MLM 101

A Primer for Regulatory Officials on Business Model Fundamentals of "Multi-Level Marketing"

Examining:

- **Saturation**
- **Retailing Levels**
- **Retail Profit Potential**
- **Source of "Bonus" Payments**
- **Relationship of "Bonus" Payments to Recruiting**
- **The MLM Bonus Payment Formula as Recruiting Reward**
- **Closed Market Characteristics**
- **Validity of MLM "Industry" Data**

PDF Version with Hyperlinks:

https://www.pyramidschemealert.org/wp-content/uploads/2021/11/MLM101.pdf

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Memorandum to Members and Officials of the
US Federal Trade Commission and other Regulatory Agencies

Date: November 2021
From: Robert L. FitzPatrick

Dear FTC Commissioners and Regulatory Officials:

As author of *Ponzinomics, the Untold Story of Multi-Level Marketing*, and president of the non-profit, *Pyramid Scheme Alert*, I am encouraged that the US Federal Trade Commission is revisiting its Business Opportunity Rule (BOR) – with expectation that the Commission will include "multi-level marketing" (MLM) for risk disclosure requirements.[1]

Inclusion of MLM is vitally needed by consumers to make valid decisions when they are financially solicited by MLM promoters. MLM solicitations and media attention to MLM product and income deception, consumer losses, and social disruptions have vastly increased since the BOR was enacted.

This memorandum is not, however, about that obvious consumer need. Rather, this paper addresses the fundamentals of the MLM business model and the data and information the FTC itself will need and rely upon to make BOR policy regarding MLM.

This brief analysis examines data supplied by the Direct Selling Association (DSA), the primary source used by the FTC, the media, and other institutions, and raises questions about the data's validity. The analysis of MLM industry data supplied by its own trade associations also challenges the FTC's current position of presumptively classifying "MLM" as a legitimate form of direct selling, offering consumers a viable and sustainable income opportunity.

I offer my experience and expertise in this field without remuneration to the FTC and other public agencies. Please contact me if I can be of service.

Sincerely,

Robert L. FitzPatrick
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[1] On June 14, 2021, the FTC announced its scheduled review of the BOR. (https://www.ftc.gov/news-events/press-releases/2021/06/ftc-schedules-review-business-opportunity-rule). Commissioner Rohit Chopra publicly commented on including MLM in the BOR (https://www.ftc.gov/system/files/documents/public_statements/1591046/statement_of_commissioner_rohit_chopra_regarding_the_business_opportunity_rule.pdf)

1. Saturation in Plain Sight

Currently, the Direct Selling Association, official voice and lobbyist of multi-level marketing enterprises in the United States, claims that MLM generates $40.1 billion in retail sales, produced by 7.7 million "direct sellers," one for every 17 households in America.[2] The claim of 7.7 million "direct sellers" is based on a new way of counting that the DSA recently adopted. In 2016, for example, it stated:

> *"A record 20.5 million people were involved in direct selling in the United States in 2016, a 1.5% increase from the previous year. These people are affiliated with direct selling companies, and are eligible to purchase products at a discount, and resell them at a profit. They are also eligible to sponsor others to do the same."*

Recently, the DSA separated and renamed 9 million "direct sellers" as "discount buyers", though they still sign the same legally binding contracts that "direct sellers" do, are classified by MLM firms as independent contractors like the "direct sellers" and are officially defined by the DSA as "eligible to purchase, sell and sponsor" just as the "direct sellers" are.

When these "discount buyers" are added back to the total of those under contract as authorized resellers, as they always used to be, there were 16.7 million "direct sellers" in 2020, *one for every 8 households in the country*, using DSA data.

Currently, MLM's ubiquitous and pervasive financial solicitations are made by these 16.7 million contractors without any requirement for disclosing the total number already operating in any given area, risk factors, historical performance, or estimated related costs to invest in the "business opportunity."

