19 unlawful.

20 CHAIRMAN TOPOROFF: Shery.

21 MS. CHRISTOPHER: Well, just to cover that, I think
22 that the step that Florida took this year with getting the
23 information they're getting is something that should be
24 considered across the board for states because it provides
25 it to the state.

1 If someone makes a complaint, they're going to call
2 the state anyway. You're going to have to do the policing
3 of this. You're going to have to obviously go out and send
4 letters or try and serve these people. So if you have it in
5 your records, that should be sufficient.

6 But to be giving disclosure documents out to the
7 general public that include everyone's home address I think
8 would be a very, very bad decision.

9 CHAIRMAN TOPOROFF: Okay. Craig Tregillus.

10 MR. TREGILLUS: Just a question I think for the
11 states. These filings with you, are these public records so
12 that if I were an interested consumer I could go find out
13 the home address that's filed with you of the sales agents?

14 MR. CANTONE: Dale Cantone. Absolutely.

15 MR. JAMES: Florida, yes.

16 MR. TREGILLUS: The second question. Is anybody
17 here suggesting that there ought to be a filing of such
18 diminimous information as we're now talking about to
19 preserve as much as anybody can the confidentiality of home
20 addresses with the FTC? And how would people feel about
21 that?

22 CHAIRMAN TOPOROFF: Dennis Wieczorek.

23 MR. WIECZOREK: Predictably, I would hope that no
24 filing would be necessary with the FTC.

25 CHAIRMAN TOPOROFF: Well, let me just say this about

1 filings. At no time during the rule review of the franchise
2 rule nor during the debate that led up to the publication
3 of the ANPR, nor in the ANPR itself has anyone suggested
4 that the Federal Trade Commission have a filing requirement.
5 So I think it is interesting to explore, but as a practical
6 matter I don't think the Commission is headed in that
7 direction.

8 Anything else about -- Oh, I have a question about
9 the names and the addresses of officers and others. It has
10 been suggested that we require the disclosure of aliases or
11 any previous names that have ever been used by these
12 individuals.

13 Does anyone have any thoughts on that? In
14 particular, it might be helpful in the instance where you
15 have at least a woman, a single woman who may have gotten
16 married.

17 A single woman may be under order by the Commission
18 or in the state and then get married and change her name,
19 and it could be very easy for that business opportunity
20 seller not to disclose information about that particular
21 woman.

22 I don't want to pick on women. It can equally apply
23 to men, and men could change their name for any reason. And
24 we know from our law enforcement experience I believe that
25 many times sellers or others associated with the sale of a

1 business opportunity have used various names. So would this
2 be helpful or not?

3 Dale Cantone.

4 MR. CANTONE: Absolutely helpful. I think, based on
5 my experience I think that many of the sellers out there and
6 the sales reps. use, change names on a weekly or daily
7 basis.

8 And it's not women who are changing their names
9 because they're getting married, it's more likely
10 individuals who are using different names to avoid having to
11 disclose actions under previous names.

12 It's extremely common that the names that are used
13 are changed. And it's the same individuals time and time
14 again. And it would be very helpful.

15 CHAIRMAN TOPOROFF: Bob James.

16 MR. JAMES: I'll ditto Dale's remarks. As a matter
17 of fact, if you're going to become very stringent, why not
18 require the DOB and the social security number?

19 CHAIRMAN TOPOROFF: Okay. Shery Christopher.

20 MS. CHRISTOPHER: I think that one of the things you
21 discussed, which is probably the biggest concern that we
22 have and that I see, I had a case where a guy called me to
23 do filings for him and was sending me the money and then
24 started sending me all these papers with this stamp as a
25 signature as being the officer who I never spoke to and kept

1 asking if I could talk to the guy.

2 And then when I started getting notarized documents
3 for states filings that were also stamped, I started calling
4 people saying, you know, do they like go out with people to
5 stamp notarized statements?

6 And I finally called the guy and said, I want to
7 speak to this guy. He either doesn't exist and you've got
8 some name stamp, or I'm not doing these filings. And they
9 basically never did any filings.

10 I think one of the situations that we have worked on
11 and talked about before, Bob James and I, is companies that,
12 and Dale is familiar with this, where they, one guy sets up
13 the company and then he's in for awhile, then someone sets
14 up the company and he's in it for awhile. And there are
15 these ongoing, ongoing, numerous companies out there.

16 And the guy who really is running the operation
17 never puts his name on any of the papers. But he's really
18 the guy who is making all the rules. And one person who is
19 a prime example is a gentleman out of Florida who comes up
20 every once in awhile and sells machines and stuff. And he's
21 never on any of the documents.

22 So I think the key thing is management personnel
23 need to be disclosed if they are in fact the people who are
24 operating the company. And we have had to do it with some
25 of my clients. We've had to, they've just said, look, we

1 know they're involved with daily operations, we want them in
2 the disclosure document.

3 CHAIRMAN TOPOROFF: Phil.

4 MR. McKEE: Many of you are familiar with the
5 National Consumers League's National Fraud Information
6 Center. We run an 800 number hotline where consumers will
7 call up, and all of our information then goes to the FTC
8 when consumers report problems, many of which are with
9 business opportunities.

10 What we find when a consumers calls, oftentimes they
11 know the name of the business opportunity and the name of
12 the salesman with whom they dealt. They may not be able to
13 find that disclosure documentation by the time they get to
14 it.

15 Many of these people are not savvy businessmen.
16 They didn't go into this with a lot of prior business
17 experience.

18 And it's in their best interest to have been able
19 to, if they can find that disclosure document or if they can
20 find any of their paperwork to be able to have these names
21 when they call us up or to have that somewhere in a
22 disclosure document which can then be gotten by the
23 regulators.

24 Because if they're saying, well, John Smith was the
25 one I dealt with throughout the company and it was something

1 along these lines and there is no John Smith anywhere in any
2 of the documentation, the consumers are, they become very
3 confused and they don't know how to deal with the situation.

4 And from the point of view of the consumer, it's
5 really in their best interest to have all of these names
6 down there, especially all of the names that were used
7 before. Because these people do not use their real names,
8 the salesmen especially.

9 CHAIRMAN TOPOROFF: Okay. Rob Ireland.

10 MR. IRELAND: I was just going to say, on the alias
11 issue it would certainly be nice to know whether these
12 people are using aliases. But I think that those kinds of
13 individuals that use an alias are not going to tell the
14 truth.

15 MS. GARCEAU: They never can.

16 MR. IRELAND: They're going to lie. And they're
17 going to say when they disclose the document is we don't use
18 aliases. And that may actually harm the consumer because a
19 consumer may think, it may give them a false sense of
20 security that, oh, they're not using aliases.

21 On the flip side, if the government is able to
22 determine that somebody is using an alias, that would give
23 us more of a hook to pursue the company. So it's sort of
24 both sides of the issue, but I do have some concerns about
25 it.

1 CHAIRMAN TOPOROFF: Okay. Elizabeth.

2 MS. GARCEAU: I was just going to say, based on his
3 remarks, I think what would help is that if they were having
4 to give an alias, if they had to give their social security
5 and other information, then you would know right away if it
6 was an alias.

7 Because you're right. Most people, if they're going
8 to use an alias and they're that sneaky, they're not going
9 to tell you on the disclosure document if it's an alias.
10 Like if you're asking for them to list any previous names or
11 whatever, they're not going to do it.

12 So I think if you could get that person to have to
13 give a social security number, I'm trying to think what
14 else, it would definitely help because then right away you'd
15 pull up their social security number and see who that person
16 really is. I don't know if that would help. I think it
17 would.

18 CHAIRMAN TOPOROFF: We're going to hear from Keith
19 and then Michael, and then we need to move on.

20 MR. ANDERSON: Well, I guess twice now I have heard
21 the social security issue repop up after I thought people
22 made pretty strong arguments as to why you don't want that
23 information going out public.

24 MS. GARCEAU: Okay. Well, I guess to put it -- I
25 agree with what Shery says, to maybe if there was some way

1 to get it that it's not actually, the social security number
2 isn't on the actual disclosure that the consumer gets, but
3 if it's maybe somewhere listed with the --

4 MR. ANDERSON: The company maybe.

5 MR. GARCEAU: Either the company or the Federal -- I
6 don't know. You said you don't usually take sheets like
7 that. But I know the states do in some instances. And if
8 there was some way they could get a list of the sales
9 people, their social security number and maybe even their
10 home address.

11 But I agree. I don't think it should be on the
12 actual document that a consumer gets, because then if a
13 customer starts looking up these people's social security
14 number.

15 But it should be somewhere that the attorney
16 generals offices, that the FTC has access to know who this
17 person is, their social security number. So if there is any
18 way you can work that way and then have just their name on a
19 disclosure document.

20 MR. ANDERSON: So are you suggesting that we have
21 some provision in the rule that business opportunity sellers
22 upon request of the Federal Trade Commission have to provide
23 social security numbers or other identifying information?

24 MS. GARCEAU: Yes, definitely.

25 CHAIRMAN TOPOROFF: Michael.

1 MR. GARCEAU: My opinion is mostly salesmen that do
2 bounce around from company to company, you try to look back
3 on them the best you can. But if they had four or five
4 aliases in the last ten years, we're not going to know about
5 it.

6 So it's very hard. If we have a social security
7 number on file and we have proof of that, upon request we
8 would submit it to the FTC or a state agency.

9 CHAIRMAN TOPOROFF: Okay. Dale Cantone.

10 MR. CANTONE: Just to clarify something earlier
11 that, well, it doesn't clarify it, but if an individual
12 files a document and includes a social security number with
13 a state, that is not public information.

14 We'd be required to redact that, cross it out before
15 we would give it to a member of the public. So for what
16 that's worth, it's something to consider.

17 MR. JAMES: We do the same thing.

18 CHAIRMAN TOPOROFF: Moving on to number five. And
19 basically, this is a disclosure about the business
20 experience. And again, this is similar to disclosures that
21 are already required by the rule and comparable provisions
22 in state laws and in UFOC.

23 Basically with respect to persons identified in four
24 above, list a description of the person's business
25 experience for ten years preceding the date of the

1 disclosure document. And basically what we would ask for is
2 their principal occupations, titles and positions, and prior
3 employers.

4 Any thoughts on this issue? Craig Tregillus.

5 MR. TREGILLUS: Just a question of curiosity. Does
6 anybody think this is a worthwhile disclosure? I mean, it's
7 been a question even in the franchise context or even you
8 could make an argument maybe that business experience is
9 more important because of the size of the investment.

10 But I'm just wondering if prior experience of
11 vending machine sellers is really like to either (a) be all
12 that truthful, or (b) be anything but fluff. And is this an
13 important disclosure from the fluff standpoint?

14 MR. ANDERSON: Keith Anderson. Let me just add on
15 to that. I mean, one of the things we have got to keep in
16 mind here is this thing can quickly get long and detailed.
17 And if the notion is to keep it short so that these
18 relatively unsophisticated buyers will get some value from
19 it, there's got to be some picking and choosing here I fear.

20 CHAIRMAN TOPOROFF: Sure. And like I said, for all
21 of these items what we're really asking for is, number one,
22 does it make sense to have this requirement. This goes
23 throughout. I mean, feel free to comment on any of these,
24 any of the items of disclosure, whether they make sense.
25 And then two, the specific language; if we're going too far

1 or it's not broad enough or over broad.

2 So any thoughts on does it make sense to give out,
3 to require the disclosure of the business experience? Is
4 that something that would be worthwhile in the business
5 opportunity context? Andy.

6 MR. CAFFEY: Andy Caffey. It certainly makes less
7 sense in the business opportunity context than it does in
8 the franchise context, because in a franchise investment one
9 of the things you're buying is the experience, the
10 wherewithal of the company that you're entering into a
11 continuing relationship where you'd be relying heavily on
12 their expertise.

13 I think that is less true in the business
14 opportunity arena. I tend, with Craig Tregillus, to
15 question whether this is even material to a purchaser's
16 decision to buy. This may not be material information.

17 Lastly, I'd suggest that ten years is far too long a
18 period of time for this disclosure. And I wonder even if
19 the five-year time period imposed by the UFOC guidelines
20 would be even too long a period for this type of statement.

21 CHAIRMAN TOPOROFF: Who is next? Michael.

22 MR. GARCEAU: I have the same feelings. People
23 rarely or never have ever brought up the history of the
24 owner's prior jobs, career, education. It's never even an
25 issue.

1 When someone is spending five, ten, fifteen thousand
2 dollars, unless they make sure to do their homework or look
3 into it, but they rarely ever do. They almost never bring
4 it up.

5 CHAIRMAN TOPOROFF: Okay. Good point.
6 Shery.

7 MS. CHRISTOPHER: I will agree with some of that
8 except that the issues are, and we go back to the history of
9 the individuals and the histories of the companies and
10 aliases because in a lot of cases when you file with
11 someone, you're going to have a company, they're going to
12 have to list--granted not all of them do, not all of them
13 tell you the truth. They tell you they have been a
14 consultant for ten years or something--but they normally
15 will have to list the companies they have previously been
16 with.

17 And in that case people, the states will see that
18 they sold for this company or they owned, they were the
19 president of this company.

20 And the reason I say that is because I get letters
21 back from his office and his office and, well, not so much
22 his office, but California and other states where they're
23 saying, what did they do?

24 Okay, so he -- or I know he was the vice president
25 of this company, I want that information. Or I know he's

1 the husband of whatever. So they want that information in
2 those disclosures. And the states are requiring it.

3 CHAIRMAN TOPOROFF: I'd like to ask Dale and then
4 Bob if they believe from their law enforcement experience
5 whether this kind of information, the background of the
6 seller is material or not. Dale.

7 MR. CANTONE: From a law enforcement point of view
8 it is material. And to a certain extent, I'll give examples
9 of when from a disclosure statement it could be material.

10 We have had situations where business opportunity
11 sellers as part of the pitch, as part of what they're
12 selling is their own experience. And when that is an issue,
13 then where they were five or maybe even ten years ago can be
14 very important.

15 CHAIRMAN TOPOROFF: Can you give any examples?

16 MR. CANTONE: Yes. There was a business opportunity
17 seller of vending machines who said that he and his family
18 had owned these machines for years. They have made a lot of
19 money.

20 Well, it turns out in reality they worked at a car
21 wash, so there you go. That would be a material disclosure
22 that, you know -- again, this is one of those situations
23 where at some point nothing is going to work if you're going
24 to have a liar.

25 But keeping in mind that you want accurate

1 disclosure, an accurate disclosure would have prevented that
2 salesperson, that business opportunity seller from using
3 that misleading statement to get a person into a business.

4 CHAIRMAN TOPOROFF: Before I go to Bob, could we
5 flip it and not make it necessarily a disclosure item but a
6 prohibition, that it would be prohibited under the rule to
7 misrepresent your background? So if you were silent, you
8 never said anything and it's not an issue, then you don't
9 have to disclose anything.

10 But if you made an affirmative representation that
11 you have expertise or whatever and that proved to be false
12 that that would violate the rule. Would that work?

13 MR. CANTONE: From a disclosure standpoint it might
14 work. From a law enforcement standpoint, when we see the
15 same individuals involved in the same scams over and over
16 again, including those that may have actions against them,
17 that is something that is helpful to know, that it's the
18 same individuals and where they have come from and what they
19 have done in the past.

20 CHAIRMAN TOPOROFF: Bob James.

21 MR. JAMES: We don't require this item in our
22 statute in Florida. From an enforcement point it certainly
23 would be good information to have. As far as your issue if
24 the seller verbally purports to be knowledgeable in his
25 field as opposed to writing it under your second scenario,

1 it would be very difficult for the consumer to ever be able
2 to propose this as a possible violation because you don't
3 have it in writing; it's only verbal. My family has been in
4 the vending business for 25 years he tells me at the trade
5 show.

6 CHAIRMAN TOPOROFF: Okay.

7 MR. JAMES: I would like to have this in the Florida
8 statute.

9 CHAIRMAN TOPOROFF: Well, let's move on. Item six
10 is -- oh, I'm sorry, Delia.

11 MS. BURKE: I'm just going to make a suggestion
12 about five. And that may be, I mean, I do tend to think
13 that ten years is an entirely too long a period of time.
14 And what I'm thinking is that perhaps it might be helpful to
15 have a requirement that the seller or those persons
16 disclosed in (a)(4) make a simple statement regarding their
17 experience in selling this business opportunity.

18 And the reason why I'm saying that is so that if
19 those persons do have experience, then they can say what
20 they want to say. You know, it's in their discretion to say
21 how much or how little they feel is appropriate. But not to
22 have a requirement that if -- or to simply say I have no
23 experience selling this. And that way the reader is on
24 notice that experience is an issue.

25 CHAIRMAN TOPOROFF: Good point. Moving along. The

1 next item is pretty lengthy here, but I'm just going to
2 summarize it. This is taken from, again, the Illinois
3 statute with some modifications.

4 And basically it gets to the disclosure of prior
5 criminal background and civil background and prior
6 bankruptcies.

7 We have taken another item, which in the Illinois
8 statute is further down the road, and that is disclosure
9 whether the seller has been denied its registration in the
10 registration states, business opportunity registration
11 state, whether the registration has been denied, suspended,
12 revoked under state law, which is another, we thought it
13 made sense to put that, if at all, into this general
14 litigation section.

15 So without going through each one of these
16 particular subsections, on the general concept or the
17 general proposition should the sellers identify and
18 disclose, as they are required to do right now under our
19 rule, prior litigation history, bankruptcy. And what we
20 would be doing is adding this about state registration.

21 Any thoughts on the subject? Keith Anderson.

22 MR. ANDERSON: Presuming that there is some value to
23 this, I guess I wonder whether there is value to all of the
24 people that are listed in (a)(4) or whether, what you want
25 to know is whether the guy that's really running the company

1 has been judged bankrupt. Do I really care whether some
2 salesman, some sales rep. --

3 CHAIRMAN TOPOROFF: We're not talking about a sales
4 rep.

5 MR. ANDERSON: Well, agent, some agent has been
6 through personal bankruptcy.

7 CHAIRMAN TOPOROFF: Okay. Phil.

8 MR. McKEE: Well, from the point of view of the
9 reports that we get, a lot of times in the end we will find
10 out after the state agencies or the FTC has done an
11 investigation that the person whose problems really were
12 material, the person that the consumer should have known had
13 been in trouble with the law may not be listed as the CEO.

14 That person may in actuality have been running the
15 business but they weren't listed as the CEO. There's been a
16 little obfuscation. They have been bending the truth, still
17 stating that this guy was a sales agent or some other low
18 ranking person.

19 But at the same time that's the person that they
20 really needed to know had six other business opportunities
21 fail on them and had been brought in under investigation
22 this many times and had settled this many charges. And
23 that's the person that they really needed to know.

24 It's not a good idea, I don't think, to limit it to
25 just the top end of the officials because it is sometimes

1 the case that the person who runs the biz op, the scam is
2 low down on the official chain of command.

3 CHAIRMAN TOPOROFF: What happens if we did this:
4 Instead of listing titles, which could really be meaningless
5 because people could come and go and they could change their
6 titles all day long, instead of focusing on titles focus on
7 what they actually do in the company.

8 So if they function as somebody who is in control,
9 if they function as whatever, fill in the blank, that those
10 are the people whose backgrounds and litigation history
11 would have to be disclosed.

