AVON

the company for women

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

**Re: Business Opportunity Rule, R511993**

Dear Sir or Madam:

Avon Products, Inc. ("Avon") is pleased to offer its comments on the Federal Trade Commission's ("FTC's") proposed Business Opportunity Rule, 71 Fed. Reg. 19,054 (Apr. 12, 2006) (to be codified at 16 C.F.R. pt. 437). Avon is a member of the Direct Selling Association ("DSA"), a not for profit, national trade association, and intends these comments to be a supplement to the DSA comments, as they pertain particularly to Avon.

***A Public Company Recognized For Its Success and Business Ethics***

Avon is a publicly-traded manufacturer and distributor of beauty and related products with 2005 revenues of $8.1 billion. Avon has operated as a leader in its industry for 120 years. Avon is a Fortune 500 company and has the distinction of being one of only 71 companies included in the Fortune 500 ranking every year since the ratings began in 1955. Avon is also the world's largest direct seller offering earnings opportunities to approximately five million independent

Avon Sales Representatives marketing to women in more than 100 countries, including more than 450,000 Avon independent Sales Representatives in the U.S.

Avon has been recognized by *Fortune Magazine* as one of the Most Admired Companies for over fifteen years and by *Business Ethics Magazine* as one of the 100 Best Corporate Citizens. *Fortune Magazine* has also recognized Avon as one of the 50 Best Companies for Minorities and the National Association for Female Executives has ranked Avon #1 in its Top 30 Companies for Executive Women.

Avon was founded in 1886 on five values that continue to be the bedrock on which the company operates: trust, respect, belief, humility, and integrity. In order to embody those values Avon is guided by six principles:

- To Provide individuals an opportunity to earn in support of their well-being and happiness.
- To Serve families throughout the world with products of the highest quality backed by a guarantee of satisfaction.
- To Render a service to customers that is outstanding in its helpfulness and courtesy.
- To Give full recognition to employees and Representatives, on whose contributions Avon depends.
- To Meet fully the obligations of corporate citizenship by contributing to the well-being of society and the environment in which it functions.
- To Maintain and cherish the friendly spirit of Avon.

Avon also strives to serve society by dedicating itself to philanthropic activities. In 1955 Avon created the Avon Foundation to improve the lives of women, and in 2000 the Foundation became an accredited 501(c)(3) public charity in the U.S. The Avon Foundation and Avon global philanthropy focus on breast cancer and domestic violence with programs in 50 countries and a total of more than $450,000,000 raised and donated worldwide through 2005. The Avon Breast Cancer Crusade is the largest program, with a mission to advance access to care and finding a cure for breast cancer, with a focus on the medically underserved. The *Speak Out Against Domestic Violence* program was launched in 2004 to support awareness, education, direct services and prevention programs and develops community outreach and support for victims. The Avon Foundation has already awarded nearly $2.0 million to domestic violence organizations across the United States. Avon and the Avon Foundation also support emergency and disaster relief and have raised millions of dollars for the families of those lost in the September 11,

2001 attacks, families of lost or wounded servicemen in Iraq, victims of the 2004 tsunami in Asia, and victims of hurricanes Rita and Katrina.

As a leader in the direct-selling industry, Avon is proud to have been the first company in the industry to offer its Representatives a 401(a) Retirement Savings Plan, for which it received the Direct Selling Association 2002 Industry Innovation Award. Avon also offers access to health insurance to its independent Sales Representatives and their families. To promote success among its Representatives, Avon provides beauty and business training, both online and at regional sales seminars, as well as online support and guidance.

These and other key elements of our business model that will be described further in the document are aligned towards the long term success and self-fulfillment of our Representatives. For Avon to grow, Representatives need to be personally successful and satisfied, and the way that happens is through genuine product sales to customers and by encouraging others to do the same.

## AVON'S BUSINESS OPPORTUNITY

As a direct selling company, Avon relies on Sales Representatives, who are independent contractors, not employees, to sell its products. Representatives are the core of Avon's business, and because of Avon's personal method of selling, Representatives are the face of Avon. The foundation of the business opportunity is the sale of products and services to customers. No matter what level of association and achievement in the Avon business, sale of products is always a priority.

The Avon business opportunity is local in nature, where Avon Representatives are recruited through personal relationships by others within their communities. The recruitment of new Representatives by friends and associates in one's community is a testament to the credibility of the Avon model.

The opportunity serves a diverse population, and 30% of our Sales Representatives are Asian, Latin and / or African American. Earnings by Representatives from the opportunity are spent within their towns and cities and contribute to local economies everywhere throughout the United States.

The sales opportunity is one that can be tailored by each individual to her specific needs, goals and level of effort and it offers the flexibility to change over time as individual needs and goals change. With its low cost / low risk design, many Representatives take advantage of its ease of entry and exit to come and go as their needs / goals change. It is this flexibility that attracts new recruits and, while there is turnover in the sales force as there is in any direct selling company, the legitimacy of the model is demonstrated by the fact that prior Representatives return, either seasonally or when their life circumstances permit. Based on the

activity mentioned above, Avon is continually reassured that its business model is designed to help each Representative succeed.

The Avon opportunity has two paths: (1) "single" level direct selling and (2) a limited multilevel structure.

***Sales Representatives***

Sales Representatives are "single" level Representatives recruited by District Sales Managers, who are employees of Avon, or by Sales Leadership Representatives (explained below). Representatives pay $10 for the opportunity to join the Avon family and sell Avon products. They are coached by the District Sales Managers and / or Sales Leadership Representatives, and trained to achieve long-term success. They purchase products directly from Avon based on orders they have received from customers, typically friends, family, neighbors, and co-workers, by pre-selling through the Avon brochure (distributed every two weeks). **It is important to note that there are no inventory requirements.** Avon believes this fact is crucial in distinguishing Avon's well thought out, long-standing, business model from those of fraudulent companies cited in the Notice to Proposed Rulemaking ("NPR").