The vast scale of MLM consumer financial solicitations to "sell and sponsor" with millions of them resulting in billions in consumer investment year after year, bears on the veracity of MLM's claim to offer a viable "income opportunity" based on retailing and recruiting. Demographic saturation – which

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[2] From the DSA's publication at https://www.dsa.org/statistics-insights/overview and based on the census count of 127 million households in 2020 (https://www.pewresearch.org/fact-tank/2021/10/12/u-s-household-growth-over-last-decade-was-the-lowest-ever-recorded/)

must also include the tens of millions "churned" out of MLM in previous years – makes the selling "opportunity" claim false on its face. The churn and loss rates of 50-80% "quitting" rates and 90+% who gain nothing or nearly nothing each year, repeatedly revealed in court documents and MLM "disclosure" documents, add historical evidence of outcomes that are inevitable due to saturation and other structural factors detailed in the following sections.

2. Falsified Retailing

"Retail selling" has been used by the FTC as a key criterion to determine the validity of MLM as "legitimate direct selling."[3] Though "retail sales" effectively serves as *sine qua non* for legality, and is the defining activity of "direct selling," MLM companies classified as "multi-level marketing" currently are not required to verify or even track retail sales by their 16.7 million authorized resellers.

The single exception is the MLM, Herbalife, which agreed to track and verify "profitable" retail sales and sales to "preferred customers" who pay a discounted price equivalent to that paid by "distributors,"[4] pursuant to its consent order with the FTC.[5] There is no publicly available information concerning Herbalife's compliance with the consent order.

For MLM to be based on "direct selling" individual participants must be able to earn sustainable *retail profit* within the MLM business model and there must be evidence that a significant number of MLM contractors in fact do earn sustainable profit from *retailing*. Otherwise, the MLM "distributorship" has no

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[3] "If the MLM is not a pyramid scheme, it will pay you based on your sales to retail customers, without having to recruit new distributors… In a legitimate MLM program, you should be able to make money just by selling the product." (https://www.consumer.ftc.gov/articles/multi-level-marketing-businesses-and-pyramid-schemes)

"In a legitimate multi-level marketing program, you make money by selling the product, not by recruiting others to join and buy product." (https://www.consumer.ftc.gov/blog/2016/07/multi-level-marketing-questions-ask)

[4] https://edge.myherbalife.com/vmba/media/CEA7E467-B3DE-4C58-BA8C-7175AAAAB2FB/Web/General/Original/BUS849664_PM_Landing_Page_Split_Flyer_USEN_p04.pdf

[5] "Defendants shall take all reasonable steps, including both random and targeted audits, to monitor Profitable Retail Sales and Preferred Customer Sales in order to ensure that they are genuine sales of Products, rather than an attempt to manipulate the Program's compensation plan… "Profitable Retail Sale" means a sale of Product by a Business Opportunity Participant to a Retail Customer or a Preferred Customer that is a genuine sale made at a price above the Business Opportunity Participant's average wholesale cost… "Retail Customer" means a purchaser of Products sold through a Multi- Level Marketing Program who is not a Business Opportunity Participant or a Preferred Customer" (https://www.ftc.gov/system/files/documents/cases/160725herbalifeorder.pdf)

value or serves primarily as a purchased right to recruit and gain rewards from "bonuses." The bonus income is offered only to those who have recruited and is based on scale of recruiting and position on an "endless" recruiting chain. Unless there is evidence that a significant number of MLM contractors in fact gain sustainable profit from *retailing*, the identity of MLM as "direct selling" is a sham disguise for pyramid recruiting.

Publicized DSA data, upon inspection, indicate that sustainable, profitable retailing is not – and cannot be – occurring at any significant scale in the entire MLM field. It further indicates that the DSA claim of $40.1 billion in retail sales for the whole "industry" is impossible.

16.7 million households are under MLM contract to purchase MLM goods *at wholesale price* and are eligible for rewards based on recruiting other *wholesale* purchasers. The DSA further claims 32.6 million more Americans, about two for each MLM participant under reseller contracts, also buy at *wholesale* prices, classifying them "preferred customers."[6]

Using current DSA data, this adds up to 49.3 million Americans buying MLM goods at the *wholesale* price in which there is negligible or no retail profit margin. According to the DSA, the "discount buyers" and the "preferred customers" make *final purchases* at the wholesale price, in which no subsequent retail transactions occur and no retail margins are generated. Their purchases do, however, count toward "bonus" rewards paid only to the "direct sellers" who successfully "sponsor." Their purchases are, therefore, part of the recruiting-based "bonus" system.

