COURT FILE NUMBER	2303 13143
COURT	COURT OF KING'S BENCH OF ALBERTA
JUDICIAL CENTRE	EDMONTON
PLAINTIFF	PRIMERICA, INC., PRIMERICA LIFE INSURANCE COMPANY, PRIMERICA FINANCIAL SERVICES LLC, PFSL INVESTMENTS CANADA LTD., and PRIMERICA LIFE INSURANCE COMPANY OF CANADA
DEFENDANT	MARCO MOUKHAIBER
DOCUMENT	**AFFIDAVIT**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	NANDA & COMPANY ATTN: Avnish Nanda 10007 80 Avenue NW Edmonton, AB T6E 1T4 Tel: 587-400-1253 Fax: 587-318-1391 Email: avnish@nandalaw.ca File No.: 729.00001

JUDICIAL CENTRE OF EDMONTON
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Nov 29, 2023
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CLERK OF THE COURT

AFFIDAVIT OF William W. Keep, PhD

Sworn on September 28, 2023

I, William W. Keep, of Mystic, CT, United States of America SWEAR AND SAY THAT:

1. As a result of my education, training, credentials, work experience, and other details set out below, I have personal knowledge of the information set out in this affidavit, except to such matters based upon information and belief.

2. I have a doctoral degree in Marketing, with minors in Business Ethics and Psychometrics, from Michigan State University. Over my career as a marketing professor, I have published research in retailing; business ethics; multilevel marketing, direct selling, and pyramid schemes; long-term business relationships; and marketing history.

3. My research has appeared in, among other publications, the JOURNAL OF MARKETING, the JOURNAL OF PUBLIC POLICY AND MARKETING, the JOURNAL OF BUSINESS ETHICS, the JOURNAL OF HISTORICAL RESEARCH IN MARKETING, INDUSTRIAL MARKETING MANAGEMENT, and MARKETING THEORY AND PