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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: Notice of Proposed Rulemaking for the Business Opportunity Rule, Project No. R511993—  
Rebuttal Comments of the Direct Selling Association

Dear Secretary Clark:

The Direct Selling Association (“DSA”) is pleased to submit these rebuttal comments regarding the Federal Trade Commission’s (“Commission”) proposed Business Opportunity Rule (“Proposed Rule”).

The initial comments of the Direct Selling Association confirm the long-standing commitment of the association and its members to stop business opportunity fraud, and set forth and substantiate in detail our legitimate concerns about certain elements of the Proposed Rule. These rebuttal comments will not repeat that discussion and substantiation. We were gratified, though not surprised, that the vast majority of other comments reflect views that are quite similar to those that have been made by DSA, including some 17,000 individual comments submitted by interested and concerned individuals who might be adversely affected by the Proposed Rule. These citizens describe themselves variously, including as single mothers, disabled veterans, and college students (and one as an assistant state attorney general). Additionally, we note that dozens of direct selling companies expressed their concerns about the impact of the Proposed Rule on their time-tested business models. Consumer leaders expressed their concern with the Proposed Rule’s impact on legitimate businesses. General business leaders expressed interest and concern on behalf of direct sellers and other small businesses. Other industries expressed their opposition to the Proposed Rule as drafted and suggested changes consistent with some of DSA’s suggestions, and academicians expressed concerns about unintended consequences of the proposal.

In stark contrast, there are very few comments in support of the Proposed Rule as drafted; a handful of these comments are highly critical of the direct selling industry. These comments inaccurately question not only the commitment of DSA and its members to fair and honest practices, but also the standards of law and consumer protection set out by the Commission and many states over the last 30 years. <sup>1</sup> The paucity of these comments, when compared to the large outpouring of comments that are consistent with DSA's initial observations, is, we believe, illustrious of the merits of DSA's position. DSA is proud of its record of consumer protection and education and its long history of working cooperatively with law enforcement and all interested parties to ensure that consumers are protected against many types of marketplace fraud. We trust that the Commission is aware of many of DSA's efforts. In any case, the Commission will, we trust, benefit from some further illumination regarding the deficiencies of fact and analysis in the assertions made in the handful of comments that are critical of direct selling.

The theme of these comments seems to be that the Commission should abandon its long-established recognition of the legitimacy of the direct selling industry and should regulate or make illegal all direct selling that uses a multilevel form of compensation. In effect, those commentators would seek to deny the legitimacy of direct selling through the adoption of a rule by the Commission. These comments effectively reject prior Commission analysis, as well as law and regulation at the federal, state and local levels of government, that set out the standards for distinguishing legitimate sales companies from fraudulent activities that focus improperly on recruiting while neglecting end-user sales. <sup>2</sup> These comments provide no credible basis for the fundamental positions they espouse or for the "relief" they seek for a number of reasons.

### Scope of the Proposed Rule

First, the comments misconceive the scope and purpose of the Proposed Rule. The Proposed Rule before the Commission is not a rule about the legitimacy of multilevel marketing. It is in essence a disclosure rule. DSA's comments and those of many of its members and their sales people reflect significant concerns about the effect of some aspects of the Proposed Rule on legitimate companies and their sales people. They also provide numerous and compelling facts that refute many of the premises in the few comments that would propose to expand the scope of the Proposed Rule to go beyond disclosure to consider a rule against multilevel marketing.

### Satisfaction and Income of Direct Sellers

Second, the comments that would propose to eliminate direct selling include numerous examples of purported "facts" that are not substantiated in the comments, are in fact inaccurate, and are

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<sup>1</sup> One of the commentators involved has been taken to task for statements about another self-regulatory organization. (See "BBB was Wrongly Maligned" Deseret Morning News (Salt Lake City Utah) 8/2/96)).

<sup>2</sup> The Commission has set out a long line of decisions describing the differences between legitimate direct selling companies using multilevel compensation and pyramid schemes. These decisions, described in DSA's initial submission on p. 19, have been relied upon by the public, the direct selling industry and law enforcement as the standard for defining pyramids.

refuted by information in DSA's prior comments and in the comments of thousands of individuals who have engaged in direct selling. For example, the linchpin of the comments attacking the direct selling industry is the claim that more than 99% of direct sellers that participate in a multilevel direct selling compensation plan lose money. Although this claim is made repeatedly throughout several comments (each citing the other as corroboration in an echo chamber of misinformation), it remains both unsubstantiated and unverifiable. None of the comments making this claim provide any information as to how this percentage was calculated. While at least one commentator provides an anecdotal description of the information he reportedly considered or consulted in making the claim, one will look in vain for precise and verifiable information as to exactly how the purported calculation was made and what numbers were included in it. For example, the comments provide no data regarding the types of sales person revenues (including profits on retail sales) that went into the purported calculation, the overall amount of those revenues, the types of expenses that were included, the overall amount of those expenses, the number of distributors considered in the calculation, how that number was derived and what it represents, the period covered by the calculation, or any other numbers critical to the calculation. This commentator also ignores the distinction between salespeople and consumers who join a direct sales company primarily or solely for the purpose of purchasing products for themselves, and misunderstands personal consumption by salespeople as a cost of doing business. In this erroneous analysis, product purchases by direct sellers for personal consumption are treated as somehow inappropriate. Such unsubstantiated statements are simply not credible and cannot be the basis for a rulemaking or for a negative judgment on the legitimacy of direct sales companies.