Using the DSA's own measure of an average retail margin of 25% (the amount of gross retail profit divided by the retail price), total wholesale revenue of the entire MLM industry is approximately $30 billion, based on the DSA claim of

[6] The "preferred customer" status is a relatively new category promoted by MLM. It is vaguely described in DSA documents. No data is offered as to the churn rates or purchase levels of "preferred customers." Some anecdotal evidence indicates the "preferred customer" is merely a "first-step" status in the recruiting strategy. Even if "preferred customers" were, somehow, counted as "retail" customers, even though they do not pay a retail price and generate no retail margin, at just 5 "preferred customers" per "direct seller", based on DSA data, they could not constitute a sustainable market for profitable "direct selling."

$40.1 billion in "retail" sales. ($40.1 billion / 0.75 = $30 billion.) The DSA is therefore claiming that approximately $10.1 billion was gained in *retail profit*.[7]

I ask the FTC to inquire, after factoring "self-consumption" purchases of the 7.7 million "direct sellers", the discounted final purchases of the 9 million "discount buyers" and the discounted final purchases of another 32.6 million "preferred customers" (total of 49.3 million), *how could the "direct sellers" have earned $10.1 billion in retail profit?*

To have produced $10.1 billion in retail profit, the 7.7 million "direct sellers" would need to sell over $40 billion *on a retail basis*, or about $5,200 each *on a retail basis,* at a 25% profit margin. Incredibly, the DSA directly asserts that 7.7 million "direct sellers" made exactly this volume of retail sales.[8] How could this retail volume have been achieved and the purchases also made by the "discount buyers" and "preferred customers", not to mention the "self-consumption" by the "direct sellers" themselves?

This is, obviously, impossible – mathematically and financially – based on the DSA's own data and factoring over 41.6 million consumers that the DSA claimed made *final purchases at the wholesale price*.

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[7] 25% gross profit is the DSA's "industry" standard for retail profit margin. Its 2021 "Growth and Outlook Survey" states, "*If your company has no standard formula for estimating retail sales, feel free to use the DSA standard formula: Net Sales/Revenue divided by 0 .75 = Estimated Retail Sales. Example: $100 in Net Sales / 0 .75 = $133 in Estimated Retail Sales*". The DSA questionnaire used to gather industry data can be downloaded at http://www.dsa.org/GO2021. It is also preserved at https://www.pyramidschemealert.org/2021-us-growth-and-outlook-questionnaire/

In the DSA example, $33 is generated in gross retail profit on a $133 retail sales transaction. $33/$133 = 25% (rounded). The formula can be reversed to determine the *wholesale* price paid by the retailers, when only the retail price is known, by multiplying the retail price by 0.75, e.g., $133 X 0.75 = $100 (rounded). Using that formula, the DSA's published figure of $40.1 billion in estimated retail sales means that the total wholesale value paid by all the "direct sellers", "discount buyers" and "preferred customers", or what the DSA refers to as "net sales" is $30 billion ($40.1 billion X 0.75 = $30 billion [rounded]).

[8] *Direct Selling in the United States, 2020 Industry Overview*, published by the Direct Selling Association states, "By dividing the $40.1 billion in sales by the 7.7 million direct sellers, direct sellers averaged $5,208 in retail sales in 2020." (https://www.dsa.org/docs/default-source/research/dsa-industry-overview-fact-sheetd601b69c41746fcd88eaff000002c0f4.pdf?Status=Temp&sfvrsn=6e75d9a5_2)

I ask the FTC to question:

- Who purchased $40.1 billion of MLM goods *at full retail price*?
- How much was actually purchased, internally and at wholesale price, by the "direct sellers" themselves as "self-consumption", and by the "discount buyers" and "preferred customers", as final purchases out the industry's total $30 billion in "wholesale" or "net" revenue?
- For example, if each of the 41.6 million people that made final purchases at wholesale pricing bought $50 a month on average, their purchases would amount to $25 billion (rounded) or 83% of the industry's entire net revenue of $30 billion. ($50 X 41.6 million "wholesale" purchasers X 12 mos. = $25 billion [rounded]). Add in the same level of monthly purchases by the "direct sellers" themselves as "self-consumption" and there would be no volume at all available to generate *any* retail profit from.

