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July 17, 2006

VIA E-MAIL

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Re: Business Opportunity Rule, R511993

Ladies and Gentlemen:

We appreciate the opportunity to submit comments on the Federal Trade Commission's (the "Commission's") proposed Business Opportunity Rule, 16 C.F.R. § 437 (the "Proposed Rule"). The National Black Chamber of Commerce ("NBCC") is dedicated to economically empowering and sustaining African American communities through entrepreneurship activity within the United States. The NBCC represents 100,000 Black owned businesses and advocates for all 1.3 million Black owned businesses in the United States (U.S. Census). Numerous owners of these businesses and/or their employees augment their incomes by working as sales associates with direct sales companies. NBCC is committed to eliminating obstacles that may unduly impair its membership's ability to compete fairly and prosper in the marketplace.

I. Overview

We applaud the Commission for undertaking a review of the Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (the "Franchise Rule"), 16 C.F.R. § 436. However, while we agree with the spirit of the proposed rulemaking, we believe that a more narrowly tailored rule could better achieve the goal of protecting consumers from fraudulent business practices within the direct sales marketplace. In particular, NBCC is concerned with the following: (i) the overbroad scope of the Proposed Rule; (ii) the onerous disclosure document requirements; and (iii) the extended waiting period mandated by the Proposed Rule.

II. Increased Costs of Compliance under the Proposed Rule

The Proposed Rule creates several onerous requirements, which costs will inevitably be, either directly or indirectly, passed on to both the direct sales associates and prospective purchasers. NBCC strongly contends that this increase in compliance costs will in turn limit the availability of these opportunities. The end result is that the Proposed Rule, as currently drafted, will make it more difficult for direct selling companies to invest in their sales associates by potentially diverting their resources towards the compliance aspects of the Proposed Rule. Therefore, insofar as the Commission's goal is not to eliminate business opportunities, modest, but material, modifications to the Proposed Rule should be promulgated.

III. Overbroad Application of the Proposed Rule

As currently written, the Proposed Rule applies to all business opportunities, regardless of the size of the investment required to take advantage of the opportunity. In order to "strike the proper balance between prospective purchasers' need for presale disclosure and the burden imposed on those selling business arrangements," the current Franchise Rule has a more tailored scope than the Proposed Rule. *See* 16 C.F.R. § 436. In the Notice of Proposed Rulemaking ("NPRM"), the Commission admitted that, "the scope of the coverage of the proposed Rule is much broader than that of the Franchise Rule." 71 Fed. Reg. 19,056 (Apr. 12, 2006). The Franchise Rule covers only those opportunities that require an investment of over $500.00 within the first six months of operation. 16 C.F.R. § 436.2(a). The Commission has not increased this $500.00 investment threshold during the past 26 years. As the Commission noted in its NPRM "where a franchisee makes no significant investment in the franchise business, he assumes only a limited risk, and the protection of the rule is inappropriate." 71 Fed. Reg. 19,055 (citing 43 Fed. Reg. 59,704).

Similarly, the Proposed Rule should be modified to include an investment threshold like that of the Franchise Rule. This would ensure that the Commission does not place unnecessary burdens on business opportunity sellers where the potential risk for the purchaser is low. NBCC would defer to those reputable direct sales companies actively involved in this market to propose the exact threshold amount. NBCC would support an initial investment threshold starting at $500.00.

In the alternative, the Commission could exclude from the definition of business opportunity under the Proposed Rule those opportunities originating from a publicly held company. Under federal securities laws, public companies are required to issue annual and quarterly reports. For example, the Form 10-K provides a comprehensive overview of the company's business and financial condition. Since this information is readily accessible to the public, the additional disclosure requirements and waiting period of the Proposed Rule are unnecessarily burdensome and duplicative.

IV. Excessive Disclosure Requirements

The Proposed Rule sets forth detailed disclosure requirements for business opportunity sellers. In particular, it requires that sellers provide a disclosure document to prospective purchasers disclosing all legal proceedings and a list of references. 16 C.F.R. § 437.3.