An examination of professionally conducted and statistically accurate data, collected by DSA and reputable research analysts over a period of years, indicates that, while making money is not necessarily the exclusive reason people enter direct selling, more than one-half of direct sellers report that their net income from direct selling after taxes and after expenses is positive. <sup>3</sup>Ninety one per cent of direct sellers say that direct selling meets or exceeds their expectations as an activity where the harder they work the more money they can make. In addition, a positive net income is reported by nearly one-half of new direct sellers -- those who have been in the industry for less than a year. The same statistics hold true for those direct sellers who do not continue in the industry. The vast majority of direct sellers rate their experience with direct selling as excellent, very good, or good. Eighty per cent of direct sellers have been with their company for one year or more and 34% for five years or more. Eighty five per cent of direct sellers say that direct selling meets or exceeds their expectations as a good way to supplement their income or as a way to make a little extra money for themselves. <sup>4</sup>

These few commentators so critical of direct selling have also speculated that sales to customers other than direct sellers are insignificant. That assertion is, however, again refuted by other research. The significant selling of product by direct sellers to non-direct sellers is shown by the

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<sup>3</sup> 1999 National Salesforce Survey, MORPACE International, Inc. ([www.morepace.com](http://www.morepace.com)). The study involved telephone interviews with 2,037 U.S. direct sellers from 36 direct selling companies. The study is instructive regarding direct selling multilevel compensation plans because, since 1998, 82% or more of direct sellers have been affiliated with multilevel direct selling companies. (*Direct Selling Growth & Outlook Survey*, various annual issues, Nathan Associates Inc.)

<sup>4</sup> *Id.*

following statistics. Nearly all direct sellers (97%) earn money from personally selling product, and 34% do not earn money from the sales of others but just from their own personal sales. Half (50%) of U.S. adults purchase product using the direct-selling retail channel during a year.<sup>5</sup> It is important to note that individual direct sellers can be and often are the ultimate consumers of product for their own personal use.

### Direct Selling and Consumer Protection

Third, the comments attacking direct selling companies depend on the wholly unsubstantiated (and erroneous) claim that there are far more complaints about direct selling than the relatively minor number that are publicly reported. The commentators offer no “support” for this claim other than their personal views and anecdotal reports that those who would otherwise complain are reluctant to do so because it would reveal them as “failures” in direct selling. In fact, there are ample and effective means for any present or former direct sales persons who may have concerns to express them. The Commission itself solicits such complaints. Anyone who claims to be harmed by a business opportunity may file a complaint via a simple form on the Commission’s website. <sup>6</sup> We have no doubt that the Commission also gives close and adequate attention to any such complaints. Similarly, DSA has a long-established Code of Ethics that requires members to advertise the Code broadly and to describe how complaints may be forwarded to DSA. DSA actively investigates all complaints and enforces its Code in an effort to prevent any kind of harm to consumers or salespeople. State and local authorities provide a host of similar opportunities for anyone who is concerned to submit complaints. These procedures set in place by the Commission, DSA, and others ensure that the direct selling industry operates in a manner that is beneficial both to those who join the direct selling industry and to consumers. To claim otherwise due to an alleged lack of opportunity to submit comments or concerns about direct selling companies or an alleged reluctance to pursue those opportunities is, at best, unsubstantiated speculation that is refuted by the record of effective adoption and utilization of a variety of complaint procedures.

### Conclusion

DSA and its member companies respect and appreciate the opportunity to work with the Commission in its long-standing shared effort and commitment to eliminate fraud in the marketplace, while recognizing direct selling as a pro-competitive and legitimate channel of distribution for goods and services. Our comments reflect that commitment but seek to highlight instances in which the specific provisions of the Proposed Rule would be unduly burdensome, ineffective, or in violation of privacy or other rights. With that in mind, we would look forward to the opportunity to participate in any hearings and/or workshops the Commission might conduct to continue the dialogue about those factors in the Proposed Rule that are problematic for legitimate direct selling companies.

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<sup>5</sup> 2004 General Public Attitudes toward Direct Selling, Burke, Inc. (www.burke.com). The study interviewed 1,001 U.S. adults by telephone.

<sup>6</sup> [https://rn.ftc.gov/pls/dod/wsolcq\\$.startup?Z\\_ORG\\_CODE=PU01](https://rn.ftc.gov/pls/dod/wsolcq$.startup?Z_ORG_CODE=PU01).

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If hearings or workshops are held, the DSA would like to participate regarding all of the topics set out in its July 17<sup>th</sup> submission, as well as any additio

Sincerely,

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CAV/dls

cc: Joseph N. Mariano