3. Imaginary Retail "Income Opportunity"

Whatever the total volume is of wholesale purchases made by the 49.3 million consumers contractually eligible to buy at wholesale pricing, the remaining volume for the "direct sellers" to resell at a retail price would make retail selling negligible, unsustainable and unprofitable as an "income opportunity."

Even if the entire net revenue of $30 billion were, somehow, available to the "direct sellers" and all the goods were, somehow, sold at full retail price, resulting in the DSA's claim that 7.7 million "direct sellers" produced $5,208 each in retail sales, this would yield an average gross retail profit, *before costs*, of just $109 a month.

Yet, according to the DSA, almost one-million (.9) Americans worked "full time" as "direct sellers" and another almost seven-million (6.8) "part time", while also claiming they each sell only $5,208 of product a year on a retail basis, on average. The DSA defines "full time" as working 30 or more hours a week and "part time" as working up to 30 hours per week.

This absurd "income" estimate is based on the impossible claim that the "direct sellers" actually sold $40.1 billion on a retail basis. But, using that concocted figure and applying only the minimum of 30 hours for the full time "direct sellers" yields just $108.50 per month in gross retail profit, an hourly rate of $3.62 before all costs are deducted.[9]

When deciphered and objective reality and math are applied, the DSA's own data reveal that a viable income from retailing does not exist for any significant number of the millions solicited to invest in the MLM "business opportunity." The calculations also lead to the conclusion that data offered by the DSA are financially, mathematically and logically contradictory, which is to say, invalid.

This raises the questions of how to characterize MLM's "income opportunity" and to how classify the "industry"?

[9] $5,208 (retail sales) X.25 (profit margin) = $1,302 ÷ 12 (mos.) = $108.50 gross profit per month, before all costs are deducted.

4. "Bonus" at the Top of the Recruiting Chain

How can nearly one-million Americans be identified by the DSA as working "full time" in "direct selling" when the data show there is virtually no retail profit potential? "Full time" *doing what?* The average retail sales for all the "direct sellers" is $109 per month. So how are advertised "incomes", with some promoters claiming to receive millions per year, *actually* gained?

DSA data do not directly reveal the overall amount of money paid in MLM's alternative reward system, the "bonuses." It does not disclose that the source of the "bonus" is the wholesale purchases of "direct sellers", "discount buyers" and "preferred customers." DSA also no longer reports an "overall" average income, as it once did.[10]

Under the MLM model, approximately 40% of net revenue, the amount gained from wholesale purchases by the "contractors", is designated for "bonuses". The

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[10] Previously, the DSA claimed that that the median income (half make more, half less), of all direct sellers, including what it now classifies as "discount buyers," was $2,400 per year, and that 41% gained more than $10,000 a year. A quick analysis shows that this is mathematically and financially *impossible*, requiring far more total sales volume than the industry reported. The DSA claimed at the time "Over 13.6 million individuals sold for direct selling companies as independent contractors with estimated retail sales of $29 billion in 2004." For just half to have earned just the minimum of $2400 would, therefore, mean 6.8 million (half) receiving $16.3 billion (6.8 million X $2,400) in reward payments, from a total industry revenue of just $29 billion. This is before adding in the payments for the other half. The further claim that 41% earned more than $10,000 would mean payments of $55.7 billion (13.6 million X 41% X $10,000). This is before adding the 59% that earned less than $10,000. Clearly, the data are invalid.

The origin of the "median" income figure is a DSA-sponsored 2002 "National Salesforce Survey" conducted by Research International. The DSA cited this study in official comments it delivered to the FTC in July 2006, arguing to exempt MLM from the proposed Business Opportunity Rule. The DSA has itself cited these finding as valid measures. Quoting from the study, the DSA told the FTC, "A direct seller's median annual gross income from direct selling is about $2,400 per year… Fifty- nine percent of direct salespeople make less than $10,000 per year from direct selling." The DSA statement to the FTC can be viewed at https://www.ftc.gov/system/files/documents/public_comments/2006/07/522418-12055.pdf and is preserved at:
https://www.pyramidschemealert.org/wp-content/uploads/2021/11/DSAtoFTC.pdf

money in this fund is re-distributed internally to the various ranks of recruiters.[11] Based on $30 billion in purchases of the "direct sellers, discount buyers and preferred customers" transacted at wholesale pricing, this equates to $12 billion in "bonuses." This money is distributed exclusively to the 7.7 million "direct sellers" who successfully "sponsor", that is, recruit other contractors. Based on how it is internally sourced from the recruited contractors and paid out only to those that successfully recruited those contractors, this fund can be properly termed the "Recruiting Bonus Fund." It is the largest single expenditure of all MLMs, surpassing product costs and production and administrative operations.[12]

