

the association's status among all those constituencies. But there was the uneasy anticipation that complaints would be forthcoming under the Code, and serious concerns about how many there would be, and how the administrative procedures would really work to handle them. There was also the uncertainty about how the Code would affect the size of DSA membership and how enthusiastic its members would remain in support of the Code.

Code Administrators. The Code was to be administered by an independent code administrator, someone not affiliated with any DSA member firm. Since no person had been targeted for that position pending approval of the Code in mid-1970, the Board determined that J. Robert Brouse become the temporary code administrator until a proper search and selection procedure could be completed. Brouse was DSA President, but not affiliated with any member firm, and thus met the qualifications of the position (see Appendix D, section VI. part B).

At the DSA annual meeting in summer 1971 the appointment of Clarence Lundquist, a Washington D.C. attorney, was announced as the first permanent code administrator. Lundquist had served in the U.S. Department of Labor as Wage and Hour Administrator under the three administrations of Presidents Eisenhower, Kennedy, and Johnson. In discussing his appointment, a DSA executive stated, "Mr. Lundquist brought an impressive background to the position. His background, we felt, would emphasize the independent status of the administrator, as well as provide the consumer with the person-to-person communication so necessary for complaint handling" (O'Neill 1972, p. 47).

Following Lundquist as second code administrator was Kenneth A. Roberts, also an attorney and a former Alabama congressman who was an early supporter of Ralph Nader. His tenure began in early 1974 and he served to the end of 1977. In commenting on the DSA Code and its role in the regulatory process, Roberts stated, "It means that with proper attitude, industry can demonstrate that not only the customer is always right, but that it's better for the seller to voluntarily prove it than be forced by the government to do so" (Offen 1976, p. 267).

The third code administrator was Henry A. Robinson, who served less than one full year during 1978. He had previously been Chief Counsel of the U.S. House of Representatives Small Business Committee, and his detailed analysis of complaint history prompted him to offer numerous clarifying revisions and amendments to the Code (discussed in a later section).

Robinson was followed in the code administrator position by William W. Rogal, former head of the FTC Bureau of Deceptive Practices which became the Bureau of Consumer Protection after the 1970 FTC reorganization. Rogal also served as legal counsel to the American Advertising Federation (AAF), an organization with a long history of self-regulation (Wagner 1971). In its early years prior to the establishment of the FTC, the AAF had spearheaded a "crusade for truth" in advertising, subsequently proposing model truth-in-advertising statutes by both federal and state legislatures. The AAF developed its own self-regulation program, carried out through "vigilance

committees" that later evolved into the Better Business Bureaus. Rogal's appointment was approved in October 1978 and he continues through the date of this narrative.

Promoting the Code. The Code of Ethics Committee of the DSA Board remained in operation to monitor the Code's progress and assess suggestions for code amendments. But initial attention of the Board turned more to making the Code known and understood than to changing its content. At the June 1971 Board meeting, Brouse noted that only 25 complaints had been received during the Code's first year of existence, a small number indeed in light of the supposed deluge of misrepresentations and other undesirable practices attributed to door-to-door selling in the popular press. Even though this was a welcome report, Brouse concluded that lack of consumer awareness as well as lack of knowledge about how to use the Code might be major reasons why more complaints did not surface, and suggested that greater promotion was necessary to make the Code more meaningful to consumers.

Action Program. In 1971 the DSA Board formed a Code of Ethics Implementation Subcommittee chaired by Jack Hamilton of Wear-Ever Aluminum. Its task was to devise an action program to enliven the understanding and use of the Code among DSA member firms and their salespeople. In January 1972 each DSA member firm received in the mail the product of this subcommittee's work -- a guidebook (called "Using DSA: A 'How To' Action Program") on how to make best use of that company's DSA membership, with strong emphasis on the Code of Ethics. The guidebook contained numerous promotional tools including a feature news article for company publications, a script for use at sales meetings, a press release for local community and state newspapers, and a variety of suggested letters for the company's CEO to communicate with its management and staff, with its field sales force, and with its state legislators and local councilmen. In addition, a new brochure was devised, with the title "The Direct Selling Association Opens the Door to Consumer Protection," highlighting for consumers the key factors in the Code of Ethics and other suggestions about buying in a direct selling transaction. Avon funded the initial printing of one million of these brochures, and each DSA member firm received 200 copies free, with additional quantities available at a nominal cost. A small booklet containing the DSA Code of Ethics and Regulations was also printed and made available to member companies at ten cents each.

As part of this program, the Implementation Subcommittee solicited examples from DSA member companies of how they used the guidebook materials, the brochure, the Code booklet, and of any other promotional activities related to the Code of Ethics. The Kirby Company purchased more than 500,000 copies of the brochure in 1972 for its salespeople to pass along to their customers and prospects, and eventually purchased and distributed more than one million copies. At least thirty other DSA member firms purchased additional copies of the brochure, and a dozen or more purchased copies of the Code and Regulations booklet.

Many companies provided examples of their own promotional efforts to be shared with the

DSA membership. For example, Hanover Shoe featured a discussion of the DSA Code of Ethics in its employee publication "Winner's Circle" and Mary Kay provided a detailed commentary about the DSA Code along with its own Code of Ethics for its beauty consultants. Mason Shoe included articles about DSA and the DSA Code in two of its issues of "Mason Shoe Dealer News" sent to its sales representatives. Shaklee distributed the "Opens the Door" brochure to all of its salespeople along with a cover letter, and reinforced the message with a feature article in its "Sales Survey" publication sent to its sales force. Sarah Coventry sent a number of messages to its sales representatives (hostesses) regarding the DSA and its Code, and one example distributed in February 1972 appears in Table 5.

Sarah Coventry also devised a special research study among its hostesses in Los Angeles County, to gain their reactions to the "Opens the Door" brochure. After the mailing of the brochure and an accompanying detailed description of its contents, a follow-up survey was conducted in March 1973 containing a half-dozen questions. Los Angeles was chosen because, in the words of company management, "Allegedly it has a higher incidence of consumer remorse caused by direct sellers." Of those who remembered receiving the brochure, 64% affirmed that it supplied them with useful information, and 48% stated that they were not aware of the Direct Selling Association prior to receiving the brochure.

Concluding comments on the results of this survey were printed in the final report as follows:

The D.S.A. Code of Ethics does have meaning for consumers and broader promotion may result in many more people taking advantage of it. Most respondents indicated they would contact Sarah Coventry if any problem occurred. They clearly attributed their positive feeling about the Direct Selling Association to Sarah Coventry since the brochure was provided by us.

Unquestionably the act of sending such a brochure was a good-will gesture. The respondents seemed to appreciate receiving this information. Inquiries and complaints should, however, be sent to D.S.A. not Sarah Coventry. For this to happen the code must be promoted by the Association. It would be expensive and the directors must determine whether or not they want a working code of ethics or a sales tool.

The Sarah Coventry survey highlighted a major issue limiting the enthusiasm of some company executives regarding the Code. Will promoting the Code bring more harm than good? Will it induce more complaints than it will garner good will? This nagging issue was undoubtedly a reason why a number of DSA member firms were reluctant to participate in the Code Action Program.

That, in turn, was troublesome to the DSA Board, who in October 1972 authorized President Brouse to contact ten member companies that were not participating in the Code Action Program to try to convince them to implement the program (or to find out why they would not). Feedback from this sample of ten would then better detail the issues and challenges that needed addressing.

The Sarah Coventry survey also pointed out a key challenge for DSA. To what extent should the association carry out a full-blown promotional campaign about the Code of Ethics and the Association itself among consumers? The answer to this question, if there was a clear answer at all, would depend somewhat on another promotional program in force at the same time -- the Wisconsin Project.

The Pilot Program in Wisconsin. The Wisconsin Project was the creation of the DSA Board Public Relations Committee chaired by Al Winfrey of Sarah Coventry. Its purpose was to test the market reaction to a consumer assistance program designed around the Code of Ethics, and to determine the best methods of promoting the Code nationwide. A single state was selected to minimize cost and staff time needed, and Wisconsin was chosen as the test state because it had an active statewide consumer protection program and offered a good cross-section of urban, suburban, and rural populations. Answers were sought to a number of questions. For instance, what did consumers think about this assistance program? Would they write in requesting information and names of companies that pledged to follow the Code? Could DSA spokespersons get air time on television and radio, especially in call-in talk shows? Would the print media consider this program newsworthy enough to provide it with space? The program began in May 1972 and was scheduled to run until the end of July.

Letters, press releases, and copies of the "Opens the Door" brochure were sent to many Wisconsin media and public service agencies. For instance, 88 Wisconsin Extension Home Economists were contacted, as were 244 Wisconsin Chambers of Commerce, 23 Wisconsin Better Business Bureaus, and all daily and weekly newspapers in the state with attention to their editorial page writers and consumer affairs editors. DSA President Brouse made a number of appearances on radio and television programs, in some cases on panels with the Wisconsin Attorney General. He also appeared on the nationally-broadcast Bess Myerson (New York City Commissioner of Consumer Affairs) television show, "What Every Woman Wants to Know" as well as on a segment of a five-part consumer series on door-to-door selling emanating from Washington, DC and as a panelist along with a consumer columnist and FTC staff member on an NBC "Consumer" program.

The Wisconsin Project and the action program by the Implementation Subcommittee were mutually reinforcing, and considerable press publicity was generated. Hamilton, the chairman of the Implementation Subcommittee, noted in the October 1972 DSA Board meeting that the Wisconsin program was successful, but the results were not entirely conclusive. To carry out another test or a full-scale national program would have required a special assessment from each association member because the cost and personal staff effort needed to elicit publicity was

extensive. Instead, the focus shifted from a broad-based publicity effort to encouraging each member company and its salespeople to communicate directly with their consumers. Reaching the market that way was deemed a more efficient method for the industry and more effective to the overall success of Code promotion. Ironically, those companies that did an effective communication job with their consumers were the same ones that experienced increasing numbers of complaints. While the rising number of complaints was good evidence that these companies were doing their promotional job, the results were also making other member firms wary of giving Code promotion an all-out effort.

Other Promotional Activities. A direct follow-up to the Wisconsin Project was not forthcoming, but instead a number of other efforts were devised as part of a more continuing campaign at promoting the Code and DSA in general. For instance, consumer relations workshops were scheduled at the DSA annual meetings. A new member service publication was initiated in October 1972 titled "Overview: Techniques for Developing a Sound Consumer Relations Program," and contained descriptions of member company programs and activities to promote the Code of Ethics and a strong consumer orientation. The first two issues of this publication featured the experiences of Wear-Ever Aluminum and Grolier. DSA produced a 60-second public service announcement in 1973 to tell consumers about DSA member companies and the code of ethics they have pledged to uphold. It was sent to 200 television stations in conjunction with Consumer Information Week, the first week of May, under the sponsorship of the Council of Better Business Bureaus. Shortly thereafter in early 1974, DSA produced a Code of Ethics slide presentation with a coordinated tape-recorded narrative to be made available to any public group. This 80-slide presentation openly addressed the problems attributed to direct selling in the past, and provided a detailed look at the DSA Code of Ethics and the administrative process whereby consumers could file complaints and get them resolved. Appendix E reproduces some of the slides and brief quotes from the narrative.

The leaders of DSA member firms began to look for other ways to bring awareness and understanding of legitimate direct selling to the marketplace. From various individual and Board discussions came the idea of forming the Direct Selling Education Foundation (DSEF), with the purposes of educating consumers, government agencies, consumer protection groups, and the general public through adult education programs, films, pamphlets, youth activities, scholarships, and research undertakings. DSEF was incorporated in late 1973 as a not-for-profit public educational organization and has since sponsored many consumer conferences, academic seminars, research projects, and exchange programs between direct selling executives and college professors, as well as many publications and information sources. The history of DSEF is, however, another story, and is not further elaborated in this narrative.

Communications With Government and Regulatory Officials. While getting the DSA ethics

story to consumers and salespeople for direct selling firms was proving a challenge, the story was reaching government and regulatory officials with some effectiveness. President Nixon, who in October 1969 and again in February 1971 sent messages to Congress about consumer problems and buyer's rights, sent his greetings to the assembled attendees at the DSA annual meeting in 1970, noting:

You have done much to further the development of self-regulatory business practices that are among the most prized aspects of our free enterprise system.

Representative Louis C. Wyman of New Hampshire was quoted on October 14, 1970 in the *Congressional Record* as follows:

When the subject of industry and business is raised many consumers frequently react negatively and we are told of the indifferent attitude of the retailer toward the buying public. Companies are now beginning to do something about this. One such organization is the Direct Selling Association with headquarters in Washington whose membership reflects the proud tradition of our free enterprise system. This association is reacting positively to counteract the increasing negativism among today's shoppers and at the same time taking steps to correct existing abuses and assure customer satisfaction from member companies.

He then inserted into the Record a laudatory article from a New Hampshire newspaper describing the DSA Code of Ethics. A few months later, on February 17, 1971, Representative Charles H. Wilson of California, spoke favorably on the House floor about employment opportunities provided by direct selling, and then noted that the DSA

... is keenly aware of its responsibilities to the consumer and seeks to take positive action to insure that deceptive and unethical practices are, as far as practicable, eliminated. Recently, the DSA promulgated a code of ethics and regulations which sets forth the fair and ethical principles and practices to which all member companies must adhere. In addition, the mechanisms for implementing the code have also been established and the association is mandatorily required to initiate appropriate action with State or Federal enforcement agencies to right a wrong that has come to light. Ralph Nader recently held a seminar on what he termed "corporate whistle-blowing."

The Direct Selling Association has built this concept into its rules of procedure and has insured that unremedied violations of their code of ethics will result in the offender being turned over to the proper Government agency for prosecution.

Government and regulatory officials were one of the target groups receiving communications in the action program of the DSA Board's Ethics Implementation Subcommittee. Many of these communications were acknowledged. For instance, the Washington D.C. Regional Director of the FTC responded on February 9, 1972, requesting additional copies of the Code of Ethics and other brochures so that his office could distribute them to consumer groups. Acknowledgement letters were also received from other FTC Regional Directors in New York and Chicago as well as from individuals in other government agencies. Virginia Knauer, Special Assistant to President Nixon for Consumer Affairs, responded by noting in one of her syndicated newspaper columns that

DSA promotes consumer awareness of how to distinguish the honest operator from the dishonest one and enforces a code of ethics whereby association members pledge themselves to deal fairly with consumers.

Even Ella, in his detailed critical analysis of pyramid schemes among direct selling firms, praised the DSA Code of Ethics and noted that the DSA members utilizing a multi-level form of direct selling appear not to be guilty of the pyramid abuses he discussed (Ella 1973, p. 392).

A particularly proactive communication effort initiated by DSA officials in 1973 involved the development of code exemption programs. As noted in Part One, ordinances restricting direct selling in local communities or requiring the direct salesperson to obtain expensive licenses began appearing in the 1930s. DSA actively opposed such ordinances as discriminatory against its method of retailing, discouraging to prospective direct salespeople, and often ineffective in controlling those who intend to be unethical anyway. W. Alan Luce, then a member of the DSA legal staff, conceived the idea that these ordinances incorporate the language of the DSA Code of Ethics, including administrative procedures, with the stipulation that salespeople from DSA member companies be exempt from such ordinances because they already are subject to the Code of Ethics. This idea was developed further by the DSA Government Relations Committee, chaired by Joseph Gannon of Electrolux, and efforts were planned to propose this program in "test" areas where local ordinances were then being considered. Luce drafted the appropriate language for incorporation into the licensing ordinance, and its first test in Lansing Michigan was successful. As a result, the Government Relations Committee pursued the same strategy in other local areas, and attained code exemption clauses in many, such as Bloomington Indiana, Forsyth County North Carolina, Prince Georges County Maryland, Downers Grove Illinois, and several smaller communities. Attempts were also made to convince state government officials to use the DSA Code as a model for state legislation, but these efforts did not prove successful.