Representative earnings are based on the difference between the discount they receive off the suggested retail brochure price when ordering products from Avon and the price at which they resell the products to their customers. **They remit payment to Avon for the orders only after they have received / delivered the products to the customers and received payment from the customers.** There are no additional, direct "up-front" fees other than the $10 they initially pay for the opportunity, which includes an appointment kit.

The earnings structure is transparent, simple and easy to understand. The discounts they receive are based on their purchase amount / "order size" as follows:

| Order Size | Discount * |
|---|---|
| $1,550 or more | 50% |
| $900 – $1,549 | 45% |
| $425 - $899 | 40% |
| $285 - $424 | 35% |
| $145 - $284 | 30% |
| $25 - $144 | 20% |
| $0 - $24 | 0% |

* Discounts are based on sales from Avon's core product line.

The Avon opportunity – low cost / low risk – often attracts part-time sellers who wish to purchase product at a discount, earn some extra money to

supplement the family income, or, in some cases, earn money for a specific need, such as Christmas or a vacation. Since the opportunity has such ease of entry, many sellers approach the opportunity with a "modest" goal in mind. These individuals usually work on a part-time basis for several months and then leave once their goal is achieved. They may re-enroll at a later date with another goal in mind. Of course, there are many Representatives who have an entrepreneurial drive and find their "niche" in selling Avon products. These independent Sales Representatives can develop a long-term Avon business that provides a livelihood for them and their families.

***Sales Leadership Representatives***

Some of Avon's entrepreneurial sellers become Sales Leadership Representatives and recruit and help train a team of additional Representatives. These Sales Leadership Representatives begin as "single" level Representatives who may qualify for the Avon Sales Leadership program by showing they can successfully recruit and train others. This program is based on a limited multilevel compensation structure.

Avon Sales Leadership Representatives receive earnings through "discounts" on products they purchase and sell to others, as well as earn bonuses based on the sales of those they have recruited. They may purchase a fully refundable $60 Sales Leadership Career Start-up Kit. They are responsible for training and mentoring those whom they recruit and are accountable for the success of those recruits. However, Avon (the company) is always available for assistance that may be required by any Representative. In fact, Avon's unique structure includes company employees, both District Sales Managers and Division Sales Managers, who are always ready to assist Representatives and provide Representatives with continued training and mentoring.

All Representatives, including those recruited by Sales Leadership Representatives, place orders directly with Avon, receive products directly from Avon and make payment directly to Avon. This enables Avon to communicate key messages directly to the entire sales force and respond immediately to situations which may arise, unlike illegal pyramid schemes, whose officers may not always know who has been recruited and / or is representing their company to others.

Avon's Sales Leadership Program is limited to four levels of achievement: Unit Leader, Advanced Unit Leader, Executive Unit Leader and Senor Executive Unit Leader. While Avon Sales Leadership Representatives can earn bonuses based on the sales of those whom they recruit, they can <u>only</u> achieve these earnings if, during each campaign, they achieve a certain level of sales themselves and if their "unit" achieves a minimum, aggregate dollar threshold in sales as well. (See Appendix A for Sales Leadership Bonus Structure)

To ensure the success of all Representatives, the focus of the Avon Leadership Representative is on training and mentoring her recruits. This emphasis is quite different from that described by the FTC, where the NPR mentions that other companies promise support and assistance, but do not follow through and provide such support and assistance.

***Policies / Controls***

***General***

Avon is very proud of its 120 year heritage and its years of success. To foster this success, Avon offers a business opportunity that is not only low cost but also low risk. This is accomplished through a number of policies that Avon has incorporated into its sales models which have evolved over the course of its many years. Some of these policies are identified below; they are specifically designed to create a positive opportunity for people and limit risk for the individual:

- ***A $10 appointment fee*** to become an Avon independent Sales Representative. Each new Representative is provided with an appointment kit, product samples, brochures, order forms, sales receipts, "getting started" manual, a tote bag and training. She is guided through the process by the individual who recruited her, either a District Sales Manager employed by Avon or a Sales Leadership Representative, who also helps her to build a business. And the Representative continues, on a long-term basis, to receive training and mentoring - for long-term success - from these individuals. This is clearly a low investment opportunity.

- ***A fully refundable $60 Leadership Success Kit*** for those Representatives interested in becoming Sales Leadership Representatives.

- ***No inventory purchase requirement***. The Avon Representative is ***never*** required to purchase inventory. Representatives are trained to take orders through the Avon brochures for future delivery. They then order products from Avon, based on what they have pre-sold to customers. The no-inventory purchase policy, once again reinforces Avon's low-risk, success driven model.

- ***100% Satisfaction guarantee*** - Avon will refund the full purchase price of any products found to be unsatisfactory at any time, for whatever reason. Avon is proud of its brand, its product selection and its product quality. Our 100% guarantee is indicative of our values and our commitment to our consumers and to our Representatives.

- ***Credit scoring process*** is developed for each new Representative to determine that the amount of credit Avon extends to her will not be more credit than she can manage.

- ***Orders purchased on credit extended by Avon*** - Avon allows Representatives to purchase product on credit, and then pay Avon for the orders only after they have delivered the products to the customers and received payment from the customers. There are no additional, direct "up-front" fees to the Representative other than the $10 she initially paid for the opportunity. (Another Avon hallmark expressing our belief and trust in our Representatives and our business model.)

- ***"Suggested retail prices"*** are established by Avon for all products and are published for customers in the Avon brochure.

- ***Contracts*** with Representatives, which are clear and simple documents, are entered into directly with Avon (the "Company") and all purchases / deliveries / payment / etc. are between the individual Representatives and the "Company".

- ***Company employees provide training to Representatives.*** As stated earlier, Avon's unique structure includes company employees, both District Sales Managers and Division Sales Managers, who assist Representatives and provide Representatives with continued training and mentoring.

- ***Representatives are not prohibited from selling products of other manufacturers / distributors*** and / or hold other professional careers.

- ***Territories are not assigned to Representatives.***

- ***Termination*** –

  - Avon will terminate the contract of an independent Sales Representative if actions taken by the Representative are in violation of Avon's policies. Moreover, as a founding member of the Direct Selling Association ("DSA"), Avon fully complies with the DSA Code of Ethics ("DSA Code") and will take appropriate measures if any Representative violates the DSA Code. The DSA Code provides a self-regulatory standard, higher than that required by law and of non-DSA member companies, and as such, it clearly and unequivocally distinguishes the DSA member companies from those companies toward which the NPR is targeted.

  - The Representative can terminate her relationship with Avon at any time without penalty.

***Avon Sales Leadership***

Avon has spent many years developing and refining its Sales Leadership opportunity, and has further controls which both protect the Avon values and the Avon Leadership Representatives. These measures include:

- ***An in-depth understanding of the "single" level opportunity***. New Representatives begin as a "single" level Representative and may progress to the Sales Leadership opportunity where they are allowed to recruit and train and mentor others, thus helping others build a successful business of their own. Avon's focus is on product sales, not on recruiting. Sales Leadership is designed for only those who have the desire to recruit and train others.

- ***Sales Criteria*** - Sales Leadership Representatives must meet certain criteria to qualify to receive bonuses based on the sales of those whom they recruit. This requirement ensures the Sales Leadership Representatives are focused on selling products to customers and on training and mentoring those whom they have recruited.

    - The Sales Leadership Representatives must achieve sales at a minimum dollar threshold each campaign and

    - The 'unit' (the Leadership Representative and the group she has recruited) must also achieve sales at a minimum dollar threshold each campaign.

- ***Levels of Achievement*** – The Avon Sales Leadership program is limited to four levels of achievement: Unit Leader, Advanced Unit Leader, Executive Unit Leader and Senior Executive Unit Leader. This limitation focuses the Sales Leadership Representative on training and mentoring her unit members. There are also qualifiers (including her personal sales of product to customers) that must be achieved to maintain status.. and this is monitored regularly by Avon.

Avon believes that with its focus on selling products to customers and on continued training and mentoring of Representatives, the Avon values (trust, respect, belief, humility and integrity) will be protected, and the Representatives and the Company will achieve success.

Avon provides a business opportunity that is profitable for both the Representatives and the Company. Over a century of business growth speaks to the success of this approach. Avon's independent Sales Representative contract is clear and concise and there are no hidden costs or loopholes. The opportunity is easy to enter into and similarly easy to exit if the Representative changes her mind.

**THE BUSINESS OPPORTUNITY RULE:**

***While Well-Intentioned, the Proposed Rule as Drafted Is Overly Broad and Unduly Burdensome and Not Necessary For Well-Established, Public Companies like Avon***

Avon fully endorses efforts by the FTC to combat fraud in the sale of business opportunities and recognizes the harm that fraud inflicts on consumers, and on society. However, the Business Opportunity Rule, as currently written, is overly broad and unduly burdensome on legitimate, well-established, direct selling public companies like Avon.

The FTC states in its Notice of Proposed Rulemaking that the Business Opportunity Rule is necessary to "address widespread fraud in the sale of business opportunities." The proposed Rule sets out to address common allegations in business opportunity cases such as false or unsubstantiated earnings claims, false testimonials or fictitious references, and misrepresentations concerning the profitability of locations, availability of support and assistance, quality of the products or services sold, prior success of the seller or recruiter, full extent of investment costs, deceptive sales practices, and failures to make promised refunds.

We understand that the main targets of the Rule are not legitimate direct selling companies, like Avon, but companies in other lines of business. However, the Rule, as currently written, would encompass the legitimate direct selling industry and could have an adverse effect on legitimate, socially-beneficial, law-abiding companies.

As examples of typical business opportunities not currently regulated, the FTC cites deceptive work-at-home schemes and pyramid marketing schemes. The FTC also quotes a business opportunity and franchise consultant who describes many business opportunity sellers as:

> Individuals who go from one business opportunity to the next, violating laws, committing frauds, taking funds without delivering what was promised only to shut down the operation within a year and move on to another one with new offices, new company names, and new products.

The Notice goes on to detail the measures and burdens that must be undertaken by businesses that fall within its definitions, whether those companies are legitimate or fraudulent.

As detailed above, Avon certainly does not fit the description of the kind of business opportunity seller targeted by the Rule, and thus should not be subjected to its burdens. Unlike the unscrupulous business opportunity sellers at

which the proposed Rule aims, Avon is an established company, with a long history of reputable business practices as described in the previous pages. With its nominal fee, no inventory requirement, and rigorous credit process, Avon's business opportunity does not subject Representatives to a risk of fraud or monetary loss. In fact, since Avon does not expect payment for products until after such time as the independent Sales Representatives have delivered products to customers and have themselves received payment, there is minimal financial risk to the Representatives. Additionally, consistent with Avon's practices, its Representatives will not be left without assistance or training as is common with fraudulent and "fly-by-night" business opportunity sellers.

Thus, the proposed rules would serve no purpose in Avon's case, as our "customers" ("Representatives as purchasers of business opportunities") are already well-protected by Avon's long standing practices and policies. On the other hand, the proposed new regulations would create serious burdens and additional costs on Avon in carrying out its business. To impose any of the burdens detailed in the proposed Rule on legitimate companies like Avon is fundamentally unfair. And for public companies, like Avon, the proposed Rule represents another set of overlapping, and thus, unnecessary, federal regulations that will add additional costs to an already regulated company, which may in turn inhibit our operations and the economic success of our independent Sales Representatives.

However, Avon and the DSA believe we need to help the FTC reasonably segment the kinds of businesses that it truly needs to regulate and require certain rules and apply certain practices to that segment. We hope that by having presented the Avon model we have provided information which will aid the FTC in segmenting these types of businesses.

***Avon Recommendations:***

Avon, thus, respectfully makes the following recommendations regarding the proposed Rule:

1. Exempt companies that are part of a self-regulatory body, such as the Direct Selling Association;

2. Exempt public companies, which regularly disclose detailed information about their operations and business to the public pursuant to existing Federal securities laws;

3. Include a threshold dollar amount below which the Rule would not apply;

4. Delete the waiting period, which will have the effect of constraining the business potential and momentum of a new recruit and delete certain disclosures; and

5. Replace the requirement of providing the seven day waiting period and providing disclosure documents, with a requirement to provide a cancellation or cooling-off period.

### *1. Exempt Companies That Are Part of a Self-Regulatory Body, such as the Direct Selling Association*

Avon is a founding member of the Direct Selling Association. All members of the DSA must abide by a strict "Code of Ethics", which, as stated earlier, provides a self-regulatory standard, higher than required by law and of non-DSA member companies, and as such, clearly and unequivocally distinguishes the DSA member companies from those companies toward which the NPR is targeted.

The DSA Code, among other things, (a) prohibits companies from making statements, promises or testimonials that would likely mislead consumers or prospective salespersons, (b) ensures the offer of products or services is accurate and truthful regarding price, quality, value etc., and (c) requires the member companies to repurchase, upon a distributor's termination, marketable inventory, purchased within the prior 12 months, for not less than 90% of the distributor's original net cost less appropriate set offs. These are just a few examples of the provisions of the DSA Code of Ethics.

The DSA Code of Ethics is administered and enforced by an independent "Code Administrator" who takes whatever action is deemed necessary to investigate alleged complaints, determines if Code violations have occurred, and takes the steps required to remedy such situations, including calling for expulsion from the DSA.

<u>We urge you to review the DSA Code in its entirety because we believe the Code distinguishes DSA member companies from those companies that you hope to target.</u>

### *2. Exempt Public Companies, Which Regularly Disclose Detailed Information about Their Operations and Business to the Public Pursuant to Existing Federal Securities Laws*

Avon is publicly traded on the New York Stock Exchange ("NYSE") and therefore subject to the Securities and Exchange Commission ("SEC") rules and

regulations, as well as NYSE requirements. These laws and regulations were enacted primarily to protect investors, and they require that a robust set of disclosures be made publicly about the company, its operations, its financial condition and results of operations, and other matters that have a material effect on the business.

As a public company, Avon files with the SEC current and periodic reports including, Form 10-Ks annually, Proxy Statements annually, Form 10-Qs quarterly, and Form 8-Ks as material events occur. Avon also provides shareholders with annual reports. These disclosures provide extensive information about Avon, including a description of Avon's business, financial performance and condition, liquidity and capital resources, accounting procedures, market risks, disclosure controls and procedures, internal control over financial reporting, executive compensation, certain related party transactions and material legal proceedings. These disclosures are publicly available on the SEC's EDGAR website as well as Avon's own website and, thus, prospective business opportunity purchasers are able to locate extensive information about Avon easily and quickly. Avon believes that the extensive information that it already publicly discloses is helpful to business opportunity purchasers and provides assurances that Avon is a legitimate, law-abiding company. Therefore, Avon recommends that it and other public companies be exempted from the Rule.

### *3 Include a Threshold Dollar Amount Below Which the Rule Would Not Apply*

Whether or not the Rule ultimately exempts DSA members or public companies (or direct selling public companies), like Avon, a threshold should be established whereby the Rule would be applicable only if the business opportunity purchaser is required to risk significant amounts.

The Rule ultimately seeks to protect business opportunity purchasers from loss of their investment due to fraudulent selling systems or exaggerated claims. If the purchaser is required to invest a nominal amount, as in Avon's case ($10), the need for protection is correspondingly less and the burdens created by the Rule are more exaggerated and out of proportion with any possible benefit.

We suggest that this kind of benefit/burden analysis should lead the Commission to establish in the Rule a "threshold" initial investment amount below which the Rule's waiting period and disclosure requirements would not apply.

We propose that an appropriate "threshold" level of required investment would be $500. However, if that is not acceptable, variations on this amount could be considered, such as including required inventory purchases in the threshold or lowering the threshold to $200, perhaps as an example. This could assist the FTC in accomplishing its goal, without placing undue burdens on

legitimate companies like Avon, where the initial cost is extremely low and the risk is even lower, especially in light of the fact that there are no inventory requirements.

### *4. Delete the Waiting Period, Which Will Have the Effect of Constraining the Business Potential and Momentum of a New Recruit and Delete Certain Disclosures*

The seven-day waiting period and the disclosure document requirements of the proposed Rule pose particular burdens on direct selling companies, including Avon, and on independent Sales Representatives. These are discussed below. If certain criteria are met, we recommend deleting the waiting period completely. Criteria again would include low initial investment, guarantees, and easy exits.