A. Legal Actions

Section 473.3(a)(3) of the Proposed Rule requires that the disclosure document include a list of all legal actions against the direct sales company, any of its affiliates or prior businesses, officers, directors, sales managers, or employees who are involved in business opportunity sales activities for "misrepresentation, fraud, securities law violations, or unfair or deceptive practices" occurring within the previous ten years.

The Proposed Rule does not place material limits on the disclosure of this information. As a result, the list would include frivolous lawsuits that would not otherwise directly influence a prospective purchaser's decision to engage in a business opportunity. However, faced with such a list, a potential purchaser is likely to be unnecessarily overwhelmed and/or develop unwarranted suspicions regarding the *bona fides* of either the sales opportunity or the company offering the sales opportunity. The time and cost of researching each of these cases will in itself be a deterrent for many potential purchasers.

Furthermore, the Proposed Rule requires disclosure of suits against virtually everyone associated with the business opportunity seller. Not only will this degree of disclosure not help a prospective purchaser of a business opportunity, but compiling and updating such a list will also be extremely burdensome to sellers.

Therefore, the Commission should consider eliminating this requirement. Alternatively, the Commission should limit this requirement to judgments decided against the seller in excess of $5,000.00 within the past 10 years. Assuming for the sake of this discussion that the Commission opts against acceptance of the above alternatives, the Commission should still exempt publicly held companies from this portion of the Proposed Rule given the extensive and comprehensive reporting obligations previously mentioned.

B. References

Section 437.3(a)(6) of the Proposed Rule requires disclosure of the name, city, state, and phone number of all purchasers of the business opportunity in the past three years or, alternatively, the 10 purchasers located nearest to the prospective purchaser's location. In addition to the obvious concern about violating purchasers' privacy, this requirement raises concerns about companies' proprietary information and generates a substantial administrative burden.

At best, assuming that a potential purchaser takes the time to contact all of the previous purchasers, which is highly unlikely, past purchasers not otherwise subject to the Proposed Rule are tasked with the burden of explaining their experiences and answering questions about the business opportunity. Because the costs of engaging in a business opportunity are generally much lower than those of becoming a franchisee, the corresponding commitments of a past purchaser as compared with a franchisee is often significantly less.

Given the minimal benefit to prospective purchasers from this requirement and the substantial interests against it, the Commission should eliminate the references requirement. Assuming for the sake of this discussion that the Commission opts against acceptance of the above suggestion, the Commission should still exempt publicly held companies from this portion of the Proposed Rule given their extensive and comprehensive reporting obligations previously mentioned. Consumers can rely upon quarterly or annual reports, which are subject to the penalties of perjury, to determine whether there is any merit to the direct sales opportunity being offered by a publicly held company.

V. Extensive Waiting Period

Finally, the Proposed Rule requires that the disclosure document be delivered at least seven days before a potential purchaser signs a contract or makes payment. Surprisingly, the Franchise Rule waiting period is only five days. 16 C.F.R. § 436.1(g). Thus, the Proposed Rule requires that purchasers of a business opportunity requiring as *little as a $1.00 investment wait longer than franchisees likely to spend upwards of* thousands of dollars. The extension of this waiting period seems arbitrary and unwarranted. In an era where transactions can take mere seconds, a seven-day waiting period is excessive and unnecessary. Moreover, the administrative burden of assuring that sellers comply with such a requirement would be tremendous. Hence, as the Commission suggested, "a shorter [waiting] period may be warranted." 71 Fed. Reg. 19,067.

Thus, the Commission should eliminate the seven-day waiting period. As an alternative, the Commission should consider modifying the Proposed Rule to exclude companies with refund policies. At the very least, the Commission should reduce the waiting period, preferably to only one or two days.

VI. Conclusion

We appreciate the opportunity to comment on the Commission's proposal. The NBCC hopes that the Commission will consider the impact of the Proposed Rule on the availability of these important business opportunities to individuals interested in supplementing their income or pursuing a career in direct selling. Please do not hesitate to contact me at (202) 466-6886 if you would like any additional information from the NBCC.

Sincerely,

Harry C. Alford
President & CEO