Complaints Resulting Under the Code. A nagging fear of many in DSA member companies was the number of complaints that would be stimulated just because a Code of Ethics existed. They believed that the Code was like an invitation, a reminder, perhaps even an encouragement to express dissatisfaction. But the anxiety about these expectations was not deserved, as only 25 complaints were filed during the first full year the Code was in effect. In fact, as already noted earlier, this very small number implied to some association officials that awareness and knowledge of the Code were far below desired levels if the Code was to be a meaningful factor in bettering the image of the industry.

But even after the various promotional and public relations efforts just described, the level of complaints activated by the Code remained very small. While detailed records were never kept in a regular reporting format, various reports to the DSA Board as well as interview recollections by association executives produce this scorecard:

<u>Year</u>	<u>Number of Complaints Involving DSA Member Companies</u>	<u>Number of Complaints Involving Non-Member Companies</u>
1970-71	25	
1974	67	
1976	49	118
1977	42	74
1979-84	40 (average per year)	

A precise number of complaints is difficult to specify because the existence of the Code and its regulatory procedures most likely prompted individual companies to take swift action on many complaints in order to prevent the issue from finding its way to the Code Administrator. In some cases, these companies devised their own formal procedures patterned after the DSA Code and its regulations. Others developed different complaint programs as discussed further on.

Other information about the complaints is sketchy, but some patterns were observed over those years. For instance, the above data indicates that complaints about non-DSA direct sellers outnumbered the complaints about member firms nearly two to one. The topic of the complaints fell into one of three general categories. About one-half involved dissatisfaction with the product or service and a request for refund. Next in number were complaints about billing problems, and a small proportion of about ten percent involved merchandise delivery problems. High-ticket products generated more discontent than did low-ticket items, and as the makeup of DSA evolved toward a higher proportion of companies selling low-ticket items, the incidence of complaints declined as well. By 1980 a sizeable portion of the complaints involved salespeople's relationships with their company, equalling or exceeding the portion emanating from ultimate customers. And not all complaints were judged to be legitimate -- about one in ten were determined to be unjustified. In

retrospect, the initial anxiety about a potential flood of complaints was clearly mitigated. Even up to 1992, no alleged code violation ever resulted in a DSA member expulsion or a case being transmitted to any court or government regulatory agency.

One particular complaint program developed during the early years of the Code was the Zero Complaint Program. This was instigated by Stanley Home Products and supported by DSA, with the objective of rewarding salespeople whose customers bring no consumer complaints against them to DSA or to their company. In its second year of operation, nearly fifty percent of Stanley dealers qualified for the award. Wear-Ever also participated in the Zero Complaint Program where it likewise generated an enthusiastic reception and produced a zero complaint award for 61 of the company's field staff. The underlying intention of this program was to motivate the salespeople to handle customer complaints in a timely and effective manner before they came to the attention of higher company officials or DSA. The zero complaint award recipient received recognition as one with a high standard of ethical conduct. Unfortunately, DSA soon realized that one way for a salesperson to avoid complaints was to fail to publicize the Code to his or her customers in the first place, a potentially counter-productive result, and the association ended its support and the award program in 1980.

Another complaint program that was initiated by association members was the "cool line" -- a direct access telephone line to someone with authority to solve a problem. Grolier initiated this service in early 1972, printing the telephone number on every contract and indicating that customers can call collect with any questions or concerns. In one month (September 1972), for example, Grolier accepted 233 calls on the "cool line" from the more than 6,300 customers purchasing that month. Of the accepted calls, 58 were requests to cancel the contract while the remainder involved questions about the merchandise or payment arrangements. Thus, about 3.5% of its buyers used this telephone service and of these about one-fourth canceled their contract, a cancellation rate of less than 1%.

Wear-Ever launched a test of a similar program, called "Action Line," in one of its six market areas in late 1971. In its analysis of the results from 288 calls over one year, this company noted that the telephone was only half as costly as communicating with the callers by letter, and the sense of urgency and courtesy communicated to customers in answering their questions and correcting any problems with this method averted any order cancellations. Based on this test, Wear-Ever expanded its "Action Line" to a national program in late 1972.

Effects on DSA Membership. The existence of a meaningful code, with serious enforcement intentions, could have produced a number of reactions on existing and potential members. In terms of number of members, the Code might have hindered some prospects from joining either because their history or policies did not square with the intentions of the Code and thus they did not apply or because their application, once received, was not acted upon favorably after DSA scrutiny. This scrutiny consisted of a one-year period of review from the time of application before acceptance as

a member. As noted earlier, Holiday Magic never did survive this scrutiny. On the other hand, the Code and DSA membership provided a mark of legitimacy, and that might be enticing enough to attract members who otherwise would not see enough benefits in joining the association. Complaints filed against nonmembers gave the Code Administrator an opportunity to contact those companies and perhaps suggest that they consider joining and thus pledging to abide by the Code's conditions. On balance, it was the feeling of association executives that the Code attracted about as many new members as it discouraged.

The year-long screening process of applicants had a qualitative impact as well, since it allowed DSA officials to identify aspects of the applicant's policies and practices that presented ethical or legal questions and that could be revised to fall in line with Code standards. Thus, some applicants with questionable behavior at time of application were able to upgrade their ways in time to gain membership. Furthermore, the Code that had gained at least tacit approval by the FTC gave DSA officials some solid criteria for this screening, criteria that had legal substance.