**Seven-Day Waiting Period**

The proposed Business Opportunity Rule would require the seller of a business opportunity to furnish a prospective purchaser with a disclosure document and any earnings claims statement at least seven calendar days before the prospective purchaser either signs a contract in connection with the business opportunity sale or makes a payment or provides other consideration to the seller. 16 C.F.R. § 437.2. This effectively creates a seven-day "waiting period" before a prospective Representative can take advantage of the opportunity of joining the company's sales force.

In its Notice of Proposed Rulemaking, the FTC explains that the seven-day waiting period is intended to "enable a prospective purchaser to review the basic disclosure document and any earnings claim statement, as well as conduct a due diligence review of the offering, including contacting references." As the Notice indicates, the seven-day waiting period is modeled on the five-day waiting period in the Franchise Rule. That rule requires franchisors to provide prospective purchasers with a completed copy of the franchise agreement at least five business days before the agreement is executed.

#### *Entry Cost Low, Process Simple, Risks Minimal*

However, unlike franchise purchases, the purchase of a business opportunity like Avon's is straight-forward and uncomplicated. The monetary investment to join Avon is substantially lower than purchasing a franchise. Avon Representatives pay $10 to become a Representative and sign a simple agreement, a sample of which is provided as Appendix "B" to these comments. Requiring a

prospective Representative to wait seven days serves no purpose except to complicate a straight-forward process.

***Potential Effect on Business***

Avon believes the seven-day waiting period is burdensome and unnecessary. This waiting period is likely to inconvenience enthusiastic individuals anxious to join Avon and could potentially create an "air of suspicion" that would be highly discouraging to prospective Representatives.

Also, in a direct selling business such as Avon's, the interaction between a prospective Representative and the current recruiting Representative or District Sales Manager is frequently a social one based on personal trust and relationships. The lengthy disclosures and the seven-day waiting period could possibly cast, inappropriately, a dark shadow on both the recruiter and the "Company".

The seven-day waiting period would also have a negative effect on those "seasonal" Representatives who join Avon during the Christmas and holiday season to earn extra money for the holidays. Such Representatives would first need to know of the existence of the seven-day rule, and think of this rule when planning their holiday schedule. With the Avon two-week selling cycle and delivery process, prospective Representatives would need to sign-up well in advance of the season to be in time for holiday shopping. More than likely, they will experience a loss of seven days of income during the peak season because one is not likely to think of the holiday season too far in advance.

And finally, the time and effort it would take for Avon to spend with each recruit on a second / subsequent visit, assuming the recruit would have the time to return for a second interview, would ultimately take away from the time that is now spent on training and mentoring others, a crucial aspect in ensuring the success of Representatives.

But most importantly, we believe that the seven-day waiting period and its associated disclosure requirements will cause the recruits to be overwhelmed, inconvenienced, and confused and will ultimately deter them from completing the appointment process.

Thus, Avon urges the Commission to eliminate the seven-day waiting period from the Rule. It is unnecessary, given the nature of Avon's sales process. It may affect Avon's ability to recruit potential Representatives and train existing Representatives, thereby affecting the sales of Avon's products, and it may cast suspicion where none is warranted.

**Disclosures of Legal Actions, Cancellations, and References**

The proposed Business Opportunity Rule would require the "seller" of a business opportunity to provide the prospective purchaser with a single written disclosure document containing certain disclosures about the company and perhaps the recruiter, including information about certain legal actions, cancellations, and references. 16 C.F.R. § 437.3. However, as proposed, these provisions of the Rule are particularly confusing in the way they would apply to Avon's operations. Also, certain requirements are redundant, and thus, unnecessary, given the types of information Avon and other public companies already provide under other regulatory schemes, as discussed above.

***Definition of "seller."*** As a threshold matter, the Rule as proposed does not provide a clear definition of who must make the disclosures required. The proposed Rule defines a "seller" as "a person who offers for sale or sells a business opportunity." As applied to Avon's operations, it is not clear from this definition whether the "seller" is the Avon corporate entity, or whether "seller" could include Avon Leadership Representatives or Avon employees (District Sales Managers) who offer the business opportunity to prospective "purchasers". So, for example, it is unclear whether each of the Avon independent Sales Representatives and / or District Sales Managers would have to make disclosures because they might be considered "sellers" under the Rule. This clarification is necessary because if these burdens fall upon Avon's Leadership Representatives and employees, compliance and recordkeeping would be even more onerous and costly.

***Disclosure of Legal Actions.*** The disclosures a "seller" is required to provide include a description of legal actions the seller or others are subject to. If the seller, any affiliate or business of the seller, or any of the seller's "officers, directors, sales managers, or any individual who occupies a position similar to an officer, director or sales manager of the seller" has been the subject of any "civil or criminal action for misrepresentation, fraud, securities law violations, or unfair or deceptive practices within the 10 years immediately preceding the date that the business opportunity is offered", the seller must check a "yes" box on the disclosure document. If the "yes" box is checked, the seller must disclose all such actions in an attachment to the disclosure document, stating the full caption of each action.

As detailed above, as a public company, Avon is required to file a Form 10-K annually and a Form 10-Q quarterly with the SEC, which include descriptions of material pending legal proceedings to which the company is a party and any such proceedings known to be contemplated by governmental authorities. This information is publicly available on the SEC website and Avon's website.

Furthermore, the proposed Rule, if enacted, would require information regarding all legal actions, without regard to the materiality. Disclosure of

potentially frivolous or immaterial information, to an audience that would not understand the relevance or lack thereof, for a business opportunity that is low cost ($10) with minimal or no risk, is burdensome and unnecessary.

Moreover, since Avon is a public company, regulated by the SEC, such disclosure could be inconsistent with the SEC requirements and could create confusion among the different "audiences" who might see it.

Therefore, Avon urges the Commission to eliminate this requirement from the Rule for, at the very least, public companies.