12 Any comments on that before I get to Keith?

13 MR. McKEE: I think it would be difficult to define.

14 CHAIRMAN TOPOROFF: Assuming we could define that.

15 Dale Cantone.

16 MR. CANTONE: I think it can be done. I agree.

17 First of all, disclosing only the seller makes no sense
18 because as we all know, the seller as the corporate entity
19 can change all too often. We have to focus on the
20 individuals.

21 If we're just dealing with people charged with sales
22 responsibility, then I think that all of this information is
23 material. And it might make sense to do that, the people
24 who are charged with sales responsibilities or the people
25 who are the nominal heads of the company.

1 So if somebody is out there and identifies himself
2 or herself as a CEO, that information is also material, as
3 well as the people who are actually doing the selling. Both
4 of those groups of individuals I think is relevant.

5 CHAIRMAN TOPOROFF: I'd just like to hear from Bob
6 James.

7 MR. JAMES: I agree with Dale. I fully agree with
8 this analogy.

9 CHAIRMAN TOPOROFF: Keith.

10 MR. ANDERSON: I guess to your point, Phil. I mean,
11 I guess my concern is people that are playing that game
12 aren't going to disclose. They're not going to tell you the
13 truth anyway.

14 MR. CATALANO: No, they're not.

15 MR. ANDERSON: So whether you get anything, I mean,
16 an approach that says where you have got to disclose this
17 for 25 different people because there might be somebody in
18 there, (a) I think there's going to be enough information to
19 overload the consumer. And (b) those kinds of operations,
20 there is no way we're ever going to get them to play
21 straight with us.

22 MR. McKEE: I agree there is a difficulty there.
23 You do get to a point where the liars are going to continue
24 to lie no matter what you do. But at the same time if you
25 say, well, we realize you're going to lie so we're not even

1 going to make it a problem that you lie, you lose your
2 ability to then slam the book on them.

3 You have to have something which says you can't lie
4 in the first place before you can then get them in trouble
5 for lying.

6 MR. ANDERSON: Yes.

7 CHAIRMAN TOPOROFF: Rich. And then we are going to
8 move on.

9 MR. CATALANO: The only thing I would say on it is I
10 fully understand and appreciate, and Bob James and I have
11 spoken about this dilemma before that you can never really
12 get everybody that's really running the show, who's running
13 the show, okay.

14 I think it's fine to try and get out, get to who is
15 running the show, and that's what you want to do, and get
16 their background. But I have kind of heard we have gone one
17 way then another on this a bit.

18 Agents. Does agents really include the sales reps.?
19 We have right now 26 sales representatives. If what you all
20 are telling me is that what you're thinking about is that
21 for each one of those sales representatives, they're just
22 salesmen. They don't guide the ship of state; they just
23 sell the product.

24 So if we're going to go so far as to that, I'm
25 telling you that that is an onerous burden indeed that we're

1 going to have to have a ten-year history on all that.
2 That's not required under anybody's statute that I know of.
3 No state in America really requires that, that we sell in
4 anyway; there's six that we don't.

5 But nobody is going to require that for each and
6 every sales representative, who is really not charged with
7 responsibility over in managerial aspects, that all of these
8 things have to be disclosed for each and every one of them I
9 think is really just grossly over inclusive.

10 CHAIRMAN TOPOROFF: Okay. We are moving on, unless
11 anybody else has questions.

12 MR. TREGILLUS: Was a time period set on the
13 disclosure?

14 CHAIRMAN TOPOROFF: Craig asked if there was any
15 time period. On many of these it was brought to our
16 attention in one of the earlier items that we did not have a
17 time limit.

18 I would assume that we're going to have some time
19 limit. So we will look at that where the options are,
20 whether it's five years, ten years. That's a good point.

21 Number seven. Disclose the names and residential
22 addresses of -- let's take out residential at this point,
23 okay. Scratch residential. Disclose the names and
24 addresses of those salespersons who will engage in the offer
25 or sale of the business opportunity nationwide or in this

1 state.

2 I want to backtrack. My first question is, is it at
3 all material for a prospective buyer to know the names in
4 the disclosure document of who the company's sales force is?
5 Is that material at all?

6 Bob James.

7 MR. JAMES: I think it is.

8 CHAIRMAN TOPOROFF: Okay.

9 MR. JAMES: As Phil pointed out earlier, the reason
10 is, as Phil pointed out earlier, that's usually the only
11 contact they have is with the salesman. They don't know who
12 the owner is.

13 And if you can identify that person as the person
14 that sold the opportunity, then you're a little bit ahead of
15 the game.

16 CHAIRMAN TOPOROFF: Let me ask you, I don't remember
17 who said this before, but am I right in understanding that
18 in Florida, under your law, when it comes to this, the names
19 and addresses of the sales people, you get that information
20 but it's not in the actual disclosure document.

21 MR. JAMES: That's correct. That's correct.

22 CHAIRMAN TOPOROFF: Okay. So our proposal here, by
23 saying that the actual disclosure document should list the
24 names of the salespersons, is that going way beyond what you
25 have in Florida?

1 MR. JAMES: No. We require that the date of birth,
2 their social security number, their home address, their home
3 phone number.

4 MR. ANDERSON: Okay, but not in the public document.

5 MR. JAMES: But not in the public record.

6 CHAIRMAN TOPOROFF: Okay. That's what I'm saying.

7 MR. JAMES: Right.

8 CHAIRMAN TOPOROFF: This would be in the public
9 document, in the disclosure document.

10 MR. JAMES: Yes, right.

11 CHAIRMAN TOPOROFF: As opposed to information that's
12 provided to the Federal Government.

13 MR. JAMES: I'll accept this information. Many
14 times I will get filings from other people that will
15 disclose the salesman's name and address. We don't disallow
16 that filing. It's superfluous information, but I don't deny
17 the filing.

18 CHAIRMAN TOPOROFF: Okay. But in your disclosure
19 documents requirements, you don't require that this
20 information is, the names and addresses of the sales people
21 be disclosed.

22 MR. JAMES: That's correct. That's correct.

23 CHAIRMAN TOPOROFF: Shery Christopher.

24 MS. CHRISTOPHER: In most states they don't require
25 the home address of the -- there is not a state we have had

1 that has had it given to the public. It's been always the
2 let's go to the state if in case that is the case it
3 happens.

4 CHAIRMAN TOPOROFF: Let me ask you, though, again
5 getting back to materiality, do you think it's material for
6 a perspective business opportunity purchaser to know the
7 names of the sales people?

8 MS. CHRISTOPHER: Right. That's what I was going to
9 say. In most cases, I have to tell you, when a company has
10 26 sales people or 15, in most cases the buyer is only
11 dealing with one person.

12 And normally that person gives them a business card
13 with their name or their alias name or their pseudo nickname
14 or whatever they've chosen for their business card for that
15 time.

16 So to have an entire list in the disclosure of all
17 sales personnel is irrelevant in the actual disclosure that
18 goes to the potential buyer because he has nothing to do
19 with them. The only person he's going to be dealing with is
20 the person who gave him the business card.

21 MS. HOWARD: Do you think that it's irrelevant,
22 though, if in the disclosure document you need to state the
23 salesperson's real name as well as alias?

24 MS. CHRISTOPHER: Oh, I think that would be
25 relevant, absolutely. But the situation is, you know, it

1 goes back to who is going to be honest. Because let's tell
2 the company, the company should be required to print
3 business cards, if they're going to print business cards,
4 with the person's real name on it, that the person is going
5 to give that card out that is going to have their real name.

6 And one of the things that they do is, or that they
7 were going to do, I don't know if they're doing this in
8 Florida, is that they were going to--Bob, you can correct me
9 if I'm wrong--at the show, they would go to the show and ask
10 for actual identification.

11 MR. JAMES: We do.

12 MS. CHRISTOPHER: And that identification better
13 match up with what that card says and what that exhibit has
14 in their office of the names. And that I think was a real
15 key element in what Florida was doing is they were taking
16 the necessary steps to prevent the guy who was, you know,
17 had like five different names in three different states or
18 whatever. And I think that's a real key element.

19 But as far as having the list of all the sales
20 people in the disclosure that goes to the public, I don't
21 think that's a relevant issue.

22 CHAIRMAN TOPOROFF: Okay. Before we move on and I
23 call on other people, I just want to know about Dale, in
24 Maryland, in the biz op statute is there any requirement
25 that sales people be listed?

1 MR. CANTONE: Yes.

2 CHAIRMAN TOPOROFF: How does it work?

3 MR. CANTONE: A lot of times they include an
4 exhibit, a list of sales people, name and addresses. And
5 quite frankly I've never seen one with 38 sales
6 representatives. I think that would really be well for the
7 biz ops because in many cases it's one, two, or three.

8 And they're all names that are all two first names,
9 like, well, names that are clearly questionable in some
10 instances. I also think it's material to a buyer to see.
11 You know, in some cases the sales representative that
12 they're dealing with may not be listed on that exhibit
13 either because of a name change or, you know, for whatever
14 reason. So I think it is material.

15 CHAIRMAN TOPOROFF: Andy, you had your name tag up.

16 MR. CAFFEY: Well, yes. You had asked whether this
17 is material information. I don't believe it is material in
18 the sense that materiality has been defined in the existing
19 rule. And it's defined as information that would be, I'll
20 paraphrase it, that would be important to a purchaser
21 deciding whether to buy or not buy this program.

22 If that's what we mean by materiality, I am
23 concerned that that whole concept is rather stretched around
24 the table, especially when you ask regulators if it's
25 material. It may well be useful in enforcing a state law

1 against a bad actor.

2 But if the question is, is it material to the
3 purchaser, I certainly agree that the list of sales
4 representatives is not material to the purchaser.

5 CHAIRMAN TOPOROFF: Keith.

6 MR. ANDERSON: I guess one alternative that sort of
7 goes to what Shery was saying, I mean, is put in the rule a
8 requirement that the identity of the salesman with whom
9 you're working be disclosed.

10 As to Myra's question about, well, what if you had
11 to disclose the aliases or the real name, had to disclose
12 the real name, if I'm working with somebody under an alias,
13 I'm not going to recognize their name when I see them on a
14 real name list.

15 MS. HOWARD: Well, what I contemplated was their
16 real name with their alias next to it. Of course, that
17 raises the question of why would they bother using an alias.

18 MR. ANDERSON: Right.

19 MR. CATALANO: I'd like to see that disclosure.

20 CHAIRMAN TOPOROFF: Shery and then Bob James, and
21 then we're going to move on.

22 MS. CHRISTOPHER: First of all, when people use
23 aliases they never give their real name to anyone. No one
24 ever knows their real name. I have had cases where I have
25 actually called an office and spoke to someone and they were

1 somebody, and then several weeks later called back and it
2 was someone else and I'm like going, you know, you sound
3 just like so and so.

4 And so they're not going, people who do that are not
5 going to do that. You know, I think the key, one of the
6 things that maybe you might want to consider is that
7 something like what Florida does goes into an overall filing
8 where some agency, whether it's a state agency or the FTC or
9 whoever has it has that information on the sales people for
10 that company, has the information as far as their social
11 security numbers and their names. And hopefully they are
12 the correct names.

13 But that as far as it going out to the potential
14 buyer, a list of five or ten sales people is totally
15 irrelevant because all they're -- they're not going to --
16 they're just going to be ten names. The person they're
17 going to be dealing with is the key person. And that's
18 obviously the person they need to know. They need to know
19 who that person is.

20 CHAIRMAN TOPOROFF: Bob James and then Craig and
21 then we must move on otherwise we're never going to finish.

22 MR. JAMES: I just wanted to quickly explain how we
23 regulate this new issue of the salesmen's names at the trade
24 shows. Let's say you have a business with five people. I
25 will go to that booth, identify myself and ask the person

1 their name.

2 If they give me a name, I have my little computer
3 printout with me or my laptop with me. I will pull that
4 business up. If that name is not on there, that's my
5 violation. It's as simple as that. It has worked.

6 CHAIRMAN TOPOROFF: Okay. Craig Tregillus.

7 MR. TREGILLUS: I just didn't want to let Andy's
8 point go unresponded to on the record, which is that it
9 would seem to me that a well advised business opportunity
10 purchaser, part of the lawyer's advice would be let's have
11 the name of your salesman.

12 Because if he's on a frolic on his own as an agent
13 of the seller, he is a potential defendant in any subsequent
14 lawsuit he would want to bring. So I would think that
15 materiality is built in for that precise potential
16 liability. And if there is anybody who disagrees with that,
17 I would like to hear it.

18 CHAIRMAN TOPOROFF: Well, you can speak with Craig
19 at another time because we're moving on; (a)(8). That is,
20 disclose the names and addresses of persons providing
21 marketing assistance to the purchaser in connection with the
22 operation of the business opportunity. And that's a
23 requirement that we currently have in the franchise rule.
24 So any concerns about that?

25 MR. ANDERSON: I'm not sure what it means.

1 CHAIRMAN TOPOROFF: Those people who are going to
2 conduct training or other kinds of assistance. Those people
3 who -- the locators, other people who are instrumental in
4 providing the marketing assistance, those people would have
5 to be identified beforehand in the disclosure documents.

6 Shery Christopher.

7 MS. CHRISTOPHER: When you're saying marketing
8 assistance versus training, versus anything else, I mean
9 marketing assistance obviously is the guy who goes out and
10 sells with the salesperson once.

11 Someone who is in training, it goes back maybe to
12 the initial disclosure of key people within the company who
13 are disclosed anyway.

14 CHAIRMAN TOPOROFF: Actually, let me explain this a
15 little bit. This morning we talked about the definition of
16 a business opportunity. And part of that definition was
17 providing marketing assistance.

18 So we said in that definition of marketing
19 assistance, locators, people who get accounts, managers,
20 trainers, all those folks. So whoever it is that is going
21 to turn this business arrangement into a business
22 opportunity, that's providing the significant assistance,
23 well, marketing assistance, those people would have to be
24 disclosed here.

25 So if somebody, for example, bought a business

1 opportunity specifically because they thought a particular
2 trainer or whoever was going to work with them, or a
3 particular locator, they would have this information, they
4 would know about it beforehand.

5 MS. CHRISTOPHER: In that case, I think when you
6 talk about locations, most companies will refer them. If
7 they're doing locations, they don't use one specific
8 location company because there are several of them out
9 there; some are good, some are bad.

10 They're depending on the area of where the potential
11 buyer is as to what location company is going to do the
12 services there. Most business opportunity sellers right now
13 do not like to give -- well, back up.

14 They want to give location assistance but they don't
15 because of following under the FTC rule of ten-day
16 disclosure.

17 CHAIRMAN TOPOROFF: Right. But I'm talking about in
18 those situations where they do, where they have specific
19 people on staff or under contract or whatever, should the
20 perspective buyer, before they pay their fee or sign a
21 contract, know who they're going to deal with?

22 MS. CHRISTOPHER: If they are key people within the
23 company that are employed by the company that are providing
24 that type of training, it could be advisable. The same way
25 that in a franchise disclosure at times we put in the key

1 training personnel who are going to do key training within
2 the franchise.

3 Oftentimes in a business opportunity they just don't
4 have those key people; they're referring you to someone
5 else. And they shouldn't be disclosed.

6 CHAIRMAN TOPOROFF: Dennis.

7 MR. WIECZOREK: I think we're starting to reach the
8 edges of useful disclosure. If the idea is to get a nice,
9 short, and simple document, I think these lists of sales
10 people, lists of marketing assistants, trainers, et cetera,
11 it's really becoming not very useful.

12 And in fact it may actually have the reverse effect,
13 and that is, a biz op seller will throw in a long list of
14 people and make it look like a big organization. These
15 people either don't exist or it's one guy with ten aliases
16 who is listed as ten people.

17 So I think these disclosures are starting to, these
18 kinds of disclosures are starting to become less and less
19 useful. And I think it would be better to leave them off.

20 CHAIRMAN TOPOROFF: Okay. Does anybody have any
21 thoughts on this particular disclosure, whether it's
22 material, useful, should be tossed out?

23 (No response.)

24 CHAIRMAN TOPOROFF: Well, I really don't get
25 anything near consensus whether this is useful information

1 or not. Delia.

2 MS. BURKE: Well, it strikes me as being useful for,
3 with respect to the purchaser to know that the seller has
4 some sort of a relationship with ABC Corporation who will be
5 providing locator assistance and not find that out until
6 later down the road.

7 But the thing that I have noticed here is that when
8 you say of any persons providing marketing assistance, I
9 mean, I think the notion I think I agree with, although this
10 language is probably going to bring in a lot of people you
11 don't really care about, like individuals who may come and
12 go and that kind of thing.

13 CHAIRMAN TOPOROFF: And again, I said at the onset
14 that we're not wedded necessarily to the specific language.
15 It's just an effort to put pen to paper so we have something
16 as a discussion piece. So I appreciate that.

17 All right. We are going to move on. Number nine
18 is, I think this is an obvious one, disclose the fees, the
19 funds that you're going to pay, how much you're going to
20 have to pay. Is there any argument that this is material to
21 would-be buyers and it should be included in the disclosure
22 document?

23 (No response.)

24 CHAIRMAN TOPOROFF: No objections?

25 MR. ANDERSON: Well, why doesn't it fall under the

1 "if not already described in the contract"?

2 CHAIRMAN TOPOROFF: Well, Keith is jumping the gun a
3 little bit. The next item, the next few items, actually
4 starting with number 11, needs a little bit of background.
5 So I was going to have to give it anyway so I might as well
6 give it now.

7 When we were in Chicago, again we went down the list
8 of various items. And we came to the conclusion, or
9 tentative conclusion I should say, that for many items of
10 disclosure they really duplicate what's already in the
11 contract.

12 So if you just attach a contract, that might
13 suffice. So instead of just repeating almost verbatim which
14 again is going to be given to the perspective buyer, leave
15 it out if it's in the contract.

16 So what Keith is asking is if the purchase price is
17 going to be in the contract, is this an item that also needs
18 to be in the disclosure documents. And also run it through
19 with the next item which is if there is a refund policy.

20 I personally think that how much you are going to
21 pay and whether there is a refund policy are highly
22 material, so material that that kind of information should
23 be set forth up front in the disclosure document.

24 But obviously there is room for disagreement on
25 this. So let's take these two together, what the fees are

1 and whether there is any guarantee or a refund policy,
2 because I think they're kind of related.

3 Is that the kind of information that should be in a
4 disclosure document, or if it's set forth in the contract
5 that should be sufficient? Dale Cantone.

6 MR. CANTONE: I don't think there is any question in
7 many cases that most material is useful information. And I
8 think it ought to be in the disclosure document, quite
9 frankly for no other reason than to compare the disclosure
10 document with the contract.

11 And also I recognize that there could be
12 circumstances where the disclosure about the fees may
13 include situations that more than one contract attached
14 would count. But that's just so important to the whole
15 scheme of the sale that it ought to be in the disclosure
16 document.

17 CHAIRMAN TOPOROFF: Shery Christopher.

18 MS. CHRISTOPHER: Yes. In fact, in most cases with
19 business opportunity sellers you will find that they have
20 several different packages and they will include the whole
21 list of those packages in the disclosure, but in the
22 contract they actually have no pricing because they have a
23 place where they then put what package or what system the
24 purchaser bought.

25 And it's extremely important that the purchaser sees

1 the options and sees what they're getting, and then the
2 salesperson then writes down which one they purchased at
3 that time without duplicating it in both documents. It's
4 probably more important than the disclosure.