The Code affected the membership in other ways as well. For instance, it represented a serious stance on ethical priorities, and this stance became the foundation for effective peer pressure to improve ethical behavior among all DSA members. Member companies were encouraged to devise their own ethics codes and to use their own codes or the DSA Code as a tool for attracting desirable sales recruits. The Code became a major factor in supporting the association's philosophy on regulation. Prior to having this Code, for instance, DSA was generally opposed to any and all attempts at regulation at the federal, state, or local levels. But as the Code was being developed, debated, and deployed, the association gained a new perspective on the need for and value of regulation in its competitive and marketplace environment, and moved to a more supportive position as in the case of the FTC's trade regulation rule on the cooling-off period. In general, there was certainly pride from successfully establishing this Code as well as satisfaction from the good experiences (and unfounded anxieties) resulting under the Code. Perhaps these feelings helped restore and support the a strong confidence among DSA members that their mode of business -- personal selling direct to consumers -- was in fact a most proper as well as enticing challenge and opportunity as they had believed and hoped in the past.

PART FOUR

ADVANCING THE CODE

Many codes of ethics are formed like edicts, recorded on parchment, and displayed to decorate the walls of offices and reception rooms. Once in place, such codes often serve ceremoniously as a monument signifying that some important declaration or event occurred in the past. Most monuments are built to be permanent, unchanging, and symbolic, and eventually blend into their surroundings without evoking much attention, interest, or dispute. Codes of ethics like these have little meaning in their organizations. A meaningful code gains the attention of those whose behavior it purports to influence because it nurtures that behavior. Nurturing is providing for needs, and must include adjusting the provisions as needs evolve and emerge. As long as ethical issues are deemed significant to address, ethics codes must remain viable and open to enhancement. A viable code is one that prompts ongoing reference, reaffirmation, reflection, review, and revision.

The DSA Code was not destined to be a monument. Once passed, it was not considered a finished task, but rather the beginning of a mission. In nearly every DSA Board and also Executive Committee meeting following the Code's passage, some agenda item or other discussion occurred relating to the Code. The Code of Ethics Committee of the DSA Board remained active and the charge given to the Code Administrator included making suggestions for "new regulations, definitions, or other implementations to more fully give full effect" to the Code. As noted in the following sections, the Code Administrators responded to this charge a number of times, and many amendments and changes in the Code were forthcoming from the Committee as well. We now look at these changes in both the Code and its Regulations, organized by major chronological period from its inception in 1970 through the major amendments in 1992.

The First Amendment in 1974

The first amendment to the Code involved pyramid sales schemes. Impetus for this action no doubt stemmed from various FTC actions discussed earlier regarding the alleged pyramid operations of Holiday Magic, Koscot, Bestline, Dare-To-Be-Great, and others. As already noted, DSA never did act on Holiday Magic's application for association membership, leading to a lawsuit that was settled in 1973. Thus, the matter of pyramid operations was very much an industry issue in the early 1970s.

Incorporating a statement into the Code regarding pyramid schemes was a tricky thing, however, since the Code focused on consumer relationships and pyramids had more to do with the internal structure of the distribution system. Relationships between the direct selling company and its salespeople were not explicitly covered by the Code, and yet it was that type of relationship that pyramid schemes involved. In the Executive Committee meeting of July 23, 1973, the kinds of transactions to which the Code of Ethics applied was the focus of discussion, with specific attention

to the meaning of the term "consumer transaction." If pyramid schemes were to fall under the purview of the Code, the Code Administrator must have the authority to review the salient facts regarding the alleged offense, and thus far these offenses came in the form of consumer complaints. A pyramid scheme, however, might not be brought to light through a consumer complaint, but rather would be best identified by a review of the questionable firm's compensation plan -- did it pay a salesperson for recruiting others regardless of whether any consumer sales volume was involved?

The Executive Committee discussion led to the conclusion that pyramid schemes should be defined as deceptive consumer practices, unfair to consumers because income was being generated for some in the sales hierarchy who were not participating in a bona fide sales transaction. Individuals victimized by such schemes, by having to pay for the privilege of becoming a salesperson or distributor, were deemed to fall under the purview of the Code Administrator and became actionable as consumer complaints. The proposed amendment was then written in a highly descriptive manner as follows:

The term "pyramid sales scheme" includes any plan or operation for the sale or distribution of goods, services, or other property which contains any provision for increasing participation in the plan through a chain process, whereby a participant pays a valuable consideration for the right, privilege, license, chance, or opportunity

(a) to receive compensation for introducing one or more additional persons into participation in the plan, each of whom receives the same or similar right, privilege, license, chance, or opportunity; or

(b) to receive compensation when a person introduced by the participant introduces one or more additional persons into participation into the plan, each of whom receives the same or similar right, privilege, license, chance or opportunity.

Between the date of this Executive Committee meeting and the Board of Directors meeting at which the amendment was to be voted for approval, the wording of the amendment was substantially changed by the recommendation of the Government Relations Committee to be much less descriptive (and hence much less limiting). At the Board meeting of November 14, 1974, the following rewritten amendment was approved as the first official change in the Ethics Code:

VIII. Amendments

Amendment 1. For the purpose of this Code, pyramid or endless chain schemes shall be considered consumer transactions actionable under this Code. The Code

Administrator shall determine whether such pyramid or endless chain schemes constitute a violation of this Code in accordance with applicable Federal, state and/or local law or regulation.