***Disclosures of Cancellation and Refund History.*** The proposed "Rule" would require the "seller" to disclose all terms and conditions of any cancellation or refund policy. It would further require, if a company does offer a cancellation or a refund, that sellers disclose information about prior cancellation or refund requests. The FTC states that, "This information is material to prospective purchasers because it goes to the viability of the business, the success of past purchasers, and their satisfaction with the business opportunity".

This is an extraordinarily burdensome requirement for a company the size of Avon, with more than 450,000 independent Sales Representatives in the United States. The "seasonal" turnover would make impractical the calculation of cancellation history, which would likely not have meaning and / or value to the prospective Representative. Such information could potentially also be misleading.

This is because, as noted above, many Representatives enter the business opportunity with a specific goal in mind and once achieved will terminate their relationship with Avon. The same is true for those who have certain changes in their lives that no longer allow them the flexibility or time to sell Avon products. These cancellations are in no way a reflection on their level of success, their experience with Avon or an indication of their feelings about Avon.

As discussed above, Avon's business opportunity is extremely low-risk and the history and reputation of Avon is proof of the viability of the business and its success. Additionally, due to the high turnover associated with "seasonal" Representatives, the number of cancellations and refund requests may appear deceptively high and discourage a prospective purchaser.

Avon therefore urges the Commission to eliminate this disclosure from the Rule, given its extraordinary burden and its potential to mislead.

***Disclosures of References.*** The proposed Business Opportunity Rule would also require the seller to provide the prospective purchaser with references.

The Rule would require the seller to "[s]tate the name, city and state, and telephone number of all purchasers who purchased the business opportunity within the last three years. If more than 10 purchasers purchased the business opportunity within the last three years, the seller may limit the disclosure by stating the name, city and state, and telephone number of at least the 10 purchasers within the past three years who are located nearest to the prospective purchaser's location." § 437.3(a)(6)(i).

The FTC's rationale for this requirement is that "business opportunity purchasers are not readily identifiable" and "the only way prospects can reasonably protect themselves from a seller's fraudulent claims is to conduct their own due diligence review of the business opportunity offer by contacting prior purchasers."

In many instances, those wanting to engage in the Avon earnings opportunity join to buy at a discount for personal use and / to sell only to friends and family members. Such participants are likely to have privacy concerns if this requirement is implemented.

While the FTC recognizes the privacy concern, it then suggests that the purchasers of business opportunities be given a disclosure statement with the phrase "If you buy a business opportunity from the seller, your contact information can be disclosed in the future to other buyers". This comment, in and of itself, will likely have a negative impact on the attractiveness of the business opportunity and would dampen one's enthusiasm to join Avon due to the requirement to provide one's name and / or other personal information for public dissemination.

Next, one should understand that all direct selling companies compete for a similar, and in some cases, the same pool of individuals, from which to obtain new recruits. Direct selling companies guard as proprietary and confidential, the listing of names of Representatives / individual direct sellers. This is, by far, a direct selling company's most protected asset. Any requirement by the FTC to share this listing of names and make it public to others could be harmful to the industry and to the individual companies.

Additionally, the requirement to encourage a prospect to contact existing Representatives could create confusion among all parties involved. Each would try to encourage the prospect to "sign-up" with her so she, herself, could gain an additional recruit. Recruits could be discouraged by such activity and simply choose to walk away from the opportunity, not because of the opportunity itself, but because of the confusion the contacts create.

In any event, Avon Representatives are easily found because of the size and visibility of the company. New business opportunity purchasers are recruited either by current Representatives or by company employees and thus have ample opportunity to discuss the business opportunity. In fact, Avon encourages its Sales

Leadership Representatives to engage prospective purchasers in discussion about the Avon opportunity and answer questions. Avon Representatives can also be located easily by conducting a search by zip code or address on Avon's website and / or by looking in one's local phone book.

Avon, therefore, finds this requirement unnecessary, impractical and concerning and urges the Commission to eliminate this disclosure from the Rule. If that is not acceptable, we would strongly encourage the FTC to create an exemption when ample names and addresses can be found by conducting a zip code or address search on the company's website or by looking in the local telephone book.

**Earnings Claims Statement**

If the seller makes earnings claims, the proposed Rule would also require the seller to provide the prospective purchaser with an earnings claim statement. The earnings claim statement would be a single written document titled "EARNINGS CLAIM STATEMENT REQUIRED BY LAW" in capital, bold-type letters, followed by the name of the person making the claim and the date of the claim. § 437.4(a)(i), (ii). This statement must also include:

- the earnings claim along with a disclosure of the beginning and end dates when the represented earnings were achieved;
- the number and percentage of all purchasers during the relevant time period who have achieved at least the claimed earnings;
- any characteristics that distinguish purchasers who achieved at least the represented level of earnings from those characteristics of the prospective purchasers;
- a disclosure that written substantiation for the claim will be made available upon request.

According to the explanation of the proposed Rule, the earnings claims information is necessary to inform the prospective purchaser how recent the supporting data is, whether the claimed earnings of potential purchasers are typical, the relevance of an earnings claim to the purchaser's particular market, and allows the prospective purchaser to verify earnings claims, thus reducing fraud.

Unfortunately, the definition of "earnings claims" is broad and may inadvertently result in many statements regarding Avon's business model and selling system being deemed to "trigger" the disclosure requirement. This may cause the recruiting and enrollment process to become complex, cumbersome and formalistic. This, again, would create a disincentive to both potential and current Sales Leadership Representatives and other Representatives. Moreover, at least in the case of Avon, the need for this kind of disclosure may not serve a useful purpose, especially given the low cost / low risk nature of the opportunity that Avon offers.