5 CHAIRMAN TOPOROFF: Bob James.

6 MR. JAMES: That's the same issue I was going to
7 bring up.

8 CHAIRMAN TOPOROFF: Then we're going to move on.
9 We'll skip ten because that has to do with return of fees
10 and guarantees. I assume that people think that that's
11 material; it should be in the disclosure document.

12 Number 11. Again, this is what I started out saying
13 before. There are many provisions that if it's already in
14 the contract, I don't necessarily see why it should be
15 duplicated in a disclosure document.

16 So basically what we have said is, if not already
17 described in the attached contract -- and I will keep in
18 mind Andy Chaffey's comments earlier today, that not all
19 business opportunities are sold by contract, we will deal
20 with them. But at least for now, if not already described
21 in the attached contract, provide a detailed description of,
22 and there are various items.

23 So the first is the actual services, what's going to
24 be provided. The second is training. The third is
25 placement, locations, or accounts. The fourth is any

1 restrictions or prohibitions or limitations on the
2 purchaser's conduct.

3 Five is whether there is a specific territory. Six
4 is rights and obligations as far as termination goes. That
5 obviously assumes that there is a long-term contract. And
6 the seventh is whether there is any impediments or
7 conditions to bringing legal action such as choice of law,
8 venue, or arbitration restrictions.

9 So I want to take first the big concepts. Do people
10 think it's a good idea if information is already set out in
11 the contract, so it's already going to be given to the
12 perspective buyer, that the business opportunity seller does
13 not need to repeat all of these in the text of the
14 disclosure document itself? Is that broad concept one that
15 makes sense?

16 Any takers?

17 Shery Christopher.

18 MS. CHRISTOPHER: Well, I mean, in the UFOC a lot of
19 things have been eliminated because you referenced to where
20 it is in the contract, so you're not repeating it. In the
21 contract of the business opportunity seller, and just to
22 touch on something very quickly about what Andy says, a lot
23 of people who don't use contracts in business opportunities
24 don't give disclosures, they use purchase orders. So that's
25 a point there.

1 But if someone is selling a business opportunity and
2 they are giving a disclosure document, they are also giving
3 a contract. And the contract is written according to most
4 often the state statutes which require certain wording and
5 verbiages in it.

6 And most of the states require that you give this
7 information anyway. I don't think it's a problem. I think
8 the issue that it goes into the disclosure, if they were
9 able to reference it to the contract I think it would
10 eliminate a lot of excess paper.

11 CHAIRMAN TOPOROFF: Well, that's what we're looking
12 at.

13 MS. CHRISTOPHER: And a lot of verbiage. And I
14 think that is something I would agree to.

15 CHAIRMAN TOPOROFF: So I take it that people really
16 don't have any strong objections to this approach. Okay.
17 We are scheduled to take a break soon, but I would like to
18 at least cover another item or two and then we will pick it
19 up again.

20 The next item is something that is not currently in
21 our law but again was taken from the model. And that is in
22 a nutshell, if the business opportunity seller is required
23 to post a bond under state law that it disclosed here with
24 the additional warning that they have posted a band, the
25 name of its surety company that you might want to check with

1 state officials about the status of the bond.

2 Again, this would be something new. We don't have
3 this in our statute. I have no idea if this would be useful
4 or not or whether it addresses something that's material.
5 So I'd just like to hear comments on this.

6 Shery Christopher.

7 MS. CHRISTOPHER: In any state that has a
8 requirement for a bond, you are required to put that in the
9 contract.

10 CHAIRMAN TOPOROFF: But would it be helpful for our
11 disclosure document?

12 MS. CHRISTOPHER: Well, then it goes back to what
13 would be the definition of whether they would post a bond or
14 not. Where is it going to be the decision on what they have
15 to post a bond? Some states require posting a bond, period.
16 They don't care. Kentucky is you post a bond. There is no
17 if you do, if you don't do.

18 Some states are if you make guarantees or buy backs
19 then you are required to post a bond. So what would then,
20 say, trigger the bonding issue on the FTC side?

21 CHAIRMAN TOPOROFF: Well, let's assume that any time
22 you have a bond filed with a state, whatever reason
23 whatsoever, that would have to be disclosed in our
24 disclosure document.

25 Would that be helpful?

1 MR. ANDERSON: This is not a proposal that we would
2 require a bond.

3 CHAIRMAN TOPOROFF: That's right. We're not
4 requiring a bond. We're just saying if there is a state
5 bond, you have to disclose it and here's where you can find
6 out information about it.

7 Would that be helpful?

8 Shery.

9 MS. CHRISTOPHER: It's going to be required by the
10 state. So they're going to look at it anyway and they're
11 going to want it. And I think that on the standpoint of the
12 buyer's side, because I have dealt with both sides, I think
13 it needs to be in there.

14 CHAIRMAN TOPOROFF: Just to make this clear, let's
15 say you have a business opportunity who has filed in
16 Florida. Bob, do you need a surety, a bond in Florida under
17 certain circumstances?

18 MR. JAMES: Under certain circumstances, yes.

19 CHAIRMAN TOPOROFF: Okay. So let's say it satisfied
20 those circumstances and it has the surety. Now, let's say
21 that same business opportunity goes to some state that
22 doesn't have any business opportunity regulation at all.
23 Give me an example of such a state, I don't know.

24 MS. CHRISTOPHER: Colorado.

25 CHAIRMAN TOPOROFF: Colorado has no business

1 opportunity. Now, if they sell to a resident of Colorado
2 and they give them a disclosure document, that Colorado
3 resident will now know that this business opportunity is at
4 least filed and has a bond in Florida.

5 MR. CATALANO: No.

6 CHAIRMAN TOPOROFF: Is this useful information? And
7 that way they can call Florida and find out if there's been
8 any problems with it or how the company is doing. That is
9 what we are getting at here.

10 MS. CHRISTOPHER: Then that would require that
11 seller to disclose every state that had bonding provisions.

12 CHAIRMAN TOPOROFF: That is right.

13 MS. CHRISTOPHER: And I don't know if it would apply
14 because the bond issues that are in the states are required
15 by a surety company licensed to do business in that state
16 specifically.

17 CHAIRMAN TOPOROFF: That's right. I understand
18 that. But the point again is a Colorado resident will now
19 know that this is a business opportunity that has posted a
20 bond in Florida, in Louisiana, in Texas, in Maryland, or
21 not at all. Would that be useful information to the
22 Colorado resident that he or she should know that
23 information?

24 MS. CHRISTOPHER: I think that to put -- but then
25 you'd be listing names and addresses of all those surety

1 companies and all the information that's required.

2 CHAIRMAN TOPOROFF: That's right.

3 MS. CHRISTOPHER: And so in Colorado you'd have, you
4 might have five different listings of surety companies and
5 all that kind of information. I'm not sure that I think
6 that would be relevant so much as the disclosure.

7 I think if people receive a listing of where they're
8 registered and a lot of states require that, where they're
9 on file, where they have been denied, those sorts of things,
10 which are other issues, and they receive the disclosure
11 document that has the appropriate information, I think that
12 that's going to be key.

13 I don't think listing those bonds in all those
14 states is really going to be something that's going to be
15 required.

16 CHAIRMAN TOPOROFF: Rich.

17 MR. CATALANO: Yeah. Another point. If there is a
18 bond in Florida, that bond is in favor of the Governor of
19 the State of Florida. It doesn't help a Colorado purchaser,
20 for starters.

21 Number two, and really my biggest concern in a lot
22 of what you're saying is this. I'm still unclear on this
23 very basic issue of preemption. Are you visualizing this
24 rule to completely preempt, say, the Florida statute?

25 Is it the intention, is it your vision that a

1 Florida seller of biz op can just comply with the Federal
2 one and forget about the Florida statute? I mean, is that
3 what you're looking to do?

4 CHAIRMAN TOPOROFF: We are not specifically talking
5 about preemption at this point. That is an issue that comes
6 up, and the Commission may be interested in pursuing that.
7 But it is not something that we're focused on.

8 Our law governs regardless. And the standard that
9 we use is all business opportunities or franchise sellers
10 have to comply with our law. However, a state can adopt a
11 law that gives equal or greater consumer protection. That's
12 why franchisors are able to use the UFOC because they
13 petitioned the Commission to accept that and the Commission
14 has granted it.

15 MR. CATALANO: And like in so many other instances
16 where the state, where they may, like right now we would
17 have an exemption saying, well, you don't have to comply
18 with this if you're a franchise under the Federal law.

19 States could, assuming that this came on-line, come
20 in and say, well, if you have a disclosure substantially in
21 conformity with the new, whatever you call it, you can use
22 that one as an alternative form.

23 CHAIRMAN TOPOROFF: Sure. That's right. That's
24 right. Where a problem comes in is, let's use the situation
25 right now. Our disclosure law for business opportunities

1 again is identical again for franchises.

2 MR. CATALANO: Right.

3 CHAIRMAN TOPOROFF: If somebody goes into the State
4 of Florida and uses a Florida only disclosure document, that
5 well run afoul of our law. For example, it's typical in
6 many states for business opportunity sellers not to have
7 three years of audited financial statements. That runs
8 afoul of our law.

9 The whole issue, though, of preemption and
10 uniformity is one that we are very, very well aware of. I
11 just cannot tell you a specific answer at this point. If
12 you're concerned about that issue, certainly let us know by
13 being here today submitting comments.

14 But that is one that ultimately is for the
15 Commission to decide, and I would not hazard a guess at all
16 of what their view is on that subject.

17 MR. CATALANO: Okay.

18 CHAIRMAN TOPOROFF: A number of people have their
19 tents up, name tags up. Bob James.

20 MR. JAMES: Just a comment on your language. We in
21 Florida also have an instrument called a letter of credit
22 from the bank that we will accept. I don't know if other
23 states have letters of credit, but this would have to be
24 revised for letters of credit.

25 CHAIRMAN TOPOROFF: Okay. Phil.

1 MR. McKEE: The only thing I wanted to add to that
2 was something that Rich had mentioned in the beginning. If
3 you are going to have this kind of information and you're
4 going to tell the consumers that there are bonds in these
5 other states, there really should also be a paragraph
6 inserted in there explaining to the consumer that they're
7 not in that state, they don't have any claim, that bond does
8 not really apply to them.

9 They can use that to check on them. But a lot of
10 consumers will read that and they'll think I'm protected.
11 And they need to be told up front, without any confusion,
12 they're not protected with that.

13 CHAIRMAN TOPOROFF: Shery, and we will move on.

14 MS. CHRISTOPHER: That's why it would be a moot
15 point to put all that information in there.

16 CHAIRMAN TOPOROFF: Okay. The next item is item 13,
17 which is earnings representations. We are going to skip
18 that one for a very simple reason. It is a very complex
19 area. We do not have any specific proposals to offer at
20 this point.

21 We are contemplating that issue and have been
22 contemplating that issue in the franchise context for years.
23 We could spend a whole day just on that one issue. Suffice
24 it to say, we are going to think about it.

25 If you have any thoughts, right now the rule

1 requires if you are going to make an earnings representation
2 that you have substantiation, a reasonable basis that you
3 put forth the material assumptions upon which the claim is
4 based, that you have documentation for it, and all the other
5 factors.

6 The most likely scenario, we would just keep what is
7 currently existing. We're taking a look at other state laws
8 to see if we can trim it back maybe. But let's just not
9 touch this one for right now.

10 MS. HOWARD: I'd just like to encourage anyone that
11 does have specific thoughts on the issue in general or what
12 we have, which is just an example, to please submit an
13 additional comment.

14 CHAIRMAN TOPOROFF: And this example again is taken
15 from the Illinois statute. I want to go on to item 14
16 because I think it's an easy one and then we will take a
17 quick break.

18 Item 14 is any seller who makes a guarantee to a
19 purchaser shall give a detailed description of the elements
20 of the guarantee including the terms, the duration,
21 conditions, limitations of the guarantee. This is almost
22 like part and parcel of what we talked about before about
23 the cost of the business and refunds, whatever.

24 How much it costs, whether there is a refund policy,
25 whether there is a guarantee tend to run together. Is there

1 really any -- Keith.

2 Of course Keith has a question.

3 MR. ANDERSON: This one is sort of like the refund
4 issue. It seems to me there is this contract issue again.
5 And here, in these two in particular it seems important
6 because there is the whole question of if it's not in the
7 contract is it enforceable?

8 So it seems to me we ought to be encouraging them to
9 be referencing the contract in that case because that
10 establishes that it's in writing, that you've got some claim
11 instead of just some oral promise.

12 CHAIRMAN TOPOROFF: Shery.

13 MS. CHRISTOPHER: Yes, in fact, in the refunds and
14 guarantee section of a document, specifically if you do
15 either one of those things then the bonding issue or letter
16 of credit issue gets triggered in the states that have those
17 issues.

18 And most states have that issue, that if you do
19 guarantees or buy backs, they actually fall under the same
20 section in most of the statutes.

21 CHAIRMAN TOPOROFF: Well, picking up on what Keith
22 said, and then we will take a break, would it make sense to
23 have something akin to what the UFOC has, and that is some
24 kind of chart that says here are the major provisions,
25 here's the paragraph in the contract, then you just list it?

1 So a purchaser could pick this up, potential biz op
2 buyer could pick this up, look and say, okay, if I'm
3 interested in termination this is where I go in the
4 contract. If I'm interested in the guarantee -- and you
5 could in N/A, not applicable.

6 But if it is applicable, then you could go to the
7 contract. So there's one provision in the disclosure that
8 really covers a whole wide variety of different disclosures
9 in a nice, neat box form.

10 MR. CATALANO: A matrix.

11 CHAIRMAN TOPOROFF: A matrix form.

12 MS. HOWARD: Andy is shaking his head no.

13 MR. CAFFEY: This is Andy Caffey. I was shaking my
14 head because these contracts are usually so short. It makes
15 sense if it's a 20- or 30- or 40-page contract and it's
16 useful. The UFOC of course is very useful for that. In
17 this community I think the contracts are so short that it --

18 CHAIRMAN TOPOROFF: Well, again on that issue. If
19 the contracts are short and there is no guarantee, this is
20 no restrictions on terminations, there is nothing, you just
21 put N/A, it's not applicable. And maybe out of this box,
22 maybe it's just the fee that's specified in the contract.

23 And the flip side is if it's not in the contract
24 because it is so short, then to detail it into the
25 disclosure. So is that a viable approach? A number of

1 people are shaking their heads. Anyone opposed to this
2 approach? No one.

3 MR. WIECZOREK: I just say it's another marginal
4 item. It's a waste of space. And I think the idea is to
5 have a short, direct, to-the-point document. A chart of
6 this kind is really irrelevant.

7 CHAIRMAN TOPOROFF: Phil.

8 MR. McKEE: Just to go from the average consumer's
9 point of view, I think the average person who calls us up
10 would find that chart to be incredibly helpful. Because
11 even in reading a short contract, they're going to have
12 difficulty figuring out what the provisions are.

13 CHAIRMAN TOPOROFF: Keith.

14 MR. ANDERSON: Let me ask a question here. In some
15 sense the value, if there be one, be any to the chart in the
16 UFOC, is if people are comparison shopping, if they're
17 looking at six or seven different franchises so that they,
18 so that it tells them where to look in this contract to
19 compare what they see in this contract, do buyers of
20 business opportunities do that? Are they comparison
21 shopping? Can we even answer that question?

22 MS. CHRISTOPHER: I think you probably could get
23 some good answers out of these people here. They have a
24 better handling of it than I do. But in fact, if they're
25 looking -- some people specifically never go to a show.

1 If they go to a show they are comparison shopping;
2 they are going from booth to booth. But in most cases the
3 salesman with the best pitch is going to make the sale,
4 unless it's something they specifically are looking for.

5 And because there are several medical billing
6 companies out there now and there are lots of vending
7 companies, I think that if it was put into the document,
8 into a chart, it would eliminate repeating things in the
9 disclosure.

10 Because right now whatever over people do is
11 irrelevant. What I have my clients do is I have taken basic
12 information from more of the more complicated states and
13 required it in all.

14 Bob gets more information than he requires, but
15 otherwise I'm reviewing their documents every state. So I
16 just put it all in there. But we do write it out and then
17 we write it out again in the agreement.

18 So if we could just, instead of saying termination
19 and then list a little two-line paragraph, if we just had a
20 little across that said --

21 CHAIRMAN TOPOROFF: A check box.

22 MS. CHRISTOPHER: Exactly. That would certainly
23 simplify things. It would limit a lot of wasted paper and a
24 lot of space in the disclosure. And it would provide the
25 purchaser with a more concise thing.

1 Because honestly, people who buy these companies,
2 they really don't want to look at this stuff anyway. So if
3 they could just go, oh, okay, not applicable, you know,
4 that's what I want, it would simplify it.

5 CHAIRMAN TOPOROFF: Any other thoughts? Otherwise
6 we are going to take a break. Okay. We're taking a break.

7 (A short break was taken.)

8 CHAIRMAN TOPOROFF: We are continuing our discussion
9 of possible disclosures for our business opportunity. And
10 we just completed our discussion of (a)(14), which is about
11 guarantees. And now we are moving into (a)(15), which is
12 disclosing information about the purchasers of business
13 opportunities.

14 This disclosure really comes from our rule. Right
15 now our rule requires the disclosure of purchasers and their
16 addresses so that they could be contacted for information.
17 We have extended it a little bit to include also information
18 about locations.

19 So let me go through this. So (a)(15) is disclose
20 (i) the total number of business opportunities that are the
21 same or similar in nature to those that have been sold by
22 the seller. Let's put aside for now the issue of same or
23 similar. That has come up before and maybe we need to
24 tinker with that language.

25 But the basic concept is that a business opportunity

1 seller should disclose the number of units, number of
2 opportunities, call it what you will, so that a perspective
3 buyer knows whether they are the first to buy, the second to
4 buy, or maybe the thousandth to buy. It gives more
5 information about the history of the company.

6 Is there any concern about this disclosure? Andy
7 Caffey.

8 MR. CAFFEY: It doesn't appear to have any time
9 limit on it. Is that intentional?

10 CHAIRMAN TOPOROFF: Yes.

11 MR. CAFFEY: So this would be from whenever the
12 program began.

13 CHAIRMAN TOPOROFF: That's right. Because you're
14 giving a raw number.

15 MR. CAFFEY: And if a business opportunity seller
16 has been in business for ten, twenty, twenty-five years, you
17 would expect it to go back to the beginning of its business?

18 CHAIRMAN TOPOROFF: That's a possibility. What
19 would you suggest?

20 MR. CAFFEY: Well, I think there should be some time
21 limit to it. There are indeed companies who have been in
22 the business of selling business opportunities for a very
23 long time, a very long period of time.

24 CHAIRMAN TOPOROFF: Okay. Would a ten-year limit
25 make sense?

1 MR. CAFFEY: It would certainly be better than no
2 limit.

3 CHAIRMAN TOPOROFF: Okay. Does anyone else have any
4 thoughts about a time frame or?

5 Dennis Wieczorek.

6 MR. WIECZOREK: I guess the question is are you
7 talking about how many business opportunities are currently
8 operating today; how many are there? Do you mean that --

9 CHAIRMAN TOPOROFF: No. Those that have been sold.

10 MR. WIECZOREK: Okay. And I guess if you say that,
11 then you mean that every business opportunity that has been
12 sold over the last ten years, even though it no longer
13 exists would have to be counted here.

14 CHAIRMAN TOPOROFF: That's right.

15 MR. WIECZOREK: So if they sold a thousand and a
16 hundred are operating, you would say we sold a thousand,
17 there's only a hundred left.

