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

RE: Business Opportunity Rule, R511993

Dear Commission:

I read with interest your Notice of Proposed Rulemaking for 16 CFR Part 437 Business Opportunity Rule. I have both been a Business Opportunity buyer, seller, and have represented clients who have been presented with business opportunities and franchises, some of which have been covered under 16 CFR part 436, and others which have only been covered under state laws regulating franchises. Accordingly, I have a number of different perspectives on your proposed rule.

As a buyer and seller (as defined by your proposed rule) of business opportunities, I have been an independent business owner associated with the Quixtar business for some years now. I chose to be involved with this business because of its reputation for integrity, its high quality products, and its money-back guarantee of satisfaction. For a very low entry cost and low overhead, I and my business associates have been able to start and maintain a business that we can build to whatever degree we wish.

As an attorney representing clients who were presented with business opportunities or franchises, I have seen a wide variety of business schemes, some legitimate and some probably not so.

I also know that a number of small businesses simply choose not to comply with government regulations, whether federal, state, or local, because the cost of complying is simply too high for the business. This proposed regulation, as written, would merely add to that regulatory burden that many find too onerous now.

Accordingly, I do not think this rule should be promulgated as it is currently proposed, for the following reasons.

First, the proposed rule imposes substantial recordkeeping and disclosure

requirements on even the newest business owner. I recall when I was first introduced to the Quixtar business. Even though I had been practicing law for a number of years, I knew next to nothing about how to run my Quixtar business. What I did know was that if I was not satisfied, I could get my minimal investment (less than \$100 at the time, if I recall correctly) back. And anyone I introduced to the business who decided to take advantage of the opportunity, could do so, with the same guarantee. I learned over a period of time how to create a successful business. However, I can guarantee you that my recordkeeping at the start was abysmal, even with my business and legal background. How a layperson could be expected to keep up with the recordkeeping and notice requirements (see proposed §§ 437.2, 437.3(a) & (b), 437.4(a), and 437.6) without incurring substantial legal fees is beyond me. This proposed regulation would be just another regulatory burden that would be ignored, often even by honest and reputable businesses.

Secondly, there is no distinction in the proposed regulation on the amount of money needed to enter into the business. One that costs \$150 to join and one that costs \$1000 to join are treated the same. There is also no distinction given based on the history or longevity of the underlying business. The Quixtar business and its predecessor, the Amway Corporation, have been reputably and honestly offering individuals a business opportunity for approximately fifty years.

Third, the seven day waiting requirement is unnecessary and not in keeping with other regulatory practices. Prospective business owners (PBOs) would have to wait seven days after receiving disclosures before they could join the business, regardless of whether the business they were considering offered them all their money back if they were not satisfied. See proposed § 437.2. There is no need for this requirement, especially if the prospective business owner (PBO) can get all his or her money back if not satisfied. Other regulations, such as in-home sales and time share sales, have a three day opt out period after the contract is signed. A solution like that would be more satisfactory than the current proposal.

Fourth, the requirement to on every business owner, even the newest, to give every PBO a list of "references" – the names, addresses, and phone numbers of 10 other business owners in the area (1) infringes on the privacy of the business owners whose names are provided, (2) can potentially hurt the business owner who is introducing the PBO to the business, and (3) imposes an undue burden on the business owner, especially the newest ones. See § 437.3(a)(6) & (b). This requirement infringes on the privacy of every business owner whose name, address, and phone number was provided to the PBO. It could also penalize the business owner who is introducing the business to the PBO, because one of the ten other owners may convince the PBO to do business with him or her instead of the original business owner, since this information must be given seven days before any contractual obligations are undertaken. And finally, an undue burden is imposed by requiring, under § 437.3(b), the disclosures be updated at least quarterly, and, for the newest business owner who does not have 10 references, "the

list of references must be updated monthly.”

These are unnecessary burdens, especially when the prospective business owner (PBO) can get all his or her money back if not satisfied.

Fifth, the requirement that the PBO would have to be provided a list of all lawsuits, arbitrations, and other legal claims for the past 10 years involving the business or its business owners, regardless of whether or not the accusation was true, is unduly burdensome and would be misleading to the PBO. See § 437.3(a)(3) & (b). Thinking in particular of my experiences with Quixtar and other legitimate companies, which would undoubtedly attempt to comply with this rule, this would merely open them up to false accusations, while dishonest companies would simply ignore the rule. I think this proposal adds nothing to help the PBO make an informed decision.

Sixth, the requirement to make a different disclosure for every income claim is ambiguous and confusing, not only for the newest business owners, but also for the PBOs. The recordkeeping requirements are also onerous for the business owner See §§ 437.3(a)(2) & (b), 437.4, and 437.6. This requirement would include any examples the business owner might use during an opportunity presentation to illustrate how the business plan works. If disclosures are needed, a simple, standard, easily understood disclosure such as "average monthly gross income for 'active' business owners" should be sufficient and easily understood. This also requires retention of a number of records, some which have to be updated monthly, for a period of three years. Again, this requirement will be observed by a few, but ignored by many, even otherwise honest, business owners, because of its burden.

Finally, the rule would require business owners to provide PBOs with personal financial documents to substantiate any income claim. See § 437.4(a)(3). I know I do not provide my personal financial information to anyone other than my accountant, my banker, and my investment counselor. I certainly would not want to provide that to someone to whom I was just introduced, especially in this day and age of identity theft. This requirement would inhibit many people from even considering a business opportunity.

In closing, I have found my relationship with the Quixtar business to be profitable on a personal and business level. The principles and business techniques I have learned from that business I have successfully applied to my legal practice. I hope that my children and grandchildren will have access to a business like this in their lives. However, I believe this proposed rule would seriously inhibit them, and others, from even considering such an opportunity. And for that, and this nation, that would be a great loss.

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Please feel free to call if you have any questions. Thank you.

Sincerely yours,

Charles T. Lester, Jr.