Administrative Changes, 1974-1978

The Code as originally approved required that any complaint must be submitted in writing to the Code Administrator before Code procedures could be invoked. In addition, some discussion took place in a 1972 Board meeting about the meaning of the term "trade" practice in Code item V. A subcommittee had been established to define this term and to review and clarify administrative procedures under the Code. This activity preceded the already-noted 1973 discussion about the meaning of what constituted a "consumer transaction." Thus, the precise meaning of various Code statements was being fine-tuned, and issues were appearing that would eventually lead to adjustments in wording.

One issue emerging at this time concerned what, if anything, to do should one member company initiate a complaint against another member company. Such situations were not interpreted as falling within the purview of the Code if they did not constitute consumer complaints, and the subcommittee recommended that those situations should be handled "informally" without spelling out any exact procedures or recommendations to modify the Code.

In late 1974, Code Administrator Roberts proposed to the Board that a specific statement be placed into the Code Regulations concerning an informal investigation procedure consisting of a hearing to gather evidence and take testimony. Following the hearing, Roberts proposed that the Administrator draw a conclusion and communicate the evidence and his decision to the interested parties, though the decision emanating from this informal investigation would not be binding on any party that was dissatisfied with the result, and in such cases the formal procedures would be carried forth. The Board approved this addition to the Code, and the informal investigation stage remains a part of the Code Regulations today though modified somewhat in procedure.

A series of changes in the Code occurred in 1975, many of which were designed to speed up the process so that complaints could be resolved more quickly. For instance, the accused member firm was now asked to provide any response to an initial complaint within seven days of being notified by the Code Administrator. Prior to this, no time period was specified. In the section on Post-Investigative Procedure (now Section 3 following the Informal Investigation section), the thirty days allowed for the accused firm to rebut the complaint or take corrective action was reduced to fifteen. In the next section involving the hearing procedure, the ten-day period for providing outlines by the Administrator and accused firm was reduced to five days, and the thirty days notice to the accused member of the hearing date was reduced to fifteen. Other events in this procedure for which no time periods had been specified now were tied to a maximum time span.

In 1975 Congress enacted the Magnuson-Moss FTC Improvement Act (Public Law 93-637) which strengthened the FTC as a consumer protection agency (Udell and Fischer 1977). Among its many provisions and implications was the requirement that warranty terms be disclosed to consumers in clear and easily-understood language. To reflect the relevance of this new legislation, item II in the Code regarding guarantees was rewritten to refer specifically to Public Law 93-637 instead of the previous wording that referenced the "Deceptive Advertising Guidelines" of the FTC.

A difficult and controversial issue since the inception of the Code concerned the independent contractor status of the sales representatives working for the vast majority of direct selling firms. The direct selling firm has no direct legal control over the behavior of these independent contractors, and thus could attempt to refuse responsibility for their unethical or illegal practices. While that rationale might be expedient to excuse some deceptive practices in the marketplace, it did not relieve the industry of the image problems created by such practices. Thus, Code item VI Part C was incorporated to place the responsibility for the actions of these independent contractors that violate the Code squarely on their employing principals, even if the latter could claim no knowledge of the violations.

Two changes were made in this section of the Code to reinforce and clarify its intention. One involved replacing the term "grossly" with "culpably" in "culpably negligent by failing to establish procedures whereby the member would be kept informed of the activity of its solicitors and representatives." The term "culpable" has clear and strong connotations of being guilty or morally faulty, thus implying that lack of attention to the behavior of its salespeople is tantamount to irresponsibility.

The second change was the addition of a statement again confronting the independent contractor issue but making clear that the legal independent status of such persons was not being negated. Its purpose was to reinforce the tone of responsibility in what was already stated in this section but also to reaffirm that the independent status of its sales reps was fully recognized. This statement, which was approved in May 1975, read as follows:

For the purposes of this code, in the interest of fostering consumer protection, companies shall voluntarily not raise the independent contractor status of salespersons distributing their products or services as a defense against code violation allegations and such action shall not be construed to be a waiver of the companies' right to raise such defense under any other circumstance.

Code Administrator Henry Robinson offered a series of recommended minor changes in early 1978 as the result of his review of complaints from the previous year. One issue involved giving the Administrator authority to initiate action when he finds a pattern of violations by the same

member company even though restitution has been made in those individual cases brought by others to his attention. Another change was the deletion of part C under item III, Terms of Sale, since an FTC ruling made that disclosure no longer necessary. Other small changes were likewise recommended and enacted, though many of these were eventually further amended in later years. Once again, however, these actions demonstrated that the Code Administrators showed concern for their mission and were vigilant in seeking improvements in Code effectiveness.

Major Code Revisions, 1978-1979

The Chairman of the DSA Board in 1978 was Robert H. King of Time-Life Libraries, Inc. In the interim period between Code Administrators Robinson and Rogal, King appointed a study committee to revise the Code. That committee included the chairmen of the Government Affairs and Consumer Relations Committees as well as the chairman of the Lawyers Council, which included attorneys from association member firms and the DSA staff. The first discussion of recommended changes from this study committee was made in an October 1978 Executive Committee meeting, and covered such topics as the elimination of the special code of ethics investigation committee, an increase in authority of the Code Administrator, and the creation of some specific new sanctions that the Code Administrator would be empowered to impose.