18 CHAIRMAN TOPOROFF: Whatever they sold regardless of
19 how many are still operating would have to be disclosed, in
20 this item.

21 One of the concerns that we had and we discussed a
22 little bit in Chicago is, and this also came up in other
23 contexts of our work at the Commission, many times business
24 opportunity sellers have told us that they don't know if the
25 purchasers are still in business or not.

1 In some instances there is a continuing
2 relationship, in which case they would know if they're
3 buying product or not.

4 Sometimes it's setting somebody up, at a seminar or
5 whatever and they give them tapes or initial training that
6 might last for a week or two and then they're gone. And the
7 seller has no indication whatsoever if the buyer is still
8 there, still operating, or long gone.

9 So at least in item number one it's an attempt to
10 give some information, because we also understand that for
11 many business opportunities it's been said before that many
12 of them don't last long and that they change over.

13 So at least if there is a disclosure of at least how
14 many they sold, that might be arguably some useful
15 information to some purchasers. And that's the idea behind
16 this item.

17 Does anybody feel strongly for this, against this,
18 this particular item of disclosure?

19 (No response.)

20 CHAIRMAN TOPOROFF: Okay. We are going to go on.
21 Number 15, subpart two. The names and addresses of all
22 individuals who have purchased the same or similar business
23 opportunity from the seller during the seller's previous
24 three fiscal years.

25 And here we did one of them, okay, again putting

1 aside the issue of same or similar, as I understand again
2 that that raises some issues. This, I should mention, is
3 already a requirement that we have in the rule.

4 So we are not contemplating changing anything,
5 adding anything. This is a current requirement that all
6 business opportunity purchasers in the United States must
7 currently comply with.

8 A number of people. Well, why don't we do this? I
9 start with Bob James and we will go around the table
10 counterclockwise.

11 What was that?

12 MR. IRELAND: I'm always last.

13 CHAIRMAN TOPOROFF: Fine. Rob has vetoed my
14 decision, so we will start with Rob and we will work our way
15 around clockwise. Rob Ireland.

16 MR. IRELAND: Well, the first thing I would say is
17 that I don't think it goes far enough. For example, the
18 names. Thinking again of the full names, there are some
19 disclosure documents that are being handed out right now
20 where the first letter of the first name and then the last
21 name is being informed to the consumer but not the full
22 names. That's one issue you may want to think of.

23 Address is another. Are P.O. boxes sufficient? I
24 would hope not. So I would try, I would recommend saying
25 residential, physical residential address.

1 And the other thing is phone numbers, whether we
2 should include phone numbers here so they can be contacted.
3 If they do do that, it must be a toll call. It can't be an
4 800 number to prevent answering services being set up for
5 these individuals.

6 CHAIRMAN TOPOROFF: Martha Vera, who is an
7 investigator in our office, has also joined us for this
8 discussion and she has her tent up. Martha Vera.

9 MS. VERA: I think it should be any business
10 opportunity purchased from the seller because a lot of the
11 cases that we have looked at, it's turning one corporation,
12 one business opportunity after another.

13 Some of them are very closely related, like in the
14 rack cases. There is always a rack. But in recent cases
15 that we have done, the Commission has done, they are
16 dissimilar but the consumers are victims of what we think is
17 real hard-core fraud.

18 I think this is a good way to protect against
19 consumers being victims of shills or singers, too. They're
20 not just contacting a consumer of the biz op, that are given
21 to us by the biz op seller but they have a chance to
22 interview others as well.

23 CHAIRMAN TOPOROFF: Michael.

24 MR. GARCEAU: Where do I begin? Based on my
25 feelings that I have just went through, this type of

1 disclosure going through next year, you will have in the
2 vending industry zero compliance. The only people left
3 selling vending machines will be the con men that change
4 names every six months because our whole office is based on
5 equipment.

6 If we sold 300 customers per year and over three
7 years we had to disclose 900 names, that's 900 people
8 potentially looking to sell used equipment that want to get
9 out of the business. They bought our knowledge of the
10 industry and bought the equipment but now becomes a list of
11 people selling machines off.

12 And we acknowledge that out of ten purchases, how
13 many actually make it in the business? Not everybody that
14 buys a McDonald's franchise, that buys a vending machine
15 route, that opens a restaurant is going to make it in
16 business.

17 And in the biz op industry we're not getting
18 royalties, we're not getting big franchise fees up front to
19 hold their hands and make sure they're successful.

20 So the bottom line is if you are forced to give out
21 every name, it's one big shopping list. And there are some
22 happy people on that list. Unfortunately not a hundred
23 percent.

24 So someone could sit there, they're always trying to
25 find a better deal. And they'll be happy to buy a used

1 machine over a new machine if they have that opportunity.
2 And once again, if this did go through, the only people out
3 there are the guys in the newspapers that are still running
4 their ads that I am following Florida law or California law
5 or New Hampshire.

6 They're never going to follow the FTC law. I mean,
7 they're not doing it now. But if it goes to this stage
8 here, including our company, there is no way we'd stay in
9 business. The only people left are the con men.

10 CHAIRMAN TOPOROFF: Let me ask you, what happens if
11 this was limited? If you turn the page, when we get to
12 location there is a limit. There are different provisions
13 such as the ten locations nearest the perspective purchaser,
14 all locations in the state, all locations.

15 What happens if it were a requirement like that, the
16 names and addresses of individuals, ten individuals nearest
17 the perspective purchaser or all those in the state or at
18 your option, all those that you have?

19 MR. GARCEAU: Well, number one, their locations,
20 when you sell four or five thousand machines a year, you
21 have no idea where the machines are initially located or
22 where they're relocated to. So as far as knowing where the
23 machines are actually at, you would never know.

24 CHAIRMAN TOPOROFF: Let's not focus on the machines.
25 Let's focus on the buyer.

1 MS. GARCEAU: Who bought from you, what city and
2 what state; is that what you're saying?

3 CHAIRMAN TOPOROFF: Right. If a purchaser comes to
4 you from Westchester County in New York, you might have to
5 give him information about purchasers in the Bronx and New
6 York City and Orange County and what have you.

7 MR. GARCEAU: My opinion is if we are in
8 Pennsylvania and you want to sell some increments and you
9 have to list 28 operators in the State of Pennsylvania, once
10 again if you operated a route here in D.C. and you had ten
11 phone calls that week from doing a show here in D.C., ten
12 potential competitors with your business right now, how
13 strong a reference are you going to give?

14 And I know what you're trying to do is to protect
15 the consumer because most guys give shills out. But there
16 has got to be an alternative answer to this situation here,
17 otherwise, again, no one is going to comply. It's almost
18 impossible.

19 CHAIRMAN TOPOROFF: Do you have a specific
20 suggestion?

21 MR. GARCEAU: Well, maybe if people are proclaiming
22 to be vending experts, again, how do you enforce it? I
23 don't know. If you were selling an opportunity, you have to
24 operate that opportunity and you have to have those
25 locations available for review by a potential customer.

1 When our customers want to buy from our office,
2 they're invited to fly to New Hampshire, go up in a van and
3 see some equipment. Do many of them do it? No. Some do.
4 Is that the answer? I don't know. But given the
5 opportunity to talk to the store owners or to the
6 corporations where the machines are in gives them a fair
7 shot.

8 MR. ANDERSON: I'm trying to understand what you're
9 telling me here, Michael. Are you telling me that the
10 failure rate in vending is so high that I'll make six calls
11 and I'll find out that people aren't making money and
12 therefore I won't buy?

13 MR. GARCEAU: Not the failure rate. Let's say you
14 came to me and you wanted to buy some equipment. It's
15 equipment in your garage; it's not an ongoing store front.
16 If your child broke his leg in softball that summer and you
17 had to take care of him all summer long, you never got it
18 off the ground, the machine is still in the garage.

19 We don't give out locator names. We don't help them
20 do locations, okay. You can encourage them to get the job
21 done. And this past week alone, we had a reorder Tuesday
22 and a reorder Wednesday. I know it's hard for you to
23 believe that people actually make money in this business but
24 they do if they apply themselves. But so few people are
25 meant to be in their own business.

1 MR. ANDERSON: But I'm still not understanding what
2 you're trying to --

3 MR. GARCEAU: What I'm trying to say is that if you
4 were considering our business, okay, and you were given a
5 list of a thousand people, most people don't get the best, I
6 mean, they want to get the best deal possible. And there's
7 going to be people that are listed that want to sell the
8 equipment off that never got it located, that did a poor job
9 locating it.

10 MR. ANDERSON: Okay. So what you're really worried
11 about is--

12 MR. GARCEAU: Loss of sales.

13 MR. ANDERSON: --that by providing that, you're
14 providing a list of--

15 MR. GARCEAU: Used equipment for sale.

16 MR. ANDERSON: --used equipment sources.

17 MR. GARCEAU: Again, we have references, okay, that
18 could fly out there, any one of them, and go see their
19 route. They'd be happy to do that. But most people don't
20 do that.

21 I understand most companies give fake referrals,
22 so-called singers. And that's the biggest problem in this
23 industry. You're trying to overcome that. But by
24 overcoming it you're going to sweep out the two or three
25 percent of the companies that are trying to do the right

1 thing out there.

2 They're going to totally walk away from the
3 business, and the only thing left right now is the guys with
4 toll-free numbers hiding at a P.O. box in Key Biscayne,
5 Florida.

6 CHAIRMAN TOPOROFF: Myra has a question.

7 MS. HOWARD: No, I just was wanting to further the
8 clarification, but I think it's clear.

9 CHAIRMAN TOPOROFF: Okay. Elizabeth.

10 MS. GARCEAU: Elizabeth Garceau. I was talking to
11 Craig. And the thing that's hard is that there's so few,
12 and you want to talk to the people that really care about
13 this business and that do everything right. And there's
14 not, there isn't probably a lot of us out there that do
15 everything right.

16 So what ends up happening is that by rules like
17 this, we end up getting hurt. And like Michael said, you
18 squeeze a lot of the honest people out of the business
19 because there is not enough funding, I'm sure, for your
20 government agency to go after every bad guy out there. So
21 what ends up happening is that a lot of the good guys end
22 up getting hurt.

23 And like Michael said, by making us provide lists
24 like this, I think what's going to happen is that the bad
25 guys aren't going to do it. There's no way. The bad guys

1 are still going to be out there in the newspapers, gone in
2 six months.

3 They're not going to supply a list of names they've
4 sold to. They're going to have alias names. So, I mean,
5 whatever the alternative is and what's going to happen is
6 that, you know, we do have a lot of satisfied customers. We
7 have people that reorder from us because we give good
8 customer support.

9 But there's a lot of things we don't do. Like we
10 don't give location assistance. We tell them you're your
11 best locator. You know, instead of going and hiring some
12 Joe Schmo that doesn't care where he puts your vending
13 machine, he's just going to throw it into any hair dressing
14 salon or wherever it may be, the person that buys the
15 machines actually care more.

16 I guess what we're afraid of is that they're going
17 to make some calls and they're going to have some satisfied
18 customers out there. But they're going to make some calls
19 and someone says, well, I put five out but I have five I'd
20 like to sell. I'll sell them to you for \$200. So what's
21 going to end up happening is that we spent all this money on
22 advertising, thousands of dollars in these professional
23 magazines, doing the trade shows, disclosing people, paying
24 for the disclosures, paying for the contracts, you know,
25 paying for people like Shery to do all of our legal work, do

1 everything right, so we have paid thousands of dollars, they
2 make a phone call and some guy in Pennsylvania that's in the
3 next town over from them says, well, I got eight machines
4 out, they're doing okay, but I have five I'd really like to
5 dump, I'll sell them to you for 150. Well, then what
6 happens to PRO Design is that we spent all these thousands
7 of dollars on advertising, our salesmen, paying Shery
8 Christopher, flying out here to take care of all this.

9 MR. CATALANO: Just how much are you charging,
10 Shery?

11 MS. CHRISTOPHER: Not as much as you get paid.

12 MR. CATALANO: You better believe it.

13 MS. GARCEAU: What I'm saying is that even flying
14 out here to meet with you people today, we really care about
15 this industry. And so people like us end up getting
16 squeezed out.

17 We talked to Craig during the break and we expressed
18 our concerns to him. I don't think that there is enough
19 money as far as, like Michael said, we shopped 24, 25
20 companies. We really did. We have the list, I don't know
21 if you brought it with you, but 20 of them were not in
22 business anymore.

23 And I'm sure the FTC and some of our, Bob or Dale,
24 they didn't get to them all. They can't. So the point I'm
25 trying to make is that there's got to be something to

1 protect some of the good guys. Because I think some of
2 these disclosures, I agree with a lot of things, but I think
3 it's going to ultimately hurt us that are trying to really
4 do the right thing.

5 So what we do is we fly people out to New Hampshire.
6 And I have personally 25 Mediquick machines out there. We
7 have 40 of our bulk candy machines that we sell. We have
8 people around the country that have machines out. Go fly
9 and meet them.

10 Or if there is someone in California and they're in
11 the next city over, we'll say, okay, go talk to whoever, Bob
12 Jones or whoever he may be to see the machines on route. So
13 we don't give singers. I know a lot of people do that. But
14 we have legitimate customers that are happy and you talk to
15 them.

16 But for them to start calling two hundred, a
17 thousand people on our list, you know, I don't know, you
18 probably want to comment on the same thing, it's ultimately
19 going to hurt us.

20 CHAIRMAN TOPOROFF: Rich Catalano.

21 MR. CATALANO: Yes, I do. This proposal right here
22 is why I came to Washington. This one right here is the
23 reason I'm here. First off, let me say this. We could have
24 been a franchise; we chose to be a business opportunity. We
25 had some trouble with the FTC in the past and we have gotten

1 that straightened out.

2 But the reason we are not a franchise is because of
3 the disclosures required by the franchise rule. Now, you
4 made a statement and said that this is not an expansion,
5 this is exactly and precisely what every business
6 opportunity seller in America today has to disclose.

7 I respectfully say that that is not true; it's not
8 correct. We are not subject to your franchise rule because
9 of the structure of our business opportunity. We do not
10 meet your definition of the franchise rule. We are a
11 business opportunity vendor, but we don't have to provide
12 the document called for under the franchise rule.

13 The exact reason that we are not a franchise and
14 chose not to go that route is because of this. You have to
15 understand what you're talking about doing here. Let me
16 give a little background in the company I come from. We are
17 an INC. 500 company. We started in 1990.

18 We just got on the INC. 500 list as one of the
19 fastest growing companies in America. The company I
20 represent, every week, every week we have 26 full-time
21 employee sales representatives who are trained. Every week
22 we send out between 500 and 600 packages of our business
23 opportunity to people who contact us.

24 We advertise nationwide, Entrepreneur Magazine,
25 Small Business Opportunities, newspaper ads, hundreds every

1 weekend around the country. This is what we do.

2 And we send our disclosures out to 500 to 600 people
3 every week. We are registered in every state that requires
4 registration in which we have chosen to do business.

5 There's six states we don't do it in; Kentucky, Maine, South
6 Dakota, Iowa, that have very similar proposals to the one
7 you have here.

8 The reason is this. We have sold to date somewhere
9 between 2,500 and 3,000 business opportunities. With this
10 rule you're telling us that we would have to send out with
11 anybody who wants a package of information a list of the
12 name and address of everyone we have ever sold to in the
13 last three years.

14 That's going to be 2,000 people to anybody, any Tom,
15 Dick, or Harry that wants that information. And let me tell
16 you this. In Florida under Chapter 688 is the Uniform Trade
17 Secrets Act. And what that states is that anything -- a
18 customer list is a trade secret. Let me just shortcut it
19 because we don't have time.

20 A customer list is a exactly what this is. We have
21 killed ourselves. We have spent millions and millions of
22 dollars developing our customer base. They continue to
23 purchase things from us, supplies, et cetera, on an ongoing
24 basis.

25 The rule coverage right now doesn't apply to us;

1 this is the reason why. I will tell you that the medical
2 billing field, and I think Bob James can tell you this
3 because he regulates us, is one of the cut-throat businesses
4 you will find anywhere.

5 The competition is fierce. We welcome competition.
6 Bring them on. You know, we are confident in our product.
7 However, if competitors got ahold of for the asking, hey,
8 send us a package, you know, or they just say I'm Joe Smith,
9 I'm interested in a package, you have got to send it out.

10 Instantly they have access to 2,000 of your
11 customers. What do they do with that information? What can
12 they do with that information? Instantly they can do a
13 target mailing to all those people if they want or a select
14 group disseminating misinformation.

15 This kind of thing goes on all the time. Now, maybe
16 you think I'm exaggerating it, but I assure you that I am
17 not. So my objection is, number one, first and foremost,
18 this is why we chose to be in the segment that we're in,
19 number one.

20 Number two, we feel it's a gross violation of our
21 right to our confidential and proprietary business
22 information under Florida law, under the applicable Florida
23 law that is in effect right now.

24 Number three, the people when they purchased our
25 product and our opportunity, they didn't sign on to have

1 their name and address circulated throughout the United
2 States to anybody out there who has a remote interest in
3 getting the product.

4 And out of the five to six hundred of these that are
5 sent out every week, a very small number are actually going
6 to purchase. But of those people, they're going to be
7 getting on the phone and contacting us, hey, how are you
8 doing, how are you doing at it?

9 So it is fraught with peril. I agree with
10 everything that these folks have said about their industry.
11 We try to do it above board. We're fully registered. We
12 send there. They have hired me as full-time counsel. We
13 have done all these things.

14 And we feel very strongly, the president of the
15 company and I, he said you better get up to Washington.
16 Because if this goes through, we are out of business. We
17 are just flat out going to be out of business because the
18 competition will eat us alive with this kind of thing.

19 That is our trade secret. That's our customer list
20 and we want to keep it that way. And I understand and I
21 appreciate, let me just say that, the issue of singers, paid
22 references, and the shills. Yeah, something has to be done.

23 But along the magnitude here is just, it's grossly
24 overdoing it. The ten locations nearest the perspective
25 purchaser, you mentioned that as a possible alternative,

1 obviously that's a lot better than giving out anybody.

2 But even then, consider this. Twenty-six states
3 require it. We do business in 20 of them. So that's ten
4 customers of ours in 20 states. Instantly our competitors
5 will know 200 of our purchasers', names and addresses of 200
6 of our purchasers.

7 The damage that they can do with that information is
8 mind boggling. So I would just pray that you think long and
9 hard about this one. This is, what you're trying to do here
10 is noble; I understand the reasons. But you could be
11 putting a lot of people out of work with this one.

12 MS. GARCEAU: Could I add a little something real
13 quick? I think as far as, it works for a franchise. It's a
14 little different than a business opportunity because for a
15 franchise when someone buys, say, certain franchises there
16 is not as many customers on that list. They might have, you
17 know, six in a certain state. So it's not as--

18 MR. GARCEAU: Intimidating.

19 MS. GARCEAU: --it's not as intimidating to see this
20 list of a thousand names or whatever. I think with a
21 franchise and a business opportunity, you said this is cut
22 and dried or whatever. I think you really need to consider
23 that everything we have talked about today with a franchise
24 and a business opportunity there's different, you know, you
25 have got to weigh different possibilities.

1 And I think with this one here it's definitely
2 something that should be, you know, differentiated between a
3 business opportunity and a franchise. I just think it's
4 very different.

