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VIA ELECTRONIC-MAIL AND COURIER

Donald S. Clark
Secretary
Federal Trade Commission
Room H-135 (Annex W)
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Mr. ~~Clark~~

I enclose for your consideration the Rebuttal Comment Submitted by Quixtar Inc. ("Quixtar") to the U.S. Federal Trade Commission in Response to the Proposed Business Opportunity Rule.

After reviewing the nearly 18,000 comments that were submitted in response to the Notice of Proposed Rulemaking ("NPR"), Quixtar remains convinced that the safe harbor provision for opportunities that, like Quixtar, offer new participants at least a 90 percent refund of their initially required payment, plus at least a 90 percent refund of unsold inventory that is neither used nor damaged, will best serve the Commission's goal of protecting consumers without unduly burdening legitimate direct sellers.

Quixtar again requests that the FTC schedule workshops around the country to enable participation in the rulemaking proceeding by a large cross section of individuals and businesses that would be impacted by the Rule.

Sincerely yours,

Joan (Jodie) Z. Bernstein

Enclosure

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**BEFORE THE
U.S. FEDERAL TRADE COMMISSION**

**REBUTTAL COMMENT
SUBMITTED BY QUIXTAR INC.**

**TO THE
U.S. FEDERAL TRADE COMMISSION**

**IN RESPONSE TO
THE PROPOSED BUSINESS OPPORTUNITY RULE**

R511993

September 29, 2006

Nearly 18,000 separate comments – over 3,800 from Quixtar Independent Business Owners and thousands more from a variety of other small entrepreneurs – have been submitted in response to the Commission’s request for comments on the proposed Business Opportunity Trade Regulation Rule. The overwhelming majority of the comments identify significant problems with the proposed Rule. Some take the view that the proposed Rule is so fundamentally flawed that it should simply be withdrawn. Others, including Quixtar, offer concrete proposals for modifying the proposal to make it into a viable Rule.

After an initial review of the record filings, Quixtar remains convinced that the “safe harbor” approach and other suggestions in our initial comments would provide effective consumer protection without imposing catastrophic burdens on millions of American entrepreneurs.¹ Most multilevel marketing (“MLM”) business opportunities involve very low consumer risk to begin with. In Quixtar’s case, the offer of its legitimate and valuable business opportunity is accompanied by specific safeguards mitigating any risk of loss, including:

- average income disclosures before a new participant can register
- a refundable registration fee of less than \$50
- satisfaction guarantee and buyback of unused inventory
- a rule to prevent “inventory loading”
- a retail sales requirement

A safe harbor provision as proposed by Quixtar would provide standardized disclosure of typical or average income information in a way that imposes minimal compliance costs on Quixtar and

¹ Comment Submitted by Quixtar Inc., comment No. 522418-70006. Comments in the FTC record are cited in this Rebuttal by their unique 5-digit suffix. Thus, “No. 70006” refers to the Quixtar comment cited in the previous sentence.

all other low-cost, low-risk opportunities. Such a Rule would enable the Commission to focus on situations where fraud and deception are occurring, without stigmatizing or burdening honest business owners.

Quixtar urges the Commission to take the time to study the thousands of individual submissions. Taken individually, they vividly illustrate that millions of individuals, couples and families choose to join Quixtar and other direct selling companies to earn extra income from a business of their own. The extra income enables families to raise their standard of living,² to survive the economic impact of serious illness,³ and to overcome the loss of a traditional job.⁴ Even though the amounts of money involved are sometimes relatively small, businesses like Quixtar change lives every day. The opportunity to have a business of one's own gives a

² See, e.g., No. 12071 (“The reason we chose to do this business was because I was working 70-80 hours a week as a youth minister in a local church. My wife, Linda, and I wanted to be able to have one of us stay home with our children”); No. 08769 (“We are still caregivers to our parents. Our oldest son is going off to college. We need extra income! We can by no means get into a traditional business because it just takes gobs of cash to get started. So this past year we have decided to seriously build [our Quixtar] business”); No.12013 (retirement income); No. 05337 (“We are able to offer an increased standard of living to many in our depressed economic area”); No. 09482, (“We have 5 children and this business has allowed my wife Sharyn...to be a full time mom and it has provided the income for us to pay cash for private schools and colleges”).