In December 1978 Rogal was introduced to the Board as the new Code Administrator and in March 1979 the new Code amendments were presented to the Board and passed. In essence, the special ethics committee, which was heretofore assembled from Board members to officiate at a formal hearing described in Regulation 4 of the initial Code, was no longer part of the process, and instead the complainant and the accused company would present their case in a formal hearing to the Administrator. After hearing the evidence, the Administrator could do one or more of the following:

1. request complete monetary restitution to the consumer for the products in question;
2. request the replacement or repair of products;
3. request the accused to make a voluntary contribution to a fund for publicizing the Code; and
4. request the accused to submit a written commitment to abide by the Code and diligently avoid future practices that produced the complaint at hand.

A new section in the Code statement, called "Powers of the Administrator," was written to incorporate the above new sanctions. Following that was another new section, called "Appeal to Outside Arbitrator," that described how an accused member may appeal the Administrator's decision to an independent arbitrator and what particular steps to follow in that process.

A few other small changes in wording and structure of the Code also occurred. For instance, what was section V of the original Code on "Deceptive or Unlawful Trade Practices" became item

1 titled "Deceptive or Unlawful Consumer Practices." Amendment 1 dealing with pyramid schemes became item 5 within the Code itself, and what was previously Code section IV on "Responsibility" was now shifted to a new major section B titled "Responsibilities and Duties."

Changes in 1980s

After eighteen months as Code Administrator, Rogal sent some written suggestions to James Preston of Avon Products, Inc., the Chairman of the DSA Board in 1980. His letter thoughtfully delineated some recommended changes and the reasoning supporting the changes. For instance, Rogal stated his belief that the Administrator should be able to initiate a preliminary investigation when he has reason to believe that a member has violated the Code, even though no complaining party has put the complaint in writing. Earlier discussions in 1972 and 1973 had also touched on this issue. Rogal noted that

It would be very distressing to have to tell an Action Line reporter, BBB official, state regulator, or an illiterate that I could not proceed in the absence of a written complaint. The Administrator should be free to determine the *bona fides* of a complaint and to exercise discretion and good judgment as to whether to proceed.

Another point in his letter concerned the lack of authority granted to the Administrator with respect to minor violations that do not merit a formal hearing procedure. He noted that "by far the greatest number of complaints fall into this category," and urged that the Administrator be given the authority to remedy such alleged violations through informal oral or written communication with the accused member company.

Rogal proposed some specific amendments to the Code to incorporate these and a few other small suggested changes. Then he concluded his letter by urging the Board to consider a "substantive amendment which would clearly provide that a member who refuses to abide by the Code or to cooperate in its enforcement would be dropped from membership." He noted that the antitrust laws do not prohibit such a code provision, but that the grounds leading to expulsion must be strong enough to withstand a possible court challenge, including such things as practices that are "illegal, unconscionable or otherwise morally indefensible."

The recommended amendments in Rogal's letter were approved by the Board on December 11, 1980, though the issue of expulsion was not yet acted upon. The discussion of these procedural amendments led to further conversation of the need to more actively promote the Code to association members and inform them of the role of the Code Administrator. The Consumer Affairs Committee was charged with developing a plan to increase awareness of the Code among all current and new members. These Board discussions about Code awareness among association members had occurred periodically in the past, and the reiteration of this same issue now suggested that perhaps

the DSA Code of Ethics was not of paramount interest to some association member firms or perhaps was still not understood as a benefit to their success.

In the January 1981 Executive Committee meeting, a discussion focused on the launching of a Code reimbursement fund. This would involve establishing a funding source from which the Administrator could make cash refunds to customers whose complaints appeared justified, and subsequently reimburse the fund by collecting the amount from the errant company. One question concerned the maximum amount that could be refunded to any one customer at the discretion of the Administrator. At the next meeting of this Committee in May, a motion was approved that

authorized the DSA Code Administrator to refund money to aggrieved consumers before resolution of complaints when the Administrator deemed the complaint was justified and that the best interests of the industry be served by immediate refund. The Administrator is authorized to make individual refunds up to an amount of \$200 and seek restitution from the company after the fact.

An amount of \$7,500 from DSA's general operating revenues was authorized as the basis for this fund.

Over the next few years, no major Code amendments occurred. But in 1985 some old issues re-emerged in both Executive Committee and Board meetings. These issues involved strengthening the sanctions within the Code, including the possibility of expulsion from membership, and improving awareness of the Code especially among the field sales personnel of association members. Paul Greenberg of Shaklee Corporation was appointed as chair of a Code of Ethics Revision Committee to consider various possible amendments in cooperation with Code Administrator Rogal.

In a follow-up to his suggestion in his 1980 letter, Rogal wrote a detailed letter to the J. Stanley Fredrick of Cameo Coutures, Inc., the DSA Board Chairman in 1986. This letter expanded on Rogal's concern about members who refuse to abide by the Code or cooperate in its enforcement. He noted that the Code does permit the Administrator to refer any probable law violations by noncooperative member firms to government agencies. But he also noted this was not a satisfactory solution in cases of refusal to cooperate because the dockets of courts and other government agencies are crowded and the reported problem might not be investigated for a long time, if ever. Under those conditions, the suspected violation might continue, and the authority of the Code would be greatly weakened if not completely impugned. He went on to say:

In my opinion, a refusal to cooperate with the investigative requests of the Administrator is a greater offense against the Code than conducting a pyramid

scheme or engaging in some other unfair consumer practice. Without authority, the Code Administrator is a figurehead and the Code is, at best, a mere recital of ethical principles. I am sure that the board, our officers, and the great majority of the membership would not want that to happen.