5 CHAIRMAN TOPOROFF: Just a comment before we move
6 on. Again, I will repeat what I said at the onset. And
7 that is right now we have a definition of franchise in our
8 rule. The definition has two parts.

9 The first part covers what we traditionally know as
10 franchises, and the second part covers what in many
11 instances is a business opportunity. Not all business
12 opportunities but some business opportunities.

13 To the extent that anyone, and I'm not familiar with
14 the Garceaus' particular business arrangement or the folks
15 that Mr. Catalano represents, so I'm not giving advice. I'm
16 not opining on whether you're covered by our rule or not
17 covered by our rule.

18 But I can just tell you in those instances where
19 business opportunities are presently covered by the rule,
20 they currently have a Federal obligation to give out this
21 information.

22 MR. CATALANO: Agreed.

23 CHAIRMAN TOPOROFF: Now whether it's wise or not is
24 a different issue. I just want to make sure it's clear that
25 this is what already is required, not necessarily all the

1 names, there are limitations on there, as I mentioned
2 before.

3 But the general concept of giving out names of
4 purchasers is already required by the law. So it's not a
5 stretch. It's not something radically new that we are
6 contemplating as much as taking what's already in the rule
7 and continuing in it in some form or another into the new
8 rule.

9 Shery Christopher.

10 MS. CHRISTOPHER: This is a tough one because I do
11 have clients sitting here. And in some cases I think it's
12 because I have sold franchises and business opportunities I
13 think that a potential buyer genuinely wants to talk to
14 someone.

15 I think the issue I have to agree on, though, is to
16 send out a disclosure document that includes all purchasers
17 of a business opportunity is a bit challenging because a
18 majority of them have well over a thousand buyers.

19 And putting names, addresses, and phones numbers of
20 over a thousand people would just be ridiculous to put.
21 Now, I know in the franchise rule I know with Uniglobe we
22 put just those in that particular region or in that
23 particular state or in that vicinity.

24 We didn't list all 700 across the board because we
25 had different regions and each region had a different

1 disclosure document. I think it would be real prohibitive
2 for a business opportunity seller to do that, one.

3 Two is their right. They would then have people
4 shopping the individual directly. And it's the same thing
5 as the network marketing people and the multilevel people.

6 There are people who bought all those water filter
7 company that was around for a long time. Even in England I
8 had friends who had a garage full of these water
9 purification things that they never went out and sold. And
10 they would have been happy to have a list of someone who was
11 potential, you know, someone to call and say, well, do you
12 have yours? Oh, well, I've got some, I'll sell you some for
13 less money.

14 So what Michael is saying would be the case in
15 vending. It's a real tough thing to say it in all business
16 opportunities because all business opportunities would not
17 be selling.

18 So medical billing would not be selling something,
19 but still it potentially puts them at risk for their other
20 medical billing companies for other problems and sue from --
21 Keith.

22 MR. ANDERSON: Is there something different about
23 franchising than business opportunities?

24 MS. CHRISTOPHER: Absolutely.

25 MR. ANDERSON: I mean, we've handled this in the

1 franchise rule and it seems to work there and I'm trying to
2 understand --

3 MS. CHRISTOPHER: Because franchising, you want that
4 sort of name recognition. You want to know that there is
5 that many people out there. Franchising is all about
6 creating that type of synergy across the board that gives
7 you that identity, that we have 700 people and they're all
8 out there with the McDonald's signs up or with the Snap-On
9 Tools trucks driving around town, and it's an ongoing
10 relationship.

11 And it's contingent on that ongoing relationship the
12 identity of all your franchisees being uniform and operating
13 under those guidelines to say, yeah, we want you to know we
14 have all these people and they're out there operating.

15 And some of them may not be so happy. But this is
16 how big we are. Whereas a business opportunity in most
17 cases, if it's a legitimate business opportunity that
18 doesn't fall under the FTC rule, because I will tell you
19 that a lot of these business opportunity sellers really
20 should be under the FTC rule but they say they're not, it's
21 sort of like we're not because we're not, but they are.

22 Because they do have the name affiliation oftentimes
23 and they do have that identity and recognition. They do
24 provide assistance of accounts or locations. Most vending
25 operators have pulled away from doing locations.

1 But the key is, there is a big difference because
2 normally a business opportunity is really a one-time sale.
3 Maybe the buyer is going to buy ongoing product from them,
4 but they're not required to. They can buy it from anyone
5 else. And that's the key. Whereas the franchise, there is
6 an ongoing relationship.

7 MS. GARCEAU: That's a major key.

8 MS. CHRISTOPHER: This is how you work. We have
9 given you these guidelines. We have these policies and
10 procedures. We have these manuals. This is how you operate
11 your business or you're not going to be our franchise.
12 Business opportunity sellers do not exercise that type of
13 control over their operators.

14 MR. CATALANO: Right. Right.

15 CHAIRMAN TOPOROFF: Let me ask you, isn't what you
16 just said, to me, even a stronger argument why in the
17 business opportunity area we should require the disclosure
18 of names? If I'm going to go buy a franchise, let's say a
19 McDonald's franchise, no one necessarily has to give me the
20 names of purchasers.

21 I could walk into any McDonald's all over the United
22 States and all over the world and ask them how they're
23 doing. I mean, it's a clear symbol. You can go into a
24 store and ask them and you know who they are.

25 With business opportunities, just the opposite is

1 true. Very rarely will you know who prior purchasers or
2 existing purchasers are. And perhaps the only way to speak
3 with other people who may have gone through the process and
4 learn from their experience and to verify the claims and the
5 representations that the seller is making is to speak with
6 people who have gone through the system.

7 And the only way you're going to know that is if the
8 franchises or business opportunity people have to disclose.

9 MS. CHRISTOPHER: And I'm not saying it's always
10 like that. I do have clients here. Shery Christopher. I'm
11 not saying that you shouldn't give out a list of names. I
12 am saying that I don't agree with disclosing all of the
13 buyers. I'm saying that in some cases and in some states we
14 are required to give the ten nearest or ten in that state.

15 CHAIRMAN TOPOROFF: Now what happens if it was
16 limited that way, to ten in that state or near by or
17 whatever?

18 MS. CHRISTOPHER: A lot of them still wouldn't want
19 to do it. You can ask them their opinion.

20 CHAIRMAN TOPOROFF: Well, let's go to Mr. Silverman
21 who had his name tag up for awhile.

22 MR. SILVERMAN: David Silverman. You have already
23 heard a couple of examples of two different business
24 opportunities on how grossly it would affect them. Ours is
25 a different situation.

1 Not only would we be out of the business opportunity
2 business, but our wholesale business would be gone. Because
3 each person who has purchased from us is a wholesale client.
4 And any Joe Schmo from any competitive company out there
5 could easily just contact the company acting like they were
6 interested in the business opportunity and get our list, our
7 entire customer list.

8 And we would be potentially out of work. We have
9 all these competitors. I mean, I can't imagine that anybody
10 would expect QVC to give out their list of people who
11 purchase from them. In fact, they make an adamant ad about
12 the fact that they won't give it out because that's valuable
13 information.

14 The second thing is when you mention how a
15 franchise, you can walk into any McDonald's and receive
16 information on how they're doing, it's not as damaging to a
17 franchise because even if that person bought the existing
18 franchise instead of buying a new one, which would mean
19 they'd probably have to go to an area outside of their
20 current town possibly, so it would be a big inconvenience,
21 the second thing is that franchise would still have that
22 customer ongoing with them, paying royalty fees and whatever
23 else goes along with it. So it's not nearly as damaging.

24 So I'm not going to get into reiterating all the
25 things that the people before me have said. But I

1 understand there's probably not a real clear solution of why
2 it's creating so much turmoil. But we'd be out completely.
3 And it's unfair to give out your entire list of customers.
4 And even a portion of it can do the same thing.

5 MS. HOWARD: Could you just elaborate on why your
6 company would be out of business immediately?

7 MR. SILVERMAN: Well, when I say that, it would lead
8 to that.

9 MS. HOWARD: Because?

10 MR. SILVERMAN: We're spending thousands and
11 thousands of dollars to bring on people that are going to
12 buy our wholesale products.

13 MS. HOWARD: Can I ask what products?

14 MR. SILVERMAN: They're sports products.

15 MR. ANDERSON: Yeah. Can you just sort of describe
16 your business? Because I'm not familiar with it.

17 MR. SILVERMAN: We distribute licensed sports
18 products. So the people that come on are setting up and
19 selling the products. And they're buying from us because
20 our prices are great and they're coming back to us.

21 But at the same time, if somebody else had our list
22 of customers, another distributor out there who doesn't
23 spend any of the dollars out there or just chooses to say,
24 well, I'll just take these five products and drop down 20
25 percent below just so I can get the business.

1 Do you understand what I'm getting at? It doesn't
2 matter the details of how it happens. The fact is it's not
3 a difficult thing to do. So if I get ahold of somebody's
4 list --

5 MR. ANDERSON: What I'm hearing here is is sort of
6 two characteristics that differentiate this from a
7 franchise. One is in order to be a McDonald's franchise or
8 a Dunkin' Donuts franchise, I have to buy from McDonald's or
9 Dunkin' Donuts because that's the way I get the trade name.

10 So I can't go to some existing guy and buy his
11 french fry maker; that doesn't get me there. Whereas in
12 your case, I'm there because you're not selling it
13 particularly under a trade name; you're just selling
14 equipment basically.

15 And I guess the other part is that to the extent
16 that -- is it true that franchises in general aren't, don't
17 have this issue of making real money off of the sale of the
18 products as they go along?

19 I mean, what you're telling me is you're making your
20 money off of the wholesale sales. And that's sort of akin
21 to saying, well, McDonald's is making their money off of the
22 potatoes.

23 So that if I let people know who McDonald's
24 franchises are, other potato salesmen could come in and
25 undercut them, but that's not where McDonald's is making

1 their money. Is that the difference?

2 MR. SILVERMAN: No, they can't. If you're
3 McDonald's, you're required to buy their french fries.
4 You're required to buy their french fries. You're not
5 required to buy products from us.

6 And the point is, once that were to happen, once you
7 had to disclose all the names, the reason why it would be a
8 gradual thing and one would feed the other is as you bring
9 on a new dealer, that dealer goes on the list, somebody gets
10 that name and possibly they're ordering products from
11 somebody else.

12 We get thousands and thousands of dollars every day
13 in the reorder business which eventually could be siphoned
14 out by somebody who is not even interested in purchasing the
15 business opportunity.

16 CHAIRMAN TOPOROFF: Okay. Next is Phil.

17 MR. McKEE: From the consumer perspective I can
18 understand there is a lot of fear about losing your
19 continuing business, and that is a definite and a legitimate
20 concern.

21 From the perspective of a consumer interested in
22 going out and purchasing a business opportunity, one of the
23 best ways for them to understand the nature of the business
24 and to make their decision is actually to talk with other
25 people.

1 Sometimes these documents, these contracts, these
2 disclosures can be very confusing. And it's a lot easier
3 for them to understand what's going on when they talk to
4 people.

5 As the Garceaus were mentioning, they tell them,
6 well, come visit us. We operate it, come visit us. The
7 only thing is even if you're not paying your references, if
8 you're not engaging in using paid references, there is a
9 difference between giving a list of references which is
10 unedited and unaltered and only giving those references that
11 are satisfied customers.

12 So you need to make sure that the list of
13 references, no matter who they are and how you come up with
14 that list, is just a random assortment of your prior
15 customers.

16 It has to be people who have both succeeded and are
17 doing well, and people who failed for whatever reason. So
18 that way the consumer can look in there and hear this person
19 saying, oh, I never got these vending machines up.

20 And you ask them what happened, it was like, well, I
21 didn't enjoy going out. I had a really hard time convincing
22 people to take my vending machines into their businesses.
23 And then the consumer can make the decision for themselves;
24 is this a problem with the vending machines or is this a
25 problem with this particular consumer?

1 The other point is if you have someone like Rich was
2 talking about, a list of 2,000 people, your average consumer
3 sitting, walking into a trade show or having seen an ad and
4 called up a phone number gets this thing with 2,000 names
5 and addresses, I can tell you what a lot of the people who
6 call us on the phone will do. They'll put that aside.
7 They're going to be scared of a list that large.

8 MR. CATALANO: Yeah, they will.

9 MR. McKEE: And they're going to be terrified. They
10 won't know what to do with something that big. And in a
11 sense, it almost is a good idea to somehow limit it down.
12 Because it becomes a disincentive to check out.

13 You want the consumers to check references because
14 that's the only way they're going to be able to get
15 something they can really understand. But you also don't
16 want to make it difficult for them, you don't want to make
17 it terrifying for them, and you don't want to keep them from
18 talking to the negative references, as well.

19 CHAIRMAN TOPOROFF: Dennis.

20 MR. WIECZOREK: First of all, in the franchise area
21 there are significant concerns about this issue, also. And
22 in fact, the franchise rules allow a franchisor to cut it
23 back to a hundred locations.

24 But let me make a suggestion. And maybe one of the
25 ways to deal with this to cover the shopper issue and things

1 like that would be to require a disclosure that says on
2 request, a reasonable request from a, and we can discuss
3 what a legitimate prospect is, upon reasonable request from
4 a legitimate prospect the business opportunity seller shall
5 supply a list of names which may be ten, the ten closest,
6 which may be all within a state, rather than requiring it be
7 put into the disclosure document.

8 And maybe that would be a way. Now, not everybody
9 is going to request a list. And maybe the seller should
10 have the opportunity to do some digging on the person to
11 make sure it is not a competitor, another competitor,
12 another wholesaler, whatever, but that then the consumer
13 will have an opportunity to say I want to see the list, let
14 me see some people.

15 CHAIRMAN TOPOROFF: Martha Vera.

16 MS. VERA: I have a brief comment. On the business
17 opportunities that are sold, my understanding is that the
18 bulk of the profits that are made are from the initial sale
19 and not from subsequent sales, a product or a service. Am I
20 incorrect in that assumption?

21 MS. CHRISTOPHER: Shery Christopher. That's not
22 always the case.

23 MR. CATALANO: Not always.

24 MS. CHRISTOPHER: Because their initial, it seems
25 that way when you think of the pricing versus the equipment.

1 And a lot of times it is that they make -- and when it's a
2 one-time sale, they do make all their money, most of their
3 money up front, all of their money up front.

4 But in a lot of cases, like in, and I know in these
5 two clients here, they pay sales people to go out and do
6 these shows.

7 So they're paying for the show cost. They're paying
8 for filing costs. They're paying to have their disclosures
9 done, their marketing materials done. They're paying sales
10 people commissions.

11 They have got hotel expenses and everything else out
12 there to make the sale, the follow-up phone calls and
13 everything else to get the product and everything shipped
14 out there.

15 In their cases, and very much so in this case here,
16 he offers a catalog of ongoing product purchases to them,
17 and that's where a good consideration of that comes from.

18 They're not required to purchase from him. They can
19 purchase from anyone else. But he has decided that he
20 really wants to have a wholesale business.

21 He wants distributors out there so that really he's
22 not going to have to continue selling a lot of them so much
23 as doing the wholesale.

24 So if he were to give his list, he would have a
25 problem because he would have other wholesalers than going

1 out and offering them.

2 But I wanted to address something that Keith had
3 said earlier, which was the McDonald's issue. Most
4 franchises, and not all of them, granted, most franchises
5 have an ongoing royalty for their support, an ongoing
6 management fee, service fee, royalty fee, whatever you want
7 to call it.

8 A majority of them have that and that's how they
9 make their ongoing income. That's the key to their success.
10 And if the franchisee is successful, you pay us a
11 percentage, we're going to be successful. In this case they
12 don't have that.

13 They don't even charge them for support. All they
14 do is sell them the ongoing products and that's where
15 they're going to make their ongoing income from.

16 There is not a contract that's tying them to that as
17 in a franchise agreement where they're actually locked in
18 for five, ten, fifteen, whatever that term is. They're not
19 locked in on a business opportunity.

20 CHAIRMAN TOPOROFF: But on the other hand, if all
21 they're doing is selling product, like a one-time sale of a
22 machine or additional product after that, under our
23 definition that we talked about this morning if there was no
24 further marketing assistance, locations, or whatever, they
25 wouldn't fall under the rule in the first place.

1 MR. ANDERSON: No. But I think what Shery is saying
2 is that David sets these guys up to be sort of his
3 retailers, so he does do sort of a business opportunity
4 marketing at the beginning and then he wants to do wholesale
5 through them.

6 MS. CHRISTOPHER: Right. And giving that name list
7 is the issue, the issue of then if you have other companies
8 out there who also do wholesaling or anything else. Because
9 a lot of your -- What's happened with this business
10 opportunity, which is really where it came from, is a lot of
11 people who were manufacturers.

12 Because I get a lot of people who come to me, I have
13 this great product, but they don't know how to get it out
14 there to the market. They just don't know how to get it out
15 there to the market.

16 So they do something like a business opportunity
17 where then there is a lot of this product going out there
18 and it's going into the racks or into the machines, so it's
19 being sold that way.

20 And then the guy who is manufacturing it doesn't
21 have to go out and find stores that are going to sell it or
22 any of those things. So that is a proprietary list. It is
23 something that if they gave it out then they would probably
24 lose a lot of their business because somebody else would get
25 it and start sending out their wholesale list of what their

1 products are being offered.

2 MS. HOWARD: Well, couldn't then Mr. Silverman's
3 company do the same thing if everyone is doing that?

4 MS. CHRISTOPHER: First of all, you're got going to
5 go to a manufacturer. They're not going to give you the
6 list of all of their buyers. You're not going to go to any
7 of these places and get those kind of lists. They just
8 don't give them out because it's a trade secret. It's
9 proprietary to that particular company.

10 MS. HOWARD: I guess I'm just suggesting that if it
11 works one way it would work both ways.

12 MS. CHRISTOPHER: Yeah, but then it becomes a
13 dog-eat-dog world.

14 MR. SILVERMAN: I don't think I would be willing to
15 take that risk just for the chance to get somebody else's.
16 We've got six customer service people. I don't want to take
17 a risk on those people being out on the street because I
18 want to try and pick up somebody else's business.

19 MS. CHRISTOPHER: Right.

20 CHAIRMAN TOPOROFF: Well, we need to move on. I
21 want to thank everyone for the discussion on that. I
22 purposefully let it go a little bit longer than I had
23 anticipated because I understand that it's an important
24 issue to many of the people who are here today.

25 But we really do need to move this. I'm going to

1 short-circuit the discussion of the other disclosures except
2 for one, and that is audited financial statements.

3 Our rule currently requires three years of audited
4 financial statements. I know that the Illinois statute, for
5 example, has one year of audited financial statements.

6 I just want to get a sense from the participants
7 when it comes to the sale of a business opportunity,
8 assuming that we are going to require audited financial
9 statements, what makes sense, three years, one year? Is
10 there any other suggestion out there?

11 MR. ANDERSON: Why can't we put also on the table
12 whether it makes sense to require audited at all?

13 CHAIRMAN TOPOROFF: I'd rather, I want to discuss
14 the first issue and then we can get to yours, okay. Let me
15 just backtrack a second and address what Keith is raising.

16 As I mentioned before, I mean, I asked and it is
17 certainly legitimate to question every one of these items.
18 And certainly you can submit comments on that.

19 My concern is at this point that we have an existing
20 rule and there is a record that supports it. Any changes
21 that we make to the rule also have to be supported by the
22 record for our law enforcement experience.