³ See, e.g., No. 04298 (“My father was diagnosed with cancer and has been fighting (literally) for his life for the past two years. . . . I knew that working a regular job would not be enough to help my family because I was living paycheck to paycheck. My husband and I were exposed to Quixtar and our whole lives changed...We are able to not only grow ourselves and our business, but help other people do the same for themselves and their families”)

⁴ See, e.g., No. 12100 (“I had a background in banking and I was laid off in 2001 and if it was not for my [Quixtar] business I would have been homeless today.”); No. 05122 (“I became a hospital chaplain at two trauma centers for 12 years...I was out-sourced and dependent on my own revenue generation through donated support to a 501C-3 organization. I was able to become self-supporting at the end of 1993 through our business efforts, and my wife left her job before that to be with our family full-time”).

powerful boost to women and minorities,⁵ and in communities where English is a second language.⁶

All of these small entrepreneurs are, of course entitled to truthful information about the businesses they are in and the products they buy, sell and consume. All have the right to get the full benefit of their distributorship contracts. The Commission's NPR identifies several past instances in which unscrupulous promoters misrepresented what they were selling and refused to honor their contracts and warranties. This is why Quixtar supports a reasonable Rule that will

⁵ See, e.g. No. 08176 (Linda Oglesby: "As a downsized research scientist I had no previous business experience. I wanted a small business which I could run from my home while meeting the needs of my school-aged children. A network-marketing type of business fit my needs especially well."); No. 06617 (Elizabeth Olvera: "Through this business opportunity I have learned how to become a business owner and grow within myself. I have also been able to find a solution to my financial needs that I know no other company can give me"); No. 10947 (Rosanna Whitehurst: "As for me, being a single mom with six kids the Quixtar business fit perfectly into my lifestyle. I am very fortunate to have my five older children who are all over the age of eighteen be in business with me. For us it is truly a family business because we are able to work together to achieve our dreams, the American Dream that we migrated to the USA for"); No. 12222 (Valerie Parker: "I have raised 3 children as a single mom, worked full time and have also built a business alongside all of my other responsibilities in order to make ends meet. In the last 20 months I have finally let go of my full time job and have been devoting my time to my family and to my business."); No. 12746 (Jigna Patel: "My husband and I are IBOs with Quixtar since 1993. We have been enjoying best products and services from Quixtar. We are excited about your business and we see a very good future in it").

⁶ See, e.g., No. 05938 ("Hemos sido IBO por un periodo de 1 ano estoy muy contento con la idea Quixtar, es la unica opcion que tengo para un retiro temprano, tengo en mi familia 3 hermanos que lo estan haciendo, uno de ellos platinos, no necesito experiencia o ser un profesional." Translation: "We have been IBOs for a period of 1 year. I am very happy with the Quixtar idea, it is the only option that I have for an early retirement, I have in my family 3 siblings that are doing Quixtar, one of whom is a platinum, and I neither need to have experience nor to be a professional..."); No. 10933, submitted by Salvador Tellez Giron; No. 12156 (Esdras Nazareth: "I've been a part of this incredible [*sic*] opportunity for over 3 years, and my financial future has never been so brighter! Migrated from Brazil, my family and I didn't have much priviledges [*sic*] and the Quixtar opportunity has given us hope and afforded us a better lifestyle").

provide typical or average income information and other meaningful disclosures to people who decide to try business opportunities.

