

MEL MARTINEZ
FLORIDA
(202) 224-3041

Mel

11859584

COMMITTEES:

ARMED SERVICES
ENERGY AND NATURAL RESOURCES
SPECIAL COMMITTEE ON AGING
BANKING, HOUSING, AND
URBAN AFFAIRS

United States Senate

WASHINGTON, DC 20510-0906

September 27, 2007

The Honorable Deborah Platt Majoras
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Dear Chairman Majoras:

I am writing in regards to the Federal Trade Commission's proposed "Business Opportunity Rule" which would require new waiting periods and disclosure requirements for sales of business opportunities. While I understand the FTC's intention is to protect consumers from fraudulent business opportunity sellers, I am concerned that the proposed rule may have an adverse effect on legitimate businesses.

Although the FTC estimates that only 3,200 entities would be affected by the "Business Opportunity Rule," I have heard from constituents in my state who believe the number to be much higher. It is my understanding that approximately 17,000 comment letters were filed in opposition to the proposed rule, specifically citing the financial and administrative burdens associated with compliance. I would greatly appreciate an update from the FTC on the status of this rulemaking. Do you share any of the concerns regarding estimates of compliance costs and entities affected? Is the FTC considering any revisions to the rule that would continue to exempt direct selling arrangements?

I appreciate your consideration of this matter, and I look forward to your response.

Sincerely,



Mel Martinez
United States Senator

2007 OCT 17 PM 12:30
FEDERAL TRADE COMMISSION
CONG. CORRES. BRANCH



Office of the Secretary

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
WASHINGTON, D.C. 20580

October 30, 2007

The Honorable Mel Martinez
United States Senate
Washington, DC 20510-0906

Dear Senator Martinez:

Thank you for your letter to the Federal Trade Commission concerning the Commission's proposed Business Opportunity Rule. As you know, the rulemaking proceeding is ongoing, and members of the Commission staff are currently reviewing comments submitted in response to the Notice of Proposed Rulemaking. Your letter and this response will be made part of the public record of that rulemaking proceeding. Given the pending rulemaking, I cannot respond to your specific questions, but I am happy to provide you with an overview of the proposed rule, as well as an update on the status of the rulemaking proceeding.

The Commission issued a Notice of Proposed Rulemaking concerning the proposed Business Opportunity Rule on April 12, 2006.¹ The version of the rule that the Commission initially proposed was designed to prevent deception inflicted on prospective purchasers of a given business opportunity by ensuring that they receive a one-page disclosure document that provides essential material information concerning that business opportunity. The requirement to provide this disclosure document would cover all types of business opportunity sellers, including those employing the multi-level marketing – or “direct sales” – model. In the Commission's enforcement experience, fraudulent businesses have often passed themselves off as legitimate companies that use this business model. Specifically, many pyramid schemes have masqueraded as legitimate multi-level marketing companies.²

¹ See 16 CFR Part 437: *Business Opportunity Rule: Federal Trade Commission: Notice of Proposed Rulemaking*, 71 Fed. Reg. 19054 (April 12, 2006).

² The Commission has a long history of law enforcement action against pyramid schemes. *FTC v. Sun Ray Trading, Inc.*, No. 05-20402-CIV-Seitz/Bandstra (S.D. Fla. 2005); *FTC v. NexGen3000.com*, No. CIV-03-120 TUC WDB (D. Ariz. 2003); *FTC v. ICR Servs.*, No. 03 C 5532 (N.D. Ill. 2003); *FTC v. Trek Alliance, Inc.*, No. 02-9270 SJL (AJWx) (C.D. Cal. 2002); *FTC v. Universal Direct*, No. C 3-02-145 (S.D. Ohio 2002); *FTC v. SkyBiz.com*, No. 01-CV-0396-EA (X) (N.D. Okla. 2001); *FTC v. Bigsmart.com*, No. CIV 01-0466 PHX ROS (D. Ariz. 2001); *FTC v. Streamline Int'l, Inc.*, No. 01-6885-CIV-Ferguson (S.D. Fla. 2001); *FTC v. Equinox, Int'l*, No. CV-S-99-0960-JBR-RLH (D. Nev. 1999); *FTC v. Five Star Auto Club, Inc.*, No. CIV-99-1693 McMahan (S.D.N.Y. 1999); *FTC v. 2Xtreme Performance Int'l, LLC*, No.

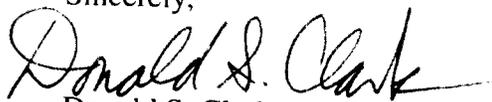
As your letter correctly notes, the Commission received more than 17,000 comments in response to the Notice of Proposed Rulemaking. Many comments express support for the proposed rule and the need to weed out fraudulent actors from the marketplace, but many comments also posit that the proposal would impose unintended compliance burdens on legitimate multi-level marketing companies.

Members of the Commission staff are currently considering whether the proposed definition of business opportunity achieves the proper balance – in its attempt to curb abuses inflicted on the public by pyramid schemes that purport to be business opportunities – while at the same time avoiding any unnecessary compliance burdens on legitimate multi-level marketing companies. These concerns are articulated very clearly and in detail in many of the comments the Commission has received. The staff appreciates these concerns and will carefully consider them as it determines what steps to recommend that the Commission take next in the ongoing Business Opportunity rulemaking proceeding.

I should note that the portion of the Federal Trade Commission Act that governs Commission promulgation of trade regulation rules, 15 USC 57a *et seq.*, provides numerous opportunities for public comment and oral participation with respect to any rulemaking proposals. I should also note, without prejudging any aspect of this matter in any way, that the final rule adopted at the conclusion of a Commission rulemaking proceeding often differs in one or more respects from the initial version proposed at the beginning of the proceeding.

We appreciate receiving your comments on this important consumer protection issue. If you or your staff have additional questions or comments or wish to provide additional information, please feel free to contact me or Jeanne Bumpus, the Director of our Office of Congressional Relations, at (202) 326-2195. Thank you for your interest in the Commission.

Sincerely,



Donald S. Clark
Secretary of the Commission

JFM 99CV 3679 (D. Md. 1999); *FTC v. FutureNet, Inc.*, No. CV-98-1113 GHK (BQRx) (C.D. Cal. 1998); *FTC v. Nia Cano*, No. 97-7947-CAS (AJWx) (C.D. Cal. 1997); *FTC v. Jewelway, Int'l*, No. CV-97 TUC JMR (D. Ariz. 1997); *FTC v. World Class Network, Inc.*, No. SACV-97-162-AHS (EEx) (C.D. Cal. 1997); *FTC v. Global Assistance Network for Charities*, No. 96-2494 PHX RCB (D. Ariz. 1996). *FTC v. Fortuna Alliance, LLC*, No. C96-799M (W.D. Wash. 1996).