23 So I would be very reluctant to simply just throw
24 out something that is currently required by the Commission
25 unless again there is some substantial reason for it. And

1 again, I don't think that we are necessarily going to get to
2 that at this round table discussion today.

3 The comment period again has been open for months.
4 And I don't think too many people have raised this issue at
5 all in terms of a business opportunity. I've read all the
6 comments.

7 Given that fact, my working assumption has been if
8 people didn't challenge it, then we should keep what already
9 exists.

10 So that's why my working assumption on this issue is
11 the rule currently requires it, is there any reason,
12 assuming that we should keep it because no one has objected
13 so far, what would make sense?

14 And then we could pick up with Keith, whether we
15 should even keep it in the first place. So on audited
16 financial statements, does anybody have any particular
17 thoughts?

18 Rich has his hand up.

19 MR. CATALANO: Yes. The audited financial statement
20 issue first off is the cost. Now, we're a pretty big
21 company. It's not going to break us to make audited
22 financials, and we have audited financials.

23 But a lot of the states that say audited financials
24 which accept a limited review. That's one thing I think you
25 should consider. It's a step just below audited financial,

1 but many of the state statutes for biz op that say they'll
2 accept, that they want an audited financial, they do in fact
3 accept what's called limited review, which is far less
4 onerous, it's far less expensive for a smaller business
5 opportunity company to provide.

6 And understanding that people and perspective
7 purchasers should be able to rely on the data in there, that
8 some kind of an audit or a review by certified public
9 accountants would be appropriate, I think you should think
10 about on the issue of audited there saying audited or
11 limited review.

12 That's just some food for thought that you might
13 want to consider. Three years of them, that's a long time.
14 That's a lot of money. To go back and impose that on every
15 seller of a business opportunity, I say again, not every
16 seller of biz ops is covered by your rule currently.

17 So it is an expansion. But three years of audited,
18 just to audit a company of our magnitude for our accountants
19 to go back and do it for three years, you are talking, the
20 figure that I was told for one year was 50,000.

21 CHAIRMAN TOPOROFF: What happens if there is a
22 phase-in, so that as you get them, it's not that you have to
23 go back retroactively, but as you get them--

24 MR. CATALANO: Prospectively.

25 CHAIRMAN TOPOROFF: --and you phase them in,

1 prospectively you could phase them in, would that alleviate
2 some of your concerns?

3 MR. CATALANO: It would clearly alleviate a lot of
4 the concern. But I say again, for smaller operators of biz
5 op, it is going to be a very high cost and I think you're
6 going to find a lot of noncompliance on that issue.

7 CHAIRMAN TOPOROFF: Dale.

8 MR. CANTONE: Maryland has a requirement for audited
9 financial statements, a year, not three years, as does
10 Illinois, as does the NASAA model. I understand Illinois
11 might be in many cases waiving the requirement for audited
12 financial statements.

13 I think they're one of the ones that accept the
14 limited review. We thought long and hard about this. I
15 know Shery is very unhappy with our requirement for audited
16 financial statements because it does make it more difficult
17 for a legitimate seller to, or for a seller to file in
18 Maryland.

19 And it really was a cost benefit analysis. And the
20 thought process was and still is to try and retain some
21 legitimacy, some stability, not restrict the start-ups as
22 long as they have some audited financial statements.

23 I don't know; for a start up it might not be that --
24 I mean, it's expensive in the long run. But it also, if
25 someone is going to be around for a couple of years, it's

1 something that perhaps they ought to think about.

2 With regard to a phase-in requirement, you have to
3 understand a lot of these business opportunities don't stick
4 around in many cases for more than a year or so. So that's
5 something you need to understand.

6 And it's something that we thought long and hard
7 about, and we made the decision that it's something that we
8 wouldn't require. And I just pass that along.

9 CHAIRMAN TOPOROFF: Michael.

10 MR. GARCEAU: We encourage it. It's used as a
11 selling tool on our behalf. We have had it for two or three
12 years going now. I think it helps eliminate some of the
13 people that claim they did four, five million dollars last
14 year. They have the fill-in-the-blank balance sheets,
15 particularly at the shows.

16 We know a company that started two weeks ago but
17 they have \$8 million in the bank. So I think having the
18 audited financials helps us at the trade show circuits and
19 even the magazines, showing the history. You can't really
20 exaggerate and claim you did X amount of sales in previous
21 years. So we certainly have them and encourage them.

22 MS. CHRISTOPHER: First of all, Dale, I wasn't very
23 upset because I would prefer that my clients do audited
24 financials. And when we get new clients who are starting
25 new companies, we try to tell them to go ahead and do an

1 audit now when the company is new because it's easier, it's
2 not as costly.

3 And then as they move through it they've got their
4 guy who has already started with them and work through it.
5 It's much more costly for a company who has been in business
6 for several years and they never had to comply with an audit
7 and suddenly they have to do one and they have been selling
8 products extensively.

9 I think, and by the way, Illinois does require
10 audits. What they have decided to do, and don't say I said
11 this but, you know, because a lot of these states have
12 implemented these rules and these filing requirements
13 because it brings money into the state coffers and it helps
14 them to do other things, as well as enforcement.

15 So what Illinois has done is they are allowing
16 companies that are under a year old to do balance sheets.
17 And then within that year before their annual renewal comes
18 up or the company is a year old, they are then required to
19 have an audit.

20 So they are allowed. But the company, it's not
21 their first filing. The company has to be brand new and
22 that's the only thing they're allowing. And Michael is
23 right.

24 I have people who send me, and this is why I wish
25 all the states would do it, I have people who send me

1 financials. And I mean, you look at these things and you're
2 just amazed that they could have that much money in their
3 accounts.

4 But who verifies it? That's the problem. Who
5 actually verifies it? I had a company send me that they had
6 all this money in the accounts, and then I sent a bunch of
7 filings in and all these checks bounced. I'm saying, well.

8 So I'm saying, you know, audits are not a bad thing.
9 Three years I think are difficult for a lot of companies. I
10 think if a company starts off with an audit, then as they go
11 and as they stay in business they should continue to audit
12 and continue to provide those reviews.

13 And actually the cost-wise, it's cheaper for a
14 company if they continue to audit and continue to have those
15 reviews because then the accountant that's coming in to do
16 it isn't going to have to do so much work in one big
17 sitting.

18 CHAIRMAN TOPOROFF: Craig Tregillus.

19 MR. TREGILLUS: I just wanted to ask Dale how many
20 biz ops are registered in Maryland, and if anybody here
21 knows how many of them are?

22 MR. CANTONE: I just happen to have that
23 information. In 1997 so far we have 24 business
24 opportunities that have filed with us. Not all of them have
25 been effective. And that's not too far afield from where we

1 are in '96 and '95.

2 MR. TREGILLUS: Does anybody know numbers for
3 Illinois, which also has an audit requirement that may be
4 permitting the reviews?

5 MS. CHRISTOPHER: No.

6 CHAIRMAN TOPOROFF: I'm sure we can call them.

7 MS. CHRISTOPHER: Yeah, you can call them. Because
8 they just actually started that. And the reason is because
9 I complained.

10 MR. CANTONE: See, I knew I got that somewhere.

11 MS. CHRISTOPHER: Yeah. Because it was too hard,
12 they put that rule in so soon, and we knew yours was coming
13 down the pipeline, but there's just sort of got dumped in on
14 everybody. And so basically we said, look, brand new
15 companies, let us at least get them to understand they need
16 to get audits.

17 More and more business opportunity sellers are doing
18 audits because of Maryland and states like that. So we are
19 trying to emphasize to these people, the ones who won't do
20 the audits, simply because the funds they have really don't
21 exist on their financial statements.

22 CHAIRMAN TOPOROFF: Okay. We're going to move on.
23 We're going to take a break in a few minutes. But before we
24 do that I just want to set the stage for the next
25 discussion, and that is prohibitions.

1 Right now in addition to disclosure our law does
2 contain certain prohibitions. One is you can't make
3 contradictory statements. Another is you can't fail to make
4 a refund if a refund is permitted and set out in the
5 disclosure documents.

6 Also, if you're going to make earnings
7 representations, you have to have a reasonable basis, you
8 have to have substantiation, you have to make that
9 substantiation available.

10 So the rule does cover more than strictly the
11 franchise or the business opportunity. The seller has to
12 disclose X, Y, and Z.

13 One of the things that we were looking at in
14 thinking about the rule is whether there should be
15 additional provide prohibitions. And the prohibitions that
16 we are contemplating really boil down to issues that we have
17 already discussed, in particular skills.

18 In a nutshell, before we take a brake, what we are
19 contemplating is if you misrepresent somebody as a purchaser
20 or as a locator or as an organization able to give some kind
21 of endorsement or referral or whatever, if you misrepresent
22 that, that might be a violation of our rule. So that's it
23 in a nutshell. And we could discuss it in detail.

24 Similarly, if you misrepresent yourself as being
25 someone who bought, someone who is a locator, someone who

1 has located.

2 Also, if you misrepresent yourself, this again goes
3 to locators, as having conducted some kind of location
4 survey or did a study, a demographic study or whatever of
5 potential locations before the sale, those would be
6 violations of the rule.

7 So I really want to leave opportunity at the end of
8 the day, and we are really running late, for people to
9 mention other issues. So why don't we take a quick break
10 until around four.

11 Hopefully we can get through these proposed
12 prohibitions, and then we could open up for again any other
13 comments that people may have to offer to us.

14 So let's meet again at four. Thank you.

15 (A short break was taken.)

16 CHAIRMAN TOPOROFF: Okay. We are back on the record
17 and we are going to move on to our next agenda item, which
18 is proposed prohibitions. The first two I have noted before
19 we took a break, and that is making contradictory statements
20 or failing to give back deposits.

21 That's something that's currently required in our
22 rule and I would imagine would continue to be required. So
23 I don't know; unless anybody has a specific interest in
24 discussing those, I prefer to move on.

25 (No response.)

1 CHAIRMAN TOPOROFF: Okay. Let's move on.
2 Prohibition number three, as I mentioned before, really gets
3 at misrepresenting consumers, purchasers. This gets to the
4 shill issue or phony references or phony or false locations.

5 And basically what the rule would require would be,
6 what the rule would stipulate is that it would be a
7 misrepresentation, it would be a violation of the rule to
8 misrepresent expressly, by implication that oneself,
9 individual, partnership, company, or entity (a) has been the
10 purchaser of a seller's business opportunity, (b) is an
11 owner of the premises where machines or equipment purchased
12 from the seller are located or have been located, or (c)
13 able to provide independent and reliable reports to
14 consumers about the seller's business opportunity and/or
15 experiences of current or former purchasers.

16 So (a) goes specifically to shills, whether you
17 misrepresent Mr. Smith as being a shill or Mr. Smith
18 identifies himself as being a shill. (b) again, the owner
19 of the premises. So what this goes to is you can't say Mr.
20 Smith, who owns the beauty shop on such and such a corner
21 has accepted our equipment or goods if that is false.

22 MR. ANDERSON: Has that been a problem? I mean, is
23 that a problem?

24 CHAIRMAN TOPOROFF: Let me just explain it and then
25 I will ask some other folks who have actually done this work

1 whether this is a problem. And (c) able to provide
2 independent and reliable reports.

3 And that goes to various organizations out there who
4 report to give a valid, supposedly valid review of complaint
5 history or whatever of a particular business opportunity.

6 I am going to ask--certainly there are a number of
7 investigators here as well as Dale and Bob James--whether
8 the whole issue of shills, of people misrepresenting
9 themselves or misrepresenting others as actual buyers, is
10 that something that you see in your work and is that
11 something that the Commission should be concerned about?

12 Dale Cantone.

13 MR. CANTONE: Based on the experience of Maryland,
14 shills may be one of the most common problems in the
15 business opportunity industry. It is very common. It is
16 very difficult to combat. It's very difficult to prove as a
17 law enforcement officer, so I tend to think it happens even
18 more than the cases would reflect that.

19 But it is very common that a seller business
20 opportunity will steer an individual perspective buyer to
21 certain names. And you can pretty much count on not being
22 able to reach that person on the first phone call but have
23 to leave a message so that -- there is suspicious
24 circumstances and I think it does untold damage.

25 Because I know from buyers who have been scammed

1 that that's one of the things that gives them the most
2 comfort, when they can speak to somebody that they believe
3 is a consumer like themselves.

4 And when they get a story that I have made X amount
5 of money, most of them will say even if they were being kind
6 I can do a half or a third of that, I felt good.

7 And it invariably sucks them in. And that really
8 more than anything else I think is the most effective sales
9 tool for the bad business opportunity seller.

10 CHAIRMAN TOPOROFF: Bob James.

11 MR. JAMES: In order to save in essence time here, I
12 will again concur completely with Maryland. It is a huge,
13 huge problem. When we tried to contact the referral, the
14 phone has been disconnected, if it was a real phone. It
15 generally is an answering service that goes back to the
16 business.

17 And the phone company is very reluctant to tell us
18 who the purchaser of that phone line was. So we can never
19 track back. It's a very, very, very big issue.

20 CHAIRMAN TOPOROFF: Martha Vera.

21 MS. VERA: I concur with Dale and Bob James. I
22 think it is a big problem. I think it weighs heavily and
23 the consumers rely on singer information when making a
24 choice to purchase.

25 I think it is also extremely difficult for law

1 enforcement agencies to prove or allege a skill count prior
2 to going into court. We usually find evidence of skills
3 afterwards.

4 I know that in a lot of cases that Rob and I have
5 worked on together, we have found singers working for a
6 number of business opportunity companies over and over
7 again, through one failed opportunity after another. It's a
8 very serious problem.

9 CHAIRMAN TOPOROFF: Okay. Moving along. On the
10 next item, misrepresenting the owner of the business that
11 has accepted these machines. Let me give an example of what
12 I mean.

13 I had a case recently that involved display boards,
14 advertising display boards that were placed in hotel
15 lobbies.

16 And this particular company, in order to sell their
17 business opportunity, claimed that they had contractual
18 relationships with Holiday Inns, Ramadas, all top hotels
19 that have already accepted these business opportunities,
20 these display boards.

21 And I think it was material to the purchaser's
22 decision buying the business opportunity that the company
23 claimed that it had a previous, an existing relationship
24 with these major outfits, these major hotels and that these
25 hotels in fact have accepted these boards before.

1 So I just want to know from Dale's perspective or
2 Bob James' perspective or anyone else, do they find that
3 this is a frequent or common occurrence where a company may
4 misrepresent that they have actually placed locations or
5 that particular companies, whether it's a bowling alley or a
6 particular airport or whatever, have accepted the vending
7 machines or the fax machines or pay phone machines or
8 whatever else it might be, is this a problem that you see?

9 Dale Cantone.

10 MR. CANTONE: Well, we actually have run into this.
11 We're talking now about (3)(b)?

12 CHAIRMAN TOPOROFF: Yes.

13 MR. CANTONE: And (3)(b) I take it doesn't get at
14 that specific issue?

15 CHAIRMAN TOPOROFF: Right.

16 MR. CANTONE: Well, we have run into situations
17 where sellers have represented that they have, just as you
18 say, an existing relationship with a chain of stores or an
19 airport where that would make it easier.

20 But I don't think that we have ever run into a
21 situation where a company has misrepresented that they are
22 the owner of the premises where they're going to be located.

23 CHAIRMAN TOPOROFF: Well, it's not so much the --
24 okay. If the concern is on the ownership part, that's not
25 it. It needs to be read all together.

1 They have accepted the machines. I mean, that's
2 what it's getting at. It's getting at the scenario that I
3 mentioned before, that Holiday Inn has already agreed and
4 has in fact accepted these. I mean, that's what it's
5 getting at. I understand the language concern.

6 MR. ANDERSON: Okay. The language may need to be
7 changed.

8 CHAIRMAN TOPOROFF: Absolutely.

9 MR. ANDERSON: I don't have any problem with the
10 general concept.

11 MS. CHRISTOPHER: Yes.

12 MR. ANDERSON: I just didn't understand the concept
13 from the way it was worded.

14 CHAIRMAN TOPOROFF: Rob Ireland.

15 MR. IRELAND: A couple of things. First of all, you
16 do have the issue of general representations and the
17 specifics. General, I mean, we have ten locations in your
18 area that are ready to take your display racks and that's
19 just not the case.

20 Also, specifically, for example, we have a super
21 contract with 7-Eleven in Ohio to take all your display
22 racks, and that's not being the case. So that happens quite
23 frequently.

24 The other thing is in terms of the issue of putting
25 display racks in particular locations and having the owner

1 act as a reference, there was one case in Florida where the
2 owner of a pizza shop claimed that he had a, I believe a
3 copy of a display rack.

4 And he did, but he exaggerated the sales
5 dramatically and was being paid by the company. So that's
6 also an issue that's been a serious problem.

7 CHAIRMAN TOPOROFF: Bob James.

8 MR. JAMES: I'd like to speak also about the bulk of
9 where I see this violation -- incidentally, in Florida this
10 is a prohibitive act; this is a felony.

11 But the bulk of this, where I see the most misuse is
12 is the typical newspaper ad that will say, maybe they had
13 runs in the Cincinnati paper, it will say vending route, 15
14 locations, call quick, \$8,000.

15 Well, the consumer will buy that deal, and then in
16 fact there is no locations. They have to hire an
17 independent locator to come in and he can't find 15
18 locations. That's the most blatant.

19 CHAIRMAN TOPOROFF: Actually on that point, one of
20 the prohibitions that we have later on is to misrepresent
21 the availability of locations or the existence of locations
22 or routes.

23 MR. JAMES: Okay.

24 CHAIRMAN TOPOROFF: Let's hold off on that one.

25 (3)(c) again goes towards various organizations, again, that

1 may represent that they have some kind of expertise or they
2 are able to review complaints or otherwise give an
3 assessment of how a company is doing. I can tell you we
4 have brought at least one case that I am aware of on just
5 this type of organization.

6 Rob Ireland.

7 MR. IRELAND: You mean like NBBB, is that what
8 you're talking about?

9 MR. CANTONE: NBOB.

10 MR. IRELAND: Yes, we brought two cases.

11 MR. ANDERSON: I know of two cases.

12 CHAIRMAN TOPOROFF: Okay, two cases, I stand
13 corrected.

14 MR. MCKEE: There was one that was just announced
15 what, the beginning of November. It was the second --

16 MR. IRELAND: Right.

17 CHAIRMAN TOPOROFF: Well, that's exactly what we're
18 talking about. I stand corrected if it's two cases. Is
19 this the kind of thing that we should address as a
20 misrepresentation in the rule?

21 Dale Cantone.

22 MR. CANTONE: Absolutely. In addition to the issue
23 of shills, maybe even more able to lead a perspective buyer
24 into a false sense of security, a seeming independent
25 consumer association that may or may not be what it purports

1 to be as far as giving accurate reports about the industry
2 or a given company.

3 I know that from our standpoint in Maryland, we have
4 a lot of complaints from buyers who were lured by, well, not
5 lured, but they got a report from who they thought was an
6 independent company like a Better Business Bureau for
7 business opportunities.

8 The one that comes to mind is the National Business
9 Opportunity Bureau. And in fact, they were under the
10 mistaken impression about exactly what that organization
11 does.

12 And it caused the purchasers to again rely, a false
13 sense of security, thinking that this was a company, that
14 this was an agency that independently rated the company.
15 And this caused them more than anything else to invest their
16 money.

