

As a court certified expert in network marketing (NM), and a full time NM participant, advocate, and consultant for the last 16 years, I am actually in favor of requiring disclosures and of the general direction of this proposed new Business Opportunity Rule. However, I am compelled to comment on several gross flaws within the Rule:

1. Overall the new Rule will do little more to curtail deceptive marketing practices than the well equipped regulatory toolbox already at the FTC's disposal. Those who practice deceptive marketing will simply create deceptive disclosure statements. Only those legitimate, honest companies will be penalized (by the additional burdens placed upon them by this new Rule).
2. The disclosure of legal actions against the seller that involve fraud, misrepresentations, securities, or deceptive or unfair trade practices is good in concept, but goes light-years too far. To simply include all legal "actions", including those that were frivolous or successfully defended, would not only severely and unfairly stigmatize the honest seller, but would encourage even more frivolous legal actions among competitors. Furthermore, to include current, ongoing legal actions blatantly defies one of our most fundamental legal tenets – it assumes guilt before innocence can be proven.
3. The seven day waiting period is too easily circumvented, unnecessarily prohibitive to the seller, and may even be harmful to the buyer.

When a seller need only check a box declaring they viewed a disclosure statement seven days ago, most will do so whether they did or not (just as most will sign a lengthy, unread, distributor agreement or click on "Agree" to the policies statement of newly installed software). Sellers may have also sold a perfectly legitimate business opportunity, in an ethical manner, at a fair price, to a willing and able buyer – both of which would be forced to wait seven days before the sale can be consummated (again, only the good guys are penalized). Forcing a buyer to wait an extra week to begin pursuing a legitimate income opportunity can be unduly costly to the buyer.

An obvious and much more effective solution would be to extend the current three day "cooling off period" to seven days. By doing so legitimate buyers and sellers are not penalized, and those who "cooled off" and seek full refunds will actually be afforded *more* protection (a seven day refund period rather than the three days that would still be in effect under the new Rule). The vast majority of network marketing programs already offer 90% refunds within the first 30-90 days (many for up to one year) so this would have little detrimental effect on honest operations. It is true this alternative approach would offer little protection to the deceived buyer who had already paid a large upfront fee, but such buyers will have just as likely been deceived with a bogus disclosure form presented seven days before the payment (once again, doing business only becomes harder for the ethical operators).

4. Without question the most ill conceived and egregious requirement of this new Rule is the "reference list" of ten local participants.

A. This requirement strongly encourage the use of skills (also prohibited in this new Rule, but those who commit deception and fraud tend not to follow rules prohibiting them – which already exist).

B. An extensive 16 year study performed by my company MarketWave (<http://www.marketwaveinc.com>) has determined that the majority of participants fail at network marketing simply because they didn't do what was required to succeed. Yet, invariably the vast majority will blame all but themselves for their failure (they don't work the business, then blame the business when it doesn't work). Polling ten local NM participants who, most likely, are taking little advantage of the opportunity afforded them as to the value of said opportunity is much like surveying Gold's Gym members who never actually went to the gym and worked out in an effort to determine the value of a Gold's Gym membership.

C. Those who are open minded to a network marketing program are a highly coveted segment of society to most network marketers. This explains why, throughout this industry's 72 year history, NM distributors typically focus on enrolling or selling to *other* NM distributors. Attempts to cross-sponsor and distributor "headhunting" are rampant within this specific type of business opportunity. To require that every NM distributor give to any and every "prospect" the names and contact information of ten others (who have been presold on the NM concept) will effectively create a massive, unscrupulous market for "MLM Enthusiast" lead lists. Such lists will surely be compiled by those pretending to be "prospects".

D. Such a provision would be useful with business opportunities such as vending routs, display racks, and franchises, which typically require several hundred to several thousand dollars in upfront fees – thus are usually not set aside and ignored shortly thereafter, and whose participants typically do not hop from one franchise to another every time they hear a better pitch. However, one size of business opportunity rule does not fit all! This ten person "reference list" provision simply won't work in network marketing – let alone the alternative of offering a company's ENTIRE distributor contact list! Such an option, while feasible in other types of businesses, borders on the absurd when applied to network marketing.

5. You have stated within the text of the proposed new Rule your belief that there are approximately 150 network marketing companies in the United States. This is shocking considering only those companies who are members of the DSA exceed this amount! Based on phone verification surveys conducted in the late 1990s there were over 1,550 companies employing a "multilevel" compensation structure – and that number has certainly risen since then, perhaps by as much as 30% (most educated estimates today place the number at over 2,000). The reason there are so many companies "flying under the radar" is because well over 90% of these companies are small, employing fewer than 50 people with fewer than 2,000 representatives. The record keeping and clerical burden will be challenging even for large, multimillion dollar corporations, let alone these many hundreds of small, struggling businesses.

The clerical time required to maintain the necessary data to fulfill the new Rule's requirements likely will be five hours total per year – for a vending rout or display rack seller. Again, they typically don't have hundreds, and eventually *thousands* of people signing up for \$19.95 who then quit within 90 days – like network marketing companies have to deal with. For that matter, they don't have hundreds, and eventually thousands of people signing up every 90 days – period! Your estimate of five hours of administrative time annually may be close when applied to other forms of business opportunities, but when applied to network marketing this estimate would be conservative even if converted to a *weekly* estimate! The set up effort alone will surely exceed five hours, not even considering the additional hours of software coding, staff training, and legal consulting many companies will have to endure.

In conclusion, this proposed new Rule seems to be taking a shotgun approach to empowering the FTC with regulatory weapons it already has. Aspects that arguably make sense when applied to other forms of business opportunities are, when applied to network marketing, wholly unreasonable, and in part unimplementable. What would create greater order in most types of businesses opportunities would result in utter chaos when applied to network marketing. Furthermore, as the numerous footnotes within the new Rule's description clearly show, the FTC has had no problem bringing down such schemes as Equinox (who I testified against in three cases), Trek Alliance, 2Xtreme Performance, SkyBiz, Fortuna Alliance, Holiday Magic, FutureNet, BigSmart, Jewelway, World Class Network, Steamline, Five Star Auto Club, and so many others – and all with the regulatory weapons already in your arsenal. To change the Rule as you have proposed will only harm the innocent, and require the frauds and deceivers to continue to do what they're already doing – only with a fraudulent, deceptive, but seemingly credible disclosure form to make their job even easier.

Thank you for your attention.

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