Therefore, we need a solution other than referral and the only solution I can think of is to remove the offender from membership. I believe that membership can be canceled without fear of successful legal reprisal as long as the member is afforded an opportunity to appear and defend itself. I suggest that the procedure would commence with a letter from the Code Administrator affording the member an opportunity to appear before the Board of Directors (or a committee) to show cause why his membership should not be discontinued for refusal to cooperate with an investigation. In such a proceeding the substance of the consumer complainant's allegations would not be an issue. Without an investigation the Administrator would be unable to prove that an unfair act or practice had taken place and, indeed, the Board should never be asked to rule on questions of that type.

On December 3, 1986, Rogal's recommendation was placed before the Board in the form of an amendment to be included under the section "Regulations for Enforcement of DSA Code of Ethics." After some discussion, the amendment was approved as follows:

In the event a member refuses to cooperate with the Administrator and refuses to supply necessary information, documentation and explanatory comment, the Administrator shall serve upon the member, by registered mail, a notice affording the member an opportunity to appear before the Board of Directors on a certain date to show cause why its membership in the Direct Selling Association should not be terminated. In the event the member refuses to appear before the Board or refuses to comply with the Board's decision, the Board may terminate the offender's membership without further notice or proceedings.

Changes in the 1990s

The next round of major Code amendments began in December 1990 with the appointment of W. Alan Luce of Tupperware to chair an Ethics Task Force. Its charge was to deal with such issues as exaggerated earnings claims in recruiting salespeople, inventory loading, and other aspects dealing with multi-level marketing, a type of direct selling organization already discussed that was increasing rapidly in popularity. The increase in number of multi-level marketing companies was worrisome because this type of organization structure can harbor the characteristics of an illegal pyramid scheme unless it is very carefully designed and controlled. The Direct Selling Association was desirous of representing all ethical firms that utilize the direct selling channel, but did not want to sanction any firm with DSA membership that, knowingly or unknowingly, followed pyramid practices. In fact, the issue was significant enough that the legal staff of the Direct Selling Association authored a legal primer on multi-level marketing for its members and others interested in this topic (Brossi and Mariano 1991). The Amway case, discussed briefly in Part Three, established some criteria applying to a pyramid operation, including the presence of inventory loading and highly exaggerated earnings claims. These issues had not been dealt with in the DSA Code, however, because they were not directly related to ethical problems of misrepresentation in consumer transactions.

Luce's task force was thus covering new ground in looking at relationships between companies and their salespeople. While the first amendment to the Code had dealt with pyramid schemes in a broad, general manner by declaring pyramid schemes as consumer transactions, that amendment or any succeeding changes in the Code did not confront any of the specific criteria used to identify a pyramid scheme. To do so would have gone beyond the bounds of consumer transactions. But it was now to be done.

After a number of task force reports and written communications to Board members, the task force efforts produced the successful passage of three amendments in March 1992. The first amendment concerned earnings representations:

No member company shall misrepresent the actual or potential earnings of its independent salespeople. Any earnings or sales representations that are made by member companies shall be based on documented facts.

The second amendment modified an already-existing statement in the Code to apply to recruiting practices as well as consumer practices. It read:

No member company of the Association shall engage in any deceptive, unlawful, or unethical consumer or recruiting practice.

The third amendment added further to the powers of the Administrator and the Association

regarding suspension or expulsion of a member who refuses to comply with the Code. It states:

... when the Administrator, after consulting with independent legal counsel, determines that a violation of state or federal law or the Code has occurred and the member continues to refuse to comply, he may recommend to the Board that the member be suspended or terminated from Association membership. The Administrator shall serve upon the member, by registered mail, a notice affording the member the opportunity to appear before the Board of Directors or a designated part thereof to show cause why its membership in the Association should not be suspended or terminated. A suspended member, after at least 90 days, and a terminated member, after at least one year, may request the opportunity to appear before the Board of Directors or a designated part thereof, to show why its membership should be reinstated.

Note the similarity between this statement and that recommended by Rogal in 1986 in dealing with members who do not cooperate in an investigation. This amendment now afforded DSA the same power in disciplining members who do not cooperate in upholding the Code as the previous amendment did with members refusing to cooperate in an investigation.

One last major amendment was still to be approved. This involved one meaningful remedy for the problem of inventory loading. The amendment offered protection for those who join a direct selling firm, buy an inventory of products to sell, but soon realize that they are unable or unwilling to carry through this job responsibility. After substantial discussion and negotiation among members, the inventory buyback amendment was passed in June 1992, and reads as follows:

Any member company with a marketing plan that involves selling products directly or indirectly to independent salespeople shall clearly state, in its recruiting literature or contract with the independent salespeople, that the company will repurchase on reasonable commercial terms currently marketable inventory in the possession of that salesperson and purchased by that salesperson for resale prior to the termination of that salesperson's business relationship with the company or its independent salespeople. For purposes of this Code, "reasonable commercial terms" shall include the repurchase of marketable inventory within 12 months from the salesperson's date of purchase at not less than 90% of the salesperson's original net cost less appropriate