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[11] The 40% standard (some pay more) of "bonus" payments based on an MLM's net revenue is disclosed, for example, in the MLM, Nuskin's, 2020 annual filing to the SEC that it spends 39.5% of net revenue on "selling expenses". The report stated, "Selling expenses include sales commissions paid to our sales force… (and) We pay commissions on preferred customer purchases to the referring member of our sales force." (https://sec.report/Document/0001140361-21-004212/#MANAGEMENTSDISCUSSIONANDA)

The figure is also commonly referenced in MLM industry literature, e.g. https://www.businessforhome.org/2019/07/the-pay-out-percentage-to-direct-selling-mlm-network-marketing-distributors/ and https://www.imatrixsoftware.com/understanding-mlm-compensation-plans/ and https://www.mlm.com/compensation-plan-payout/

[12] For example, the MLM, Nuskin, stated in its 2020 annual filing "Selling expenses are our most significant expense… Selling expenses include sales commissions paid to our sales force… (and added) We pay commissions on preferred customer purchases to the referring member of our sales force." The report included data that "selling expense" was 39.5% of net revenue while the cost of all the goods it sells was 25% and all general and administrative costs were 25.5% of net revenue. (https://sec.report/Document/0001140361-21-004212/#MANAGEMENTSDISCUSSIONANDA)

5. Upside-Down "Commissions", Recruiting over Sales, a Closed Market

MLM's defining and universal compensation formula is precisely opposite to that of conventional, that is, *real* direct selling, where the majority of commissions, per transaction, is paid to those who make the sale directly and to the manager closest to the transaction. This results in the great majority of the total commissions going to those at the bottom of the sales and sales management structure.

Under MLM's unique, hallmark pay formula, a much greater percentage of the Recruiting Bonus Fund is distributed to the top ranks. The top-weighted pay formula increases the percentage, *per transaction*, transferred to the upper "ranks" on the recruiting chain as their "group" volume increases.

Real direct selling's pay-formula rewards those who produce the most value to the company, *with value defined as making sales to end-users*. Real direct selling's pay-formula is normally accompanied by a relatively flat structure of no more than three levels, and sometimes fewer, of management responsibility in a country, based on geography or market focus. Eligibility for the few sales management positions is determined by evaluated competence.

MLM's upside-down pay formula, which increases the percent paid, per transaction, based on *group volume*, does the opposite by transferring the largest percent of the total commission to those at the top of the structure, farthest away from the transactions. The unique MLM formula is also accompanied, typically, by up to 12, and often more, "ranks", each receiving a respective percentage, per transaction, of "bonus."

The "ranks" are determined by total volume generated by recruited "downlines" and by various complex structural requirements for specific numbers of recruits at specified lower ranks in required configurations. MLMs then "compress" payments *upward* when participants in mid-level ranks quit or fail to qualify due to lack of required volume or downline structures. The large-scale quitting or qualification failure rates, termed "breakage", matched with the policy of "compression," further transfers and concentrates payments to the top.

None of the "ranks" carries any executive responsibility nor is there any executive oversight of selection or review of management abilities. They serve only as ceremonial titles, made to sound like actual management positions. The only qualification is volume of revenue produced by respective downlines.

Geography plays no role in MLM "ranks" as no "direct sellers" in MLM are assigned territories and the number of "direct sellers" in any area has no limit. Recruiting of new participants is not limited by or associated with any external market factors, such as numbers of competitors, total number of existing resellers, demographic limits, market demand or general economic conditions. By generating more and more "direct sellers", each of which, on average, may recruit a few "discount buyers" and "preferred customers", all buying under contract at fixed, non-negotiable pricing, MLM *creates its own closed and artificial market*. This market is driven by the bonus promises, incentive and rewards, not retail profit.