17 And maybe that permitted them or suggested that they
18 didn't need to do the due diligence that they may have done
19 if they had an accurate idea of what they were getting into.

20 CHAIRMAN TOPOROFF: Phil.

21 MR. McKEE: From the perspective of the Internet,
22 it's actually a surprisingly big problem. It's very easy to
23 set up a web site that purports to be from an independent
24 organization and which claims to be providing reports
25 similar to those provided by the BBB.

1 Oftentimes the ones that we have seen on the
2 Internet last about as long on-line as the company which
3 they are supposedly providing the check on. It's a blatant
4 link.

5 When that company fails and closes shop, the
6 independent, supposedly independent rating bureau will also
7 all of a sudden vanish off-line. Another thing which you
8 will see is they will try and link themselves very much.

9 They will use the name. They will try and use the
10 name Better Business Bureau, better, something to make them,
11 to get the name confusion with the Better Business Bureau.

12 And Steve Salter over at the BBB who works on the
13 BBB on-line, he and I have spoken, he says that they are
14 spending a lot of money just hiring companies to search
15 around the Internet to try and make sure that their BBB
16 on-line site is not being spoofed; in other words, that
17 someone isn't making a copy of that site and pretending
18 they're the BBB to provide these kinds of false validations.

19 It's a surprisingly big problem. You will see web
20 sites if you're out there, and it will have seal of approval
21 from some organization. And who is this? It really is no
22 one but that organization itself.

23 CHAIRMAN TOPOROFF: Martha Vera.

24 MS. VERA: It is interesting to note that in a lot
25 of the companies, business opportunity companies that we

1 have looked at and gone into where the receiver, checks made
2 out to NBOB and other companies for paid appraisals, they
3 are a great company, no problems. It's consistently across
4 the board checks made out to these companies to pay for a
5 rep.

6 CHAIRMAN TOPOROFF: Any other discussion on this
7 point?

8 MR. IRELAND: Yes.

9 CHAIRMAN TOPOROFF: Rob Ireland.

10 MR. IRELAND: Just a couple of things. In the
11 industry this is often called institutional singers, and
12 they're really difficult cases to prove.

13 We have been able to bring two cases, the United
14 States, the FTC versus the United States Business Bureau and
15 the FTC versus the National Bureau of Better Business.

16 But fortunately we were able to uncover some
17 evidence which was not always easy to get. And so I think
18 this may not go far enough in terms of misrepresentation,
19 especially for the consumers.

20 So we may want to really consider prohibiting it
21 completely, although we'd have to come up with some sort of
22 creative language to do that.

23 The other thing I just want to say is whether any
24 people from the industry here, if you know of anything about
25 like NBOB, if you have ever used them, I don't know if your

1 lawyer would allow you to answer that of course, but
2 whether, you know, you consider them to be legitimate and
3 whether, you know, you used them in the past, you no longer
4 use them, or if you care to comment on that.

5 MR. GARCEAU: I care to comment. At the shows it's
6 almost become, actually, basically, people walk around from
7 booth to booth and then they'll go to the seminars
8 afterwards. Do you belong to the Better Business Bureau?
9 Yes. Do you belong to NBOB? You would say no for the first
10 six months.

11 Then you say, well, you're damned if you do, you're
12 damned if you don't. You get charged \$20 per phone call
13 from the NBOB. And we are still a member until probably
14 tomorrow when we cancel after hearing what we've heard here.

15 We were told by the NBOB they work with you, with
16 the FTC, and they help to take down all these bad companies.
17 Knowing they're getting paid per call, maybe it's ignorant,
18 we are knowing that that's funding their operation and
19 they're making money doing that, but they have told us
20 numerous times that they work closely with the FTC.

21 The NBOB are the ones out of Florida that shut down,
22 but the one based out of Atlanta. Is that not true, they
23 don't work with you?

24 MS. VERA: You know, I think part of the provisions
25 of one of the orders is that they're required to provide

1 copies of complaints I think.

2 I don't have the -- you know, I think there is some
3 mechanism there where the Commission can have access to
4 complaints filed against companies, but I'm not sure. I
5 have to see the order.

6 CHAIRMAN TOPOROFF: I just want to make a point
7 here. The purpose of this meeting is not law enforcement.
8 We're not singling out NBOB or anybody else for any
9 particular purpose here.

10 That's why we want to focus on the concepts of
11 organizations like this. I don't know the difference
12 between NBOB and Atlanta versus Miami or whatever.

13 And I want to stay focused not on particular
14 companies or potential violators but on the underlying
15 concept here that organizations like this, if they are
16 compensated or otherwise are engaging in misrepresentations
17 that involve the sale of a business opportunity, that that
18 should be a misrepresentation.

19 Shery.

20 MS. CHRISTOPHER: And I agree. And I will tell you
21 that the gentleman who bought the NBOB was unfortunately
22 misrepresented by the seller. Because when he first bought
23 it he called me, and the guy had told him that he was
24 legitimate, whatever.

25 But I think that the biggest issue is that I have

1 never worked with the NBOB. I have heard about them. There
2 are other organizations out like that.

3 And unfortunately I think it goes back to exactly
4 what you're saying is that this should be prohibited. This
5 is a misrepresentation. It is a false statement. They're
6 getting paid to sing for someone and it's something that
7 needs to be considered.

8 MR. IRELAND: I wanted to clarify the record. I
9 don't believe the FTC has acted against the NBOB yet. I
10 don't know if that was misunderstood by anybody. We have
11 not filed an action against them.

12 MS. CHRISTOPHER: No, I understood you.

13 MR. IRELAND: But I think you stated that the NBOB
14 perhaps has said that they worked with the FTC. It may be
15 possible they have provided information informally. But we
16 do not work with them.

17 MR. GARCEAU: The way they talk about it --

18 CHAIRMAN TOPOROFF: Who is "they"?

19 MR. GARCEAU: The NBOB. They way it's described to
20 people, their pitch to get them to be a member, that any
21 companies that are in bad standing, that it's all reported
22 right to your bureau. Initially they had problems. They've
23 straightened all their problems out and --

24 CHAIRMAN TOPOROFF: I'm going to really cut off
25 discussion of this. This is really beyond our purpose here.

1 And I think it's unfair also to the NBOB, who is not
2 represented here. So again, this is not a law enforcement
3 hearing. And I really want to focus on the underlying
4 concept.

5 MR. SILVERMAN: I think this is the underlying
6 concept, which is what I'm trying to figure out, because
7 from a business opportunity standpoint if a company like,
8 I'm not going to say letters, whatever, if they're strictly
9 just giving a report and it's the same as, like from what I
10 understand, we're members of the Better Business Bureau in
11 Maryland. We're members of the Better Business Bureau in
12 New Mexico.

13 In Maryland they charge, there is a 900 line. And
14 neither of them allow you to advertise the fact that you're
15 members, as far as I know. So one of these other
16 organizations, from what I've, you know, gotten a report
17 keep track of, they told me they are required to write down
18 every call they ever get.

19 So how do we know whether or not we can put down any
20 of these organizations if we don't know whether or not
21 they're legitimate or not. And is it against the law for
22 them to charge \$10 for mailing somebody out information, or
23 do they have to charge that individual instead of us?

24 CHAIRMAN TOPOROFF: I understand your concern
25 because your potential customers are theirs, or of these

1 groups as business opportunity sellers. I don't have an
2 answer for you.

3 It would be the same answer if somebody came to me
4 and said I'm looking to purchase a business opportunity,
5 how about such and such a company? I don't know. Unless we
6 do an investigation of them or have evidence they're
7 violating the law, I can't comment on that.

8 What we are suggesting here is that if we do have
9 evidence where these companies that operate that way are
10 misrepresenting their ability, that they aren't independent,
11 that they're not unbiased, that they actually do something,
12 if they misrepresent that then arguably that could be a
13 violation of the rule, and that's all we are saying.

14 I'm going to skip, to be brief, item four and five
15 and six. Those are more or less taking what we just said
16 before, thou shalt not misrepresent, but turning it around
17 and saying if you do represent, then you have to disclose if
18 you have an affiliation that you're being compensated, that
19 you have some kind of relationship.

20 So it's just the flip side of the outright
21 misrepresentation. Okay. But it's the same kind of
22 concept. But I would like to go to seven.

23 Seven in a nutshell is saying not to misrepresent
24 you, yourself or whatever as having earned a specific level
25 of income or range of income as a result of purchasing the

1 business opportunity, purchasing or operating the business
2 opportunity if that is false.

3 So basically I can't go along and falsely say I have
4 purchased this when I haven't, that's what we discussed
5 before, but also let's say I even did purchase. I can't go
6 along and represent that I am earning a certain level of
7 income if that is false.

8 Okay. So basically again, this is getting to the
9 shills issue. Shills have different parts. One possibility
10 is I am a shill because I never bought, or another one is I
11 am a shill because I'm giving a glowing report when in fact
12 I haven't made this level of income or money.

13 So any questions about that?

14 MR. CAFFEY: Does this assume that there is an
15 agency--this is Andy Caffey--that there is an agency
16 relationship and that's what brings the shill into the
17 coverage of the rule?

18 CHAIRMAN TOPOROFF: No. We are contemplating a new,
19 independent liability for shills.

20 MR. CAFFEY: Okay.

21 CHAIRMAN TOPOROFF: Okay. If you are a shill, if
22 you are being paid or compensated to lie, your lie will be a
23 violation of the business opportunity rule. That's what
24 we're saying in a nutshell.

25 Keith.

1 MR. ANDERSON: But this doesn't sweep in either the
2 guy that inadvertently gives the wrong answer. I mean, if
3 somebody calls me up and says how are you doing and I tell
4 him that I have made 15,000 off of it and in fact it only
5 turns out that I have made ten, if I'm not being paid then
6 I'm not covered.

7 CHAIRMAN TOPOROFF: That's right. That's right.
8 Where you are a paid reference, where you agree to be paid
9 and then you misrepresent. We're not interested in covering
10 the situation where let's say I'm a business opportunity
11 purchaser and someone calls me and says how are you doing
12 and I say, well, I think I earned \$10,000 last year.

13 They're getting a cold call out of nowhere. And low
14 and behold it turns out that it's not 10,000, it was \$100,
15 let's use an extreme case, we are not interested in
16 targeting those people, I don't think.

17 What we are interested in targeting are those people
18 who have accepted consideration who are agreeing to act in
19 this capacity to misrepresent that they have earned a level
20 of income.

21 Keith.

22 MR. ANDERSON: Can I go way out in left field here
23 and admit that I made, I may take this back tomorrow and
24 deny that I ever said it, but is there some reason that we
25 just don't out and out ban the payment for references?

1 I mean, why do we couch it as misrepresenting when
2 you're paid to be a reference? Why isn't it just illegal to
3 be paid to be a reference?

4 CHAIRMAN TOPOROFF: Because it's an unfair practice.

5 MR. ANDERSON: I don't know how to do it legally.

6 MS. HOWARD: So perhaps what you're asking is is it
7 possible to be a paid reference and to really legitimately
8 discuss how you're doing, and so you're compensated, say,
9 for instance, for the time that you're spending talking to
10 perspective purchasers but you don't lie. Does that happen?

11 MR. ANDERSON: Yeah, yeah. I mean, just the fact
12 that they're paid seems to me to raise questions.

13 CHAIRMAN TOPOROFF: Dale.

14 MR. CANTONE: I think you want to be careful about
15 who you're going to cover under such a rule. I mean, for
16 example, the Better Business Bureau. I mean, if they're
17 charging for a 900 line, you might be able to make the same
18 argument that they would fit under this type of definition.

19 MR. ANDERSON: Okay. Okay.

20 CHAIRMAN TOPOROFF: Thanks, Dale. Let's move on.
21 Number eight is the flip side of what I just said. If
22 you're going to make a statement about income or whatever,
23 okay, then you have to take the next step and disclose if
24 you're being compensated, if you have a social or a
25 managerial or whatever relationship. It's kind of the flip

1 side of what we just mentioned.

2 CHAIRMAN TOPOROFF: Andy.

3 MR. CAFFEY: Andy Caffey. I want to make sure I
4 understand that there is a new class of people who are going
5 to be regulated by these prohibitions.

6 CHAIRMAN TOPOROFF: That's what we are
7 contemplating.

8 MR. CAFFEY: We have been talking about sellers all
9 day. And now we are talking about a new class.

10 CHAIRMAN TOPOROFF: That's right.

11 MR. CAFFEY: Okay. Thanks.

12 CHAIRMAN TOPOROFF: That's exactly right. The next
13 is, and final one, is to misrepresent directly by
14 implication. And this gets to routes, that you have already
15 established a route or account on behalf of a perspective
16 purchaser, okay, that you have entered into contracts or
17 otherwise found retail establishments willing to accept the
18 machines.

19 And what I mentioned before, I'm skipping just to be
20 brief, that you have conducted research or whatever about
21 locations.

22 So if you make a specific representation that you
23 have a route ready to go or that you have lined up
24 purchasers, like in the example I mentioned before about the
25 Holiday Inn, or you have conducted some kind of demographic

1 survey, and that has come up in our cases, if you make those
2 claims, in order to basically lure the perspective business
3 opportunity purchaser to go with you and they are false when
4 made, that would be a violation of our rule.

5 Does anybody have any concerns about that possible
6 prohibition?

7 (No response.)

8 CHAIRMAN TOPOROFF: No one seems to raise any issues
9 there. Great. Well, that means we're finished. What I
10 would like to do is we still have about a half hour.

11 And I really would like to open the discussion to
12 anyone who cares to really give us any feedback at all on
13 any of the issues that we discussed or any other business
14 opportunity issue that you may have, including whether
15 disclosure even makes sense for business opportunities.

16 Bob James has his card up.

17 MR. JAMES: With regard to your disclosure
18 requirements, I see nothing in there, Steve, that's talking
19 about a delivery statement.

20 In Florida we have the 45-day clause. If you order
21 vending machines or a work-at-home computer, if you don't
22 get that delivered in 45 days then the consumer has a
23 contractual right to seek a full refund.

24 Of course it doesn't always work, but there is no
25 language like that in here. Was there a reason you did not

1 put that in?

2 CHAIRMAN TOPOROFF: I don't know that we necessarily
3 thought about that. Well, let me backtrack a second. In
4 Chicago we did mention in our round table discussion the
5 possibility of having post-sale rescissions as an option in
6 lieu of disclosure, that if a company agrees in their
7 contract that they will rescind, then if it turns out not to
8 be what the buyer wants then they can get out for any
9 reason.

10 MR. ANDERSON: Well, what Bob's talking about is
11 not --

12 MR. JAMES: Let's say we have a vending machine
13 company that might send the candy in but they don't send the
14 vending machines in or vice versa. So the purchaser is
15 unable to start his business until he gets both elements.

16 CHAIRMAN TOPOROFF: And you're saying under Florida
17 law that if you don't get the necessary elements you can
18 cancel.

19 MR. JAMES: Right.

20 CHAIRMAN TOPOROFF: Okay. That's an interesting
21 approach.

22 MS. CHRISTOPHER: It's pretty much across the board.
23 Shery Christopher. Most states have that, which is if you
24 do not deliver the product, supplies, training, materials,
25 blah, blah, blah within 45 days of the delivery date stated

1 in your agreement, then the purchaser has the right to
2 cancel. So it's not 45 days.

3 So if my contract, you sign it on the first, and
4 then I say that on the 12th I'm going to deliver everything,
5 and then 45 days from the 12th I still haven't delivered it,
6 you then have the right to cancel and receive a full refund.
7 And that's what should be considered I think in your rule as
8 well.

9 CHAIRMAN TOPOROFF: Okay. Phil.

10 MR. McKEE: All right. There are just a few small
11 points I wanted to bring up. One, we didn't talk about it
12 at all. It's something which Susan and I have talked about,
13 especially with our experiences so far on the Internet.

14 It's a matter of disclosures and how it's affected
15 now in regards to the Internet. It's very easy to say,
16 well, we can just put this disclosure document up on a web
17 site; anybody can view it.

18 Unfortunately, what we find in terms of claims made
19 on web sites is a consumer will say when I visited that web
20 site it was telling me I was going to make this much and
21 this much and this much.

22 And by the time that report, the consumers decided
23 that this was a scam, that web site is either gone or it no
24 longer has those statements. So you may have
25 misrepresentations in a disclosure document on a web site,

1 and by the time the consumer has reported it to someone, the
2 disclosure document on that web site actually does match the
3 one they filed with Bob.

4 And so that's a major problem. From the perspective
5 of the National Consumers League, it's probably a better
6 idea if the disclosure document be in writing, that simply
7 putting it up in an electronic form because it's so easy to
8 change really isn't enough.

9 Also, earlier when we were talking about, to go
10 back, to backtrack a little, when we were talking about
11 lowering the costs that trigger the --

12 MR. ANDERSON: The threshold.

13 CHAIRMAN TOPOROFF: The threshold.

14 MR. McKEE: Yes, lower the thresholds, lower the
15 required payments, it was stated no matter where we put that
16 required payment the scam artists, the crooks are going to
17 come in five, ten dollars less.

18 If we have it at 500, they're going to be selling at
19 495. If you have it at 300, they're going to be at 295.
20 And you have either one of two things. You can either say
21 we're going to get rid of the required payment and force
22 everyone to go by these rules.

23 If you take that approach, you are requiring a lot
24 of people who are selling low cost business opportunities to
25 go through all of this effort.

1 The one thing that should be taken into account when
2 you're making that decision and when you're setting that
3 required payment, Dennis mentioned during that discussion
4 that it can cost several thousand dollars to make up the
5 disclosure document.

6 It's very expensive to make it in the initial thing.
7 But when you're thinking of those economics, you can't think
8 of that as several thousand dollars per disclosure document.

9 That cost is going to be, you should consider that
10 cost in light of the number of people that become, that
11 purchase a business opportunity.

12 It's not a thousand dollars per person who is buying
13 this thing. It is a thousand dollars divided by the three
14 thousand sales. And so the cost is actually much less for
15 these people.

16 And it may raise their cost of their \$150 business
17 opportunity to \$170. However, everyone else also has had to
18 do the same thing. And their costs have gone up just as
19 much.

20 So this isn't really going to destroy their
21 competitiveness at that level. If everyone is having to do
22 it, you're not destroying their competitiveness. It may
23 make it more difficult.

24 And at a certain level, yes. You're going to get
25 down to say \$100, \$50, where it's prohibitive. But it's

1 something that needs to be considered since the scam artists
2 are willing to just keep whittling it down.

3 CHAIRMAN TOPOROFF: Dale.

4 MR. CANTONE: We're talking generally now; right?

5 CHAIRMAN TOPOROFF: Yes.

6 MR. CANTONE: I feel very strongly that the FTC
7 should continue with some type of presale disclosure as
8 opposed to a post-sale rescision.

9 For the first reason, in a presale disclosure it's
10 the current model not only for the Federal Trade Commission,
11 but for the states that have a specific business
12 opportunities act it is certainly nothing new.

13 It has been out there for quite a while. The
14 problem that I see with post-sale rescision is that it's
15 going to hurt the buyer in certain circumstances.

16 I don't see any reason why the buyer should have the
17 ability to do the research, due diligence, pulling off
18 before they put their money down, before they write their
19 check rather than afterwards.

20 Number one, they might not get their money back.
21 Number two, I just think it's easier for somebody to do
22 research on a potential business opportunity before they
23 have a financial stake in it, even if there is an
24 expectation that they can change their mind.