The Rule as proposed would require Avon to make certain kinds of earnings disclosures to comport with the Rule in a way that may itself be misleading or incomplete, and may actually result in the provision of less informative materials, instead of what was intended. For instance, those selling on a part-time basis may show low earnings, which, in fact, may be quite substantial given the amount of time they spend selling Avon products. And others may have "modest" goals and while they themselves are successful in meeting their goals, their earnings might not suggest a successful proposition to others and may skew the Avon averages.

Also, it is critical that companies like Avon be allowed to communicate the business model to prospective Representatives without being considered to have made a specific type of earnings claim. It is important that Representatives know how the compensation system works so they can understand how they can earn income and over time increase such earnings, if they so desire.

Finally, it is important that information regarding the discount / bonus structure that might be communicated to existing independent Sales Representatives be permitted without risk of implying that such information constitutes an "earnings claims statement" covered by the proposed Rule.

The section of the Rule regarding earnings claims needs to be clarified to exclude existing sales Representatives who have already shown, by their association, that they are satisfied with the business opportunity and, as such, continue to stay engaged in the opportunity. It also needs to be contained in its scope so general communication to a new recruit, necessary to explain the compensation structure, does not "trigger" the earnings claim and associated disclosure requirements.

**Recordkeeping**

The proposed Rule would require business opportunity "sellers" to retain each materially different version of all documents required by the Rule; each purchaser's disclosure receipt including all disclosure documents (pages) provided; each executed written contract with a purchaser; each oral or written cancellation or refund request received from a purchaser; and all substantiation upon which the seller relies from the time an earnings claim is made. These records would be required to be kept for three years. § 437.6.

Due to the size of Avon, this requirement would be very burdensome. Avon estimates that the Rule could require it to retain millions of pages annually. Avon also reiterates its concern regarding the definition of "seller". This requirement would be even more burdensome if Representatives were required to keep the records themselves.

Avon, therefore, urges the Commission to eliminate this record keeping requirement from the Rule.

5. ***Replace the Requirement of Providing the Seven Day Waiting Period and Providing Disclosure Documents, with a Requirement to Provide a Cancellation or Cooling-Off Period***

Avon additionally suggests that, based on the information provided herein, and the unnecessary burdens the Rule will place on legitimate companies, that the FTC can accomplish its goals by replacing all the disclosure requirements in the Rule with a cooling-off period or right of rescission. Such a cooling-off period would permit cancellation within a specified timeframe, with a right to return all items required under the recruiting agreement to the selling company and receive a refund of payments made under the recruiting agreement.

* * * * * * * * * *

***Conclusion***

In summary, Avon believes that its business opportunity model is low cost / low risk. Avon has worked for many years to maintain its integrity and its values and has developed a system that provides Representatives with flexibility to meet their particular needs while incorporating the necessary consumer protection "controls" to ensure the Representative's success.

We further believe that the Avon model, as explained in this document, is not an appropriate target of the proposed Rule. We, therefore, respectfully request the opportunity to continue to work together with the FTC to craft a rule that provides the FTC with the protections that it is seeking, without placing any undue, unnecessary burdens on companies like Avon.

We hope the FTC can consider our recommendations to:

1. Exempt companies that are part of a self-regulatory body, such as the Direct Selling Association;

2. Exempt public companies, which regularly disclose detailed information about their operations and business to the public pursuant to existing Federal securities laws;

3. Include a threshold dollar amount below which the Rule would not apply;

4. Delete the waiting period, which will have the effect of constraining the business potential and momentum of a new recruit and delete certain disclosures; and

5. Replace the requirement of providing the seven day waiting period and providing disclosure documents, with a requirement to provide a cancellation or cooling-off period.

* * * * * * * * * *

Avon appreciates the opportunity to present its views and suggested changes to the proposed Rule and hopes that the Commission will give them full consideration.

Avon also requests that the Commission schedule workshops for further discussion regarding the implications of the proposed Rule on direct sellers and request that the Commission consider Avon when selecting participants for the workshops.

Sincerely,

**Appendix A**

## Sales Leadership Bonus Structure

| Leadership Overview | | | | | |
|---|---|---|---|---|---|
| | Personal Award Sales | Minimum # of Recruits | Total Unit Sales Recruitment | Minimum Order Size to Earn | BONUS |
| Unit Leader | $250 | 5 | $1,200 | $100 | 3.0% |
| | | | | $150 | 5.0% |
| | | | | $315 | 6.0% |
| | | | | $625 | 7.0% |
| | | | 2nd Generation | $100 | 0.5% |
| | | | | $150 | 1.0% |
| Advanced Unit Leader | $300 | 12 including 3 Unit Leaders | $4,000 | $100 | 3.0% |
| | | | | $150 | 6.0% |
| | | | | $315 | 7.0% |
| | | | | $625 | 8.0% |
| | | | 2nd Generation | $100 | 1.0% |
| | | | | $150 | 2.0% |
| | | | 3rd Generation | $100 | 0.5% |
| | | | | $150 | 1.0% |
| Executive Unit Leader | $350 | 20 including 7 Unit Leaders | $17,500 | $100 | 3.0% |
| | | | | $150 | 8.0% |
| | | | | $315 | 10.0% |
| | | | | $625 | 12.0% |
| | | | 2nd Generation | $100 | 1.5% |
| | | | | $150 | 3.0% |
| | | | | $315 | 4.0% |
| | | | | $625 | 5.0% |
| | | | 3rd Generation | $100 | 1.0% |
| | | | | $150 | 2.0% |
| Sr. Executive Unit Leader | $400 | 20 including 9 Unit Leaders, 2 of whom are Executive Unit Leaders | $40,000 | $100 | 3.0% |
| | | | | $150 | 8.0% |
| | | | | $315 | 10.0% |
| | | | | $625 | 12.0% |
| | | | 2nd Generation | $100 | 1.5% |
| | | | | $150 | 3.0% |
| | | | | $315 | 4.0% |
| | | | | $625 | 5.0% |
| | | | 3rd Generation | $100 | 1.0% |
| | | | | $150 | 2.0% |

*Personal award sales are sales by an individual Sales Leadership Representative to others.