While the numerous MLM "ranks" serve no management or direct selling function, they very efficiently "leverage" and energize the bonus recruitment model. Each level requires an ever-widening base to meet the higher "group volume" and configuration requirements and necessarily increases the numbers of participants. Increasing the number of recruits is rewarded with a higher percentage of bonus reward, per transaction, gained from the larger base.

The formula gives extraordinary incentive to recruit. The rank and bonus pay plan also makes ascendancy in rank, where the payments are concentrated, feasible *only by recruiting activity*, not individual sales work.

The net result of MLM pay formula is that 50-80% of MLM's $12 billion Recruiting Bonus Fund is transferred to the top 1%.[13] Within the 1%, the top-weighted formula concentrates payments even further, with the majority of "bonus" rewards that goes to the top 1% being transferred to an even smaller group at the peak of that small group, a percent of one-percent.

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[13] The pattern of a transfer of 50% or more (some as high as 80%) of the "bonus" rewards to the top 1% of participants can be verified, with analysis, from available MLM "disclosure" documents. See "The Myth of MLM Income Opportunity at https://www.pyramidschemealert.org/wp-content/uploads/2020/10/Myth-of-MLM-Income.pdf

The MLM formula plainly indicates that the highest value to the MLM company is provided by *the most productive recruiters*, not those actually making individual selling transactions.[14]

The "bonus" payment allocation is not based on competition among the participants in the open marketplace. It is a closed, and controlled money transfer within a self-generated artificial market. Extreme restrictions and extraordinary company control are imposed on the participants. Pricing inside the model is fixed. The distribution and flow of payments to the ranks are prescribed in take-it-or-leave-it contracts. The model dictates that for a larger number of participants to "win" higher incomes from the $12 billion "bonus" fund, a proportionately larger number must be brought into the lower ranks who gain nothing but do supply money to the fund. The upper levels do not outpace the lower ranks. They create and financially devour them.

The purchases by those in the lower ranks are the primary source of $12 billion Recruiting Bonus Fund. Approximately 40% of what they pay in consideration to participate as "direct sellers, discount buyers or preferred customers" is transferred to those who recruited them or recruited those who recruited them,

[14] The role of MLM top-level recruiter, to which is granted the majority of "bonus", includes organizing "motivation" and large-scale, emotional recruiting events, maintaining high visibility in social media as model for "personal life-style", which may or may not reflect reality, and posing as living proof that "anyone can do it." The role also involves employing sophisticated methods of indoctrination of recruits into a belief system, universally promoted in MLM, that success (and by extension all reality) is determined, not by competition, markets, product quality, or individual sales and marketing skill, but by an individual's level of belief, confidence and commitment. The top recruiters' primary role, then, is to persuade all recruits that the MLM model is workable for all when, in reality, it has been designed to work only for less than one percent and, further, to convince the recruits that their failure is always of their own making, never the MLM's.

In *Ponzinomics, the Untold Story of Multi-Level Marketing*, I make the case that the primary mission of all MLMs is not to sell goods or even to recruit but rather to influence new adherents to accept the reality-denying MLM "dogma," which includes believing the "endless chain" to be a workable economic model. When that is achieved, MLM recruits can be swindled into giving nearly everything they have – labor, money, time, family and friends – to the MLM enterprise, *without compensation*. This mission of indoctrination, leading to near total control, is the basis for my identifying MLM as an "economic cult."

etc., with the largest proportion of the total going, by formula, to the smallest number, positioned at the highest "ranks."

The extreme ratio of those receiving the most "bonus" rewards to those receiving nothing, but making payments that source those rewards, as much as 1-to-1,000, is calculated and built into the MLM structure, policy and pay formula.

The leveraged, multi-tiered structure based on recruiting and top-loaded pay formula reserve the majority of the "bonus" rewards for a tiny number positioned, year after year, at the top of the "endless" recruiting chain, which is composed of an ever-churning base of new recruits. The system results, by design, in a vast number of "quitters and losers" who "fail" to reach the higher ranks where the payments are concentrated. The design and outcome make the claim of a "bonus income opportunity" as misleading and false for the vast majority of participants as the "retail selling" income claim.