25 I just think that they go into it with a more open

1 look. And I just think that it makes more sense to allow
2 the consumer to have that time period before they pay any
3 money.

4 I just think that that's the hallmark of the state's
5 business opportunity act, and it seems to make the most
6 sense.

7 CHAIRMAN TOPOROFF: Rich Catalano.

8 MR. CATALANO: Thank you. Just again in general I
9 just feel it imperative to reiterate a couple of things.
10 Number one, again I asked about the need for it. Because I
11 know that you haven't reached the issue of preemption, but
12 it's clear that this seems to be the way this is going.

13 CHAIRMAN TOPOROFF: No.

14 MR. CATALANO: Well, it seems that way.

15 CHAIRMAN TOPOROFF: Well, I want to make it clear.

16 MR. CATALANO: I know I don't know how it's going.
17 But, you know, I asked, well, one question that hasn't been
18 brought up and in the materials that I got on this,
19 "Alternatives to Burdensome Regulations and Enforcement," I
20 mean, isn't this kind of flying in the face of this -- I
21 don't know how seriously this is taken here.

22 I have no idea, with all due respect, this thing
23 about the White House and the memorandum directed to, you
24 know, to make regulatory reform a top priority and not
25 putting in more I guess barriers to business and what have

1 you.

2 And the question on mind again is that Maryland has
3 an excellent statute. I mean, they're one of the toughest
4 in America.

5 Illinois, the model of Illinois; I mean, that's a
6 renewed statute. And obviously you all have found merit in
7 it because you're kind of using that as a guide post.

8 So it's not like this is an industry that is not
9 regulated already. It really is in 25, 26 states of the
10 union. The other states are well aware of these laws, they
11 just haven't seen fit to put them into effect.

12 Now, are these disclosures, presale disclosures
13 important? Absolutely. I think they absolutely should be
14 required, et cetera. They are being required in Florida and
15 many, many other states.

16 And I just don't see why we need to have another set
17 of rules, another disclosure document, another thing to add
18 on more of a regulatory burden on that.

19 But I would say this, that if you're going to go
20 forward with it and you're going to do it, Illinois is an
21 excellent model. The only question I have is, what I'm
22 reading here is it's very much like Illinois.

23 I'm very familiar with their statute. I have to
24 comply with it so I'm familiar with it. But this (a)(15)
25 that you've got on here, this disclosure is nothing like the

1 Illinois statute. You're jumping from the Illinois statute
2 here to the FTC rule.

3 CHAIRMAN TOPOROFF: And that is exactly right. I
4 prefaced my remarks by saying people have pointed us in the
5 direction of Illinois. But that doesn't necessarily mean
6 that we would adopt wholesale what's in Illinois.

7 Basically what we did was we took our rule, the
8 existing franchise rule, we took Illinois, plus we
9 considered what our law enforcement experience has been and
10 combined them. So you're right, this is not the Illinois
11 disclosure statute for business opportunities.

12 MR. CATALANO: Right.

13 CHAIRMAN TOPOROFF: We are just looking at that as a
14 model.

15 MR. CATALANO: As a model.

16 CHAIRMAN TOPOROFF: And again, I should say we are
17 not wedded to that. That is something that people brought
18 to our attention. When we published the ANPR, a number of
19 people wrote to us and said if you're considering revising
20 your rule, look to Illinois. And that is exactly what we
21 did.

22 So again I want to emphasize that the proposals and
23 the handouts that we gave are strictly thought pieces. It
24 is just a vehicle for us to be able to discuss these issues.

25 But by no means are we, the Commission, or anybody

1 else necessarily wedded to the Illinois statute as a model
2 or anything else. It's strictly here, and we used it today
3 strictly as a thought piece.

4 MR. CATALANO: I understand. And I want to thank
5 the Commission for having this and allowing us to come up
6 and air our side of the thing, so I appreciate that.

7 CHAIRMAN TOPOROFF: Shery Christopher.

8 MS. CHRISTOPHER: Yeah, a couple of things. I
9 discussed this with you, and Craig Tregillus and I have
10 talked about this for many years actually. And there was a
11 time before when someone else who actually wanted this rule
12 to be specific.

13 And I think that I have to disagree with Richard on
14 the fact that I do think that a predisclosure rule needs to
15 be put into place.

16 But I do think, I feel very strongly that that needs
17 to be a totally separate definition from the franchise rule
18 and it needs to be defined as what a business opportunity
19 is, what the disclosure is going to be required, and I
20 understand that that's what all these meetings are about.

21 I will tell you that other states have little FTC
22 acts. And even though they say we don't have a rule,
23 Tennessee will chase you all the way back to your door to
24 get things resolved if you go in there and violate anything,
25 even if they don't have a requirement to register or

1 disclose.

2 Arizona is the same way. And a lot of states are
3 stepping up to the plate. And they may not have passed any
4 particular statute in those states, but they are requiring
5 that people comply with little FTC acts.

6 Secondly, California requires that whether you sell
7 in that state, sell to that state, or sell out of that state
8 you're required to disclose anywhere you go.

9 So if you are a company in the State of California,
10 you have to disclose straight across the board everywhere,
11 including nonregistration states.

12 So it is in some cases where this is happening
13 anyway. I think that what we're trying to say and what a
14 lot of people are looking at is that people who are not
15 following it now, who are not complying now, they're not
16 going to comply when you change it. It doesn't matter.

17 But it's going to at least give it a more balanced
18 playing field for the guys who are complying, who are
19 disclosing, who are not making earnings claims and
20 projections and false promises.

21 It's going to give them a better playing field out
22 there against the other people who are exposed to the shows
23 and the advertising and so on.

24 CHAIRMAN TOPOROFF: Let me ask a question on that.
25 If the Federal Trade Commission were to get out of the

1 business opportunity disclosure business, is there a fear
2 then that you have, I don't know how many states, 22 states
3 or so that have business opportunity regulations, is there a
4 fear that the additional 28 states and territories will come
5 in and have different disclosure or other kinds of regimes,
6 and then business opportunity people will be petitioning the
7 Commission and banging down our door, please help us out
8 here, it's impossible to comply with every state law, please
9 have some kind of national standard; is that a concern?

10 MS. CHRISTOPHER: I don't think their concern is
11 that, I don't think the business opportunity sellers are
12 concerned that it's going to be so across the board upside
13 down because it already is.

14 I mean, you've got states who, you have got,
15 Minnesota requires -- when you file in Minnesota for a
16 business opportunity, you have to file a UFOC.

17 There is no other option for it. There is nothing
18 else you can do. So you have to file under that
19 requirement. Every state has something different from
20 two-day disclosures to three-day cancellations to one state
21 has a 30-day cancellation notice.

22 You have some states that require that you review
23 all the marketing materials they have. I mean, they're all
24 in such a mishmash. I'll give you a printout of them.

25 I give a chart to all of my clients and to Bob and a

1 lot of the other state people, I think Dale has had it
2 before, that it really goes across the board.

3 I mean, when you look at it you can see the
4 differences, how varied it is. You look at it and it's just
5 a chart that tells you the days and everything. And you're
6 just amazed at the differences in it. And I provide my
7 clients with it.

8 But I think the key is what the biz op sellers want
9 and what I think a lot of people would like to see who are
10 legitimate is that the FTC not get out of it, that it does
11 become some kind of uniform law.

12 CHAIRMAN TOPOROFF: Okay. Two things. One, could
13 we get a copy of your chart?

14 MS. CHRISTOPHER: Sure.

15 CHAIRMAN TOPOROFF: If you could just mail it to us
16 and we can put it in the record.

17 MS. CHRISTOPHER: Absolutely. If you have a disk I
18 will just copy it for you.

19 CHAIRMAN TOPOROFF: If you could speak with Myra
20 about that. Myra is the techie here. Second, are you in
21 essence arguing for preemption, that the Federal Trade
22 Commission should preempt business opportunity disclosure
23 laws so that there is one national uniform standard?

24 MS. CHRISTOPHER: I don't think you're going to get
25 states to, just like you have states who actually have their

1 franchise requirements, and in those particular states we
2 have to supply addendums to the agreement.

3 I think that if you had a uniform law that went
4 across the board that a biz op state would say we'll accept
5 that document but you still have to file, but we will accept
6 that document instead of our particular statute, then that's
7 something that would make life much easier.

8 MR. CATALANO: I agree totally with that.

9 MS. CHRISTOPHER: I mean, my clients now, I'm always
10 trying to, I'm to the point where I'm coding disclosures for
11 them and dating them and everything and giving them single
12 documents. Because otherwise you have got 32 files and you
13 have got 32 different disclosure documents in it.

14 CHAIRMAN TOPOROFF: Elizabeth.

15 MS. GARCEAU: Well, Shery touched upon a lot of what
16 I wanted to say. But just to touch upon it a little bit
17 more, I think that it's really important to have a national
18 uniform law.

19 And I don't know how that would work with the
20 different states. But I think as us owning, you know,
21 myself owning a business, it gets really crazy having to
22 conform to all of these different laws and regulations.

23 And you're like, okay, now what does Florida want
24 and what does this one want and what does California want?
25 And they're all a little bit different. And so it's even

1 very confusing for our sales consultants, people, you know,
2 who are out there selling.

3 Because they're like, okay. We are talking to them
4 all the time and sending things with their literature.
5 Okay, it's a 10-day disclosure law.

6 But I think it's really important what you're doing.
7 And I don't know if there is any way it can happen to work
8 with the states and maybe, you know, as long as we're
9 conforming with what you're doing.

10 But one thing that I just wanted to touch upon again
11 is that, you know, I know you said you're working with the
12 Illinois statute a lot but you still have your own FTC
13 franchise rules that you're going by, but you have never
14 really done a separate one for a business opportunity.

15 And I just want to stress how important I think it
16 is to really look at the differences between a franchise and
17 a business opportunity because they are really a different
18 animal.

19 And so it's really important to have a different
20 disclosure for a business opportunity and to really, you
21 know, touch upon some of the points we made.

22 Because we all, you know, as far as I know, I don't
23 know him personally, but I think are pretty much honest
24 business opportunity people here.

25 So it's important for us to have a uniform

1 disclosure, but I think it definitely needs to be a little
2 bit different then maybe what you have already regulated for
3 a franchise.

4 And thank you very much for having us today because
5 it's been helpful for us to hear things that you said that
6 we were not really aware of every little point either, even
7 though Shery does a good job, but a lot of things.

8 CHAIRMAN TOPOROFF: Michael.

9 MR. GARCEAU: Back to my favorite subject, and that
10 is the list of people. In lieu of that --

11 MR. CATALANO: He's right. You have no idea.

12 MR. GARCEAU: Bad idea?

13 MR. CATALANO: No; I said he's right, you have no
14 idea.

15 MR. GARCEAU: Oh. In my opinion what we're trying
16 to prevent here is giving out a list of singers, of five
17 hand-picked operators that are doing great.

18 Why don't we say this. You are forbidding biz op
19 promoters of giving out one name. You can't give out any
20 referrals at all.

21 If we catch you doing that, you're in violation.
22 You can give out no referrals at all to any person. They
23 have to do it on their own. If you're going to hand pick
24 these people, obviously they're skills or they're
25 hand-picked referrals.

1 Don't make us give out every purchaser's name. But
2 then again don't let us give out referrals. That's a
3 possible solution.

4 MR. ANDERSON: But what are you saying, Michael?

5 MR. GARCEAU: What we're saying is --

6 MR. ANDERSON: You wouldn't be permitted --

7 MR. GARCEAU: To giving out referrals.

8 MR. ANDERSON: So you wouldn't be --

9 MR. GARCEAU: We would still sell.

10 MR. ANDERSON: But you wouldn't tell, I mean, the
11 consumer would have no way of checking at all then because
12 they wouldn't know who your customers were.

13 MR. GARCEAU: I think the biggest problem here that
14 everybody sitting on this side of the table is the list of
15 names.

16 I honestly believe every legitimate business
17 opportunity out there that tries to do the right thing will
18 point blank close its doors and let the con men run the game
19 because that's what is going to happen.

20 CHAIRMAN TOPOROFF: Okay. On this point I really
21 feel that we discussed the names at length. Unless somebody
22 really has something else to add or a possible solution,
23 otherwise I really want to give, within the ten minutes that
24 we have left, an opportunity for people to have their say
25 about other issues that we might not have addressed.

1 Well, before we get to Dale, I want to ask Andy a
2 few questions, if I may. I know in your comment you touched
3 on today that you questioned the whole idea of disclosure
4 for business opportunities, and I would really like to know
5 your thoughts on the subject or what your opinion is with
6 disclosure for business opportunities generally or possible
7 approaches that the Commission could take in this field.

8 MR. CAFFEY: The question I've raised is less about
9 disclosure, which I think is appropriate for business
10 opportunity sales; it's presale disclosure. It's a 10
11 business day or a 14-day presale requirement for an
12 investment of any size.

13 And it appears to me that depending on the size of
14 the investment the Commission might even devise a timing
15 framework that would not as simple as 14 days.

16 It may be 14 days for an investment over X dollars.
17 It may be three days for an investment over Y dollars. It
18 may be delivery of disclosure at the time if a purchase is
19 appropriate with the right of rescission in a number of days
20 after the purchase.

21 It may be appropriate for purchases that fall within
22 another range. I have never -- I worry about the level of
23 compliance.

24 And I think Maryland has a very tough statute. I'm
25 very proud to have been one of the behind the scenes authors

1 of that statute originally.

2 But if there are 24 companies that have applied in
3 Maryland, I wonder what that tells us about the level of
4 compliance? Now, it may be that that is 100 percent and the
5 rest of the business opportunity community simply stays out
6 of the State of Maryland.

7 But I don't think the Commission, I think the
8 Commission should think hard. When this rule is adopted
9 there will be no place to go.

10 Companies will either have to close their doors, as
11 has been suggested, or they'll simply operate illegally and
12 count on the odds of not being caught by the FTC.

13 So I think it's worth focusing on why companies are
14 not complying now. It would be interesting to know, for
15 instance, how many business opportunity sellers there are in
16 the United States. I don't think we have a clue.

17 It would be interesting to know how many of those
18 sellers are registered in the various registration states.
19 I had occasion for an article I was writing five or six
20 years ago to survey business opportunity states.

21 And I got an interesting array of responses back.
22 The key question was how many companies are registered. And
23 one state told me it was more than six hundred. Another
24 state told me it was two.

25 Other states like Maryland fell in the middle range.

1 And there are lots of reasons for that, obviously. There
2 are different requirements, bonding requirements and the
3 like that some companies simply decide not to do business in
4 those states.

5 That was mentioned earlier. There are a handful of
6 states, six or seven, that are almost not worth the price of
7 going in and complying.

8 So I think that if the Commission is concerned about
9 the level of compliance, and I think it should be, I think
10 the Commission should come up with a rule that most
11 companies taking reasonable measures can comply with, that
12 we ought to look at the presale disclosure scheme and see if
13 there is a better way to do it if that's the imposition on
14 these sellers, and I think it's a huge imposition for most
15 companies, and I think it is unreasonable for companies who
16 are selling smaller priced packages.

17 CHAIRMAN TOPOROFF: Okay. Phil.

18 MR. McKEE: Just when you mentioned essentially a
19 sliding scale, a sliding time period depending upon the
20 price, it's an interesting idea.

21 The only thing I would say is that I don't think it
22 would be wise to ever completely eliminate some form of a
23 waiting period.

24 And the main thing that comes to mind are the
25 seminars. Because a lot of times you will hear in a seminar

1 we have 800 people in this room and we have 500 slots we can
2 fill, and you need to be the first ones in the back of that
3 room to give us your check.

4 And they're not getting a disclosure document.
5 They're not getting anything. But if you educate the
6 consumer beforehand that they need to have a certain period
7 of time, even if it's only a few days, then that can help
8 eliminate that or at least curtail that slightly.

9 And if you don't have a waiting period for them, if
10 they've managed to slip beneath the fee and instead you give
11 them the ability to have a refund if they then decide later,
12 with the seminars I would say you don't stand a chance of
13 ever getting a refund, period. There should always be at
14 least some form of a waiting period if for nothing else to
15 handle them.

16 CHAIRMAN TOPOROFF: Okay. We are going to hear from
17 Shery, and I think that that's going to be the last word.

18 MS. CHRISTOPHER: Just real quick. The only problem
19 with the sliding scale, Andy, is that in cases where the
20 disclosure offers several different packages and the person
21 is going to get the disclosure, until he decides what
22 package he's buying and the investment level he's going to
23 make, you're not going to know how long you have to disclose
24 him.

25 And because we have a lot of clients who do that,

1 that's a problem. I think it really needs to be, maybe not
2 ten days, but then I don't think a lot of -- a lot of people
3 don't have a problem with ten days.

4 I think the key here today, and I'm real happy that
5 I had clients who attended, is that they agree with me and a
6 lot of my other clients agree that basically definitely some
7 sort of general across-the-board law needs to be put in
8 place that is totally separate from the franchise
9 requirements because you cannot put them together.

10 They just do not belong together, and that it's real
11 definitive as to what a business opportunity is. And this
12 also eliminates these business opportunity sellers who
13 really are franchises as well.

14 So it needs to be clearly defined that this is what
15 a business opportunity is. And if you do this and you need
16 to go over to this other side and that this is a disclosure.

17 And it does not need to be as involved and as
18 lengthy as a franchise disclosure, but it does need to have
19 certain things in it. And I'm happy to submit some things
20 for you.

21 And that's all I have to say.

22 CHAIRMAN TOPOROFF: Okay. Well, with that we are
23 going to close. A few closing remarks.

24 One, I greatly appreciate people's participation. I
25 understand that people flew in to attend this meeting in

1 some instances and are taking out time from their work day.
2 And I appreciate that.

3 It's been very, very helpful to us. I just want to
4 mention some things that I started off with. The comment
5 period still is open until December 31st.

6 So you have heard some of the issues that we are
7 wrestling with. We would very much like your continued
8 input.

9 If you have particular issues that you didn't get to
10 address, or you think that certain proposals or issues that
11 we have mentioned could be approached in a different way or
12 you have a solution to offer to us, by all means supplement
13 your comments and get them to us because we will consider
14 them.

15 Okay. So with that, again, thank you. This is the
16 final meeting that we are having of the six public workshop
17 conferences on the franchise rule.

18 The next step will be to take, after the close of
19 the comment period, to take all the comments and
20 recommendations and digest them and come up with possible
21 solutions.

22 And sometime hopefully in the next year or so the
23 Commission will publish what will be a notice of proposed
24 rulemaking which would have the actual text of the rule,
25 franchise rule, business opportunity rule, that we might be

1 contemplating.

2 And again, there will be further opportunity to
3 comment at that time. So again, thanks everyone. I
4 appreciate it.

5 (The hearing concluded at 5:00 p.m.)

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C E R T I F I C A T I O N O F R E P O R T E R

DOCKET/FILE NUMBER:

CASE TITLE: ANPR Workshop: Business Opportunities

HEARING DATE: November 20, 1997

I HEREBY CERTIFY that the transcript contained herein is a full and accurate transcript of the notes taken by me at the hearing on the above cause before the FEDERAL TRADE COMMISSION to the best of my knowledge and belief.

DATED: December , 1997

Jayne M. Toering

C E R T I F I C A T I O N O F P R O O F R E A D E R

I HEREBY CERTIFY that I proofread the transcript for accuracy in spelling, hyphenation, punctuation and format.

Sara J. Vance