The negative comments submitted by six self-appointed critics of the multilevel marketing industry, operating under the name “Pyramid Scheme Alert,” require little rebuttal from Quixtar.⁷ The patronizing screeds submitted by these six individuals have already been rebutted by the thousands of testimonials submitted by satisfied entrepreneurs who, unlike their critics, are actually involved in Quixtar and comparable business opportunities. Stripped of their rhetoric, the comments of the six critics boil down to complaints that unscrupulous promoters lie about the income potential of multilevel business opportunities and thereby defraud consumers. Quixtar agrees that no one should be deceived when they are considering any business opportunity. The overwhelmingly positive response from actual participants in Quixtar and many other multilevel opportunities shows rather conclusively that fraud is neither chronic nor widespread in the MLM business. We would note Quixtar’s original Comments, which describe a rule providing average income disclosures placed in a proper context and a safe harbor provision that, we believe, would be highly effective at preventing deception in MLM and similar low-cost, low-risk business opportunities without crippling millions of honest entrepreneurs.

⁷ There is no evidence that “Pyramid Scheme Alert” has any real corporate identity or even any real, practical membership beyond the six individuals who used the name in their comments. The 19 submissions from the six people calling themselves “Pyramid Scheme Alert” are as follows. Stephen Barrett submitted No. 10018. Douglas Brooks made three submissions, Nos. 10570, 10572 and 10579. Bruce Craig submitted No. 12306. Robert FitzPatrick made five submissions, Nos. 06415, 09379, 70036, 70037 and 70047. Eric Scheibeler submitted No. 11317. Jon Taylor made no fewer than eight submissions, Nos. 10051, 10058, 10266, 12262, 12585, 12684, 12748 and 70056.

Quixtar strongly disagrees with the comments of the same six individuals that compare multilevel marketing to pyramid schemes. Multilevel marketing is a business, in which participants understand there are no guarantees of success, and that rewards usually come as a result of intentional risk-taking (small risks in the case of Quixtar and comparable opportunities) and persistent effort. Data submitted by other commenters, including the Direct Selling Association, corroborates that most people who put any reasonable amount of effort into Quixtar and comparable opportunities do, in fact, earn income. Quixtar and its predecessor Amway have been calculating and disclosing the actual average gross income of our distributors for over 27 years, under Commission supervision. We pay our U.S. distributors hundreds of millions of dollars in compensation every year, close to one-third of our gross revenues from product sales, using a commission structure that puts Quixtar well ahead of the rates of compensation per dollar of product sold paid to most “traditional” salespeople. Other companies have been imitating our sales and marketing plan for nearly half a century, and it seems certain that many of them also provide a real income opportunity.

The self-appointed MLM police don’t believe that individual citizens should be allowed to take business risks. They invite the Commission to adopt their snobbish belief that anyone who disagrees with them about multilevel marketing must be a victim and a fool. They criticize the Commission’s 1979 *Amway* decision, which has been the leading and universally accepted case defining illegal pyramid schemes for nearly 30 years.⁸ This attack on the Commission’s decades of effective law enforcement is utterly unjustified. The Commission’s *Amway* analysis remains the most effective tool for identifying and distinguishing fraudulent Ponzi schemes from

⁸ *In re Amway Corp.*, No. 9023, 93 FTC 618, 1979 FTC Lexis 390 (May 8, 1979).

legitimate, product-based businesses. A growing number of states recognize this, and have enacted model anti-pyramid legislation based, in some part, on the Commission's *Amway* analysis.

The cynical attack on the multilevel marketing industry is far outside the scope of issues raised by the Commission's NPR. We are confident the Commission will reject such efforts to hijack the rulemaking process. This rulemaking is not a debate about pyramid scheme fraud. Its purpose is to create an effective trade regulation rule that will benefit – not penalize – small business owners in Quixtar and throughout the legitimate direct selling industry.

Quixtar appreciates the opportunity you have given to us and thousands of our independent Business Owners to comment and participate in this rulemaking. We request a full opportunity to participate in any future workshops, hearings or other fact-finding activities the Commission may conduct concerning any of the issues addressed in our original comments or this rebuttal.

Respectfully submitted,

Altacor Inc. (on behalf of Quixtar Inc.)

Michael A. Mohr
Vice President and General Counsel, Altacor Inc.