6. The Validity of MLM Data

The Direct Selling Association (DSA) informs the FTC, the media, academia, Wall Street and the public that it produces an estimated $10.1 billion in retail profit[15] for 7.7 million "direct sellers" who generate $40.1 billion in retail sales. More specifically, it claims that, on average, the 7.7 million "direct sellers" produce $5,208 each in personal retail sales.

A simple analysis of the DSA's "data", factoring the number of authorized resellers and so-called "preferred customers" who purchase at wholesale price and generate no retail profit for the "direct sellers," reveals that sustainable retail profit potential in MLM is virtually impossible. Analysis shows that retailing cannot be occurring at any significant level. The gross total of $10.1 billion in retail profit and the average volume of retail sales reported in the DSA data are mathematically and financially impossible.

While the "retail" data is invalid on its face, the DSA statistics conspicuously offer nothing on the other income proposition based on "bonuses." And, whereas the $10.1 billion retail profit is impossible, the $12 billion paid out in "bonuses" is a financial reality. It is the source of MLM's promise of "unlimited" income, the individual testimonials of receiving "extraordinary" payments, and the images of luxury and wealth commonly associated with MLM promotions. The "bonus" income plan is a universal and defining characteristic of MLM. It is the financial proposition that accounts for ecstatic responses of MLM participants. It animates the business and, unsurprisingly, is the largest single expenditure of the MLM business model.

While the DSA omits specific data on MLM's largest source of payments to "direct sellers," the bonus payment volume can be independently gleaned from available DSA data. The reported average figure of 40% of net revenue for bonuses, which is also not publicly disclosed, can then be applied to determine the total "bonus" payments.

The DSA omission is all the more glaring considering that bonus payment data are readily available. Unlike retail sales carried out by large numbers of

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[15] The gross profit is not directly disclosed but can be calculated from the total retail sales figure of $40.1 billion, using the DSA's standard measure of gross retail profit of 25%. ($40.1B X 0.25% = $10.025 billion)

individuals, bonus payments are made directly by the MLM companies. Every MLM company necessarily records each payment to each recipient.

A brief examination of the DSA data cannot escape a conclusion that the data on which the FTC has historically relied for regulatory policy is not only inadequate but purposefully misleading. It is ambiguous, false or evasive in what it claims to disclose, its interpretations and, even more significantly, what it omits.

- The data on per capita average retail "sales" by "direct sellers" and the claim of more than $10 billion of retail profit gained by "direct sellers", analysis shows, are impossible.
- A retail profit opportunity, which the DSA presents as real and paramount for millions of consumers, analysis shows, is virtually non-existent, calling into question the FTC's characterization of multi-level marketing as "legitimate direct selling."
- An actual external retail market for MLM goods, driven by legitimate market forces such as demand, competitive pricing, superior quality, or brand awareness, is not documented. The existence of consumer "demand" is also challenged by MLM's enormous "churn" rate. DSA data appear to misleadingly conflate internal, contractual purchases, made at wholesale price points and tied to the "bonus" recruiting incentives, with market-based retail sales.
- The separation and re-classification of MLM participants into "direct sellers" and "discount buyers" based on recruiting activity is artificial and unfounded. It appears to define "direct sellers" not by "retail sales", sales efforts, or contractual legal status but by subsequent pyramid recruiting activity, euphemistically called "team building," further calling into question the FTC's characterization of multi-level marketing as "legitimate direct selling."
- MLM's enormous alternative payment system, called "bonuses," can only be gained – according to design – by an extremely small group at the peak of the recruiting chain, and gained only by dedicated and large-scale recruiting activity. Though this payment model is central to the FTC's

determination of MLM legality, the DSA offers little or no information on the bonus funds' ultimate source, allocation, or average payments.

These factors and others call for the FTC to limit, reject or ignore DSA information and to independently undertake a thorough study of MLM as part of its review of the Business Opportunity Rule. This current review should include information and views from experts, authors, consumer activists, investigative journalists, litigating attorneys, and the voices of what is now called "anti-MLM," a newly emerging consumer movement that is documenting MLM deception, consumer losses, and social disruptions associated with MLM solicitations.

The FTC review or any investigation of MLM by any other regulatory agency should reflect the current consumer awareness and activism, additional research, documentation, analysis, investigative media reports now available and the many new voices now involved.