Appendix B

# Independent Sales Representative Terms and Conditions

## I. As an Independent Sales Representative for Avon, I agree to the following:

A. To promote the sale of Avon products actively, to honor the Avon tradition of integrity and personal service, and to honor the Avon Guarantee promptly. To make no statements, claims or representations, or do any act that would impair the name, reputation or goodwill of Avon.

B. To sell only to Consumers and not to sell Avon Products for resale to or through third parties, any business entity or any type of retail establishment or any Web site unless authorized by Avon in writing. I will not use or register, and do not currently own, any domain names, keywords or metatags that include, in whole or in part, any of Avon's trademarks including, without limitation, the name AVON, and I hereby consent to transfer to Avon any such domain names.

C. To provide product orders and to pay Avon for such orders on time and to collect sales tax on Customer sales. In addition to any amounts that I owe to Avon, I will be responsible for payment of all fees assessed to my account by Avon and for Avon's collection costs, attorney fees, expenses, and court costs incurred by Avon in collecting all such amounts. I understand that any amounts previously owed by me to Avon prior to signing this agreement, if any, shall be immediately payable to Avon. I understand that no shipment will be made on credit if the amount owed for a previous order is not paid when due. At its sole discretion, Avon may request a deposit or down payment from the Representative prior to the extension of credit.

D. To recognize that I am an Independent Sales Representative and have no power or authority to incur any debt, obligation or liability, or make any promise or contract on behalf of Avon. I understand that I will not be treated as an employee with respect to federal, state or local tax purposes, and I am responsible for paying my own income and self-employment taxes.

E. To abide by the collective Avon Policies, Procedures and Guidelines as well as any future amendments thereto.

F. To pay the appointment fee, in effect at the time you signed this contract, for the privilege of selling Avon.

G. Either party may terminate this Contract, with or without cause, at any time.

## II. Other Provisions

A. This Contract shall be effective on the date it was received at the appropriate Avon Branch and shall supersede any Contract previously made between the Representative and Avon. This Contract may not be transferred or otherwise assigned without the prior written consent of the Avon Legal Department.

B. All Purchase Orders are subject to acceptance by Avon.

C. Avon reserves the right to discontinue products or to change prices at any time. Avon reserves the right to change discount schedules or incentive programs upon ten (10) days prior written notice.

D. I hereby grant authorization to Avon Products, Inc., to investigate my character and credit-standing for the purpose of determining whether I should be appointed as an Avon Independent Sales Representative and receive credit in accordance with the terms and conditions contained in this document. Avon reserves the right to limit the amount of credit it extends to its Independent Sales Representatives. I agree that any extension of credit by Avon to me shall be for business or commercial purposes.

E. If I checked "Y" under Publicity Release on the front of the Avon Independent Sales Representative Contract,

I gave my consent for Avon to publicize in any medium my name, photo, performance statistics and statements, without payment, for any Avon-related purposes, including recognition of any sales, recruiting or motivation success I achieve.

F. If I checked "Y" under Preferred Preview on the front of the Avon Independent Sales Representative Contract, I agreed to participate in Avon's Preferred Preview program. By participating in this program, I understand that approximately one to four times a year, on an ongoing basis, Avon will notify me with a letter in my order about a new product or sales tool and its cost and will give me 10 days to call Avon at a specified telephone number to reject the product if I do not want it. If I do not call Avon by the date specified on the form, I understand that Avon will ship the product to me and will invoice me for its cost. I understand that if Avon ever gives me less than 10 days to call and reject the product, I can return the product for a full refund, at Avon's expense. The products offered through this program will generally cost between $1 and $50.

I understand that I may cancel my participation in this program at any time by emailing Avon from the "e-mail us" link located at www.YourAVON.com or calling Avon at 513-551-2866.

G. For residents of Alaska, Hawaii and Guam only: to pay Avon applicable shipping fees. All locations charge shipping fees for immediate shipment of additional orders.

H. Within six (6) months after the termination of your relationship with Avon, Avon will repurchase on reasonable commercial terms, current marketable inventory that the Representative has purchased for resale within the twelve (12) months prior to the termination of the Representative relationship with Avon.

## III. Specific Leadership Provisions

A. If I desire to participate in the Leadership Opportunity, and effective immediately with my first direct recruit, I accept the provisions of Leadership as follows and agree to abide by the collective Avon Polices, Procedures and Guidelines, including the Leadership Reference Guide, as well as any amendments thereto.

B. I understand that the percentage of my Leadership bonus will vary based on my achievement and the performance of my individual recruits and/or unit.

C. The Leadership Opportunity, including qualifications, method of payment for order, sales earnings plan and Leadership bonuses, may be modified or changed at the sole discretion of Avon upon prior written notice to all participants.

D. I may terminate my participation in Leadership at any time upon submission of a Notification of Withdrawal from Leadership with resulting forfeiture of entitlements to Leadership bonuses.

Applicants must be of legal age in their state of residence.

**By clicking "accept" below, I agree to comply with all of Avon's policies, procedures, and guidelines, as well as any future amendments thereto. I have read the terms and conditions above, and agree to be bound by all these terms and conditions. I understand that this contract is subject to acceptance by Avon Products in its sole discretion.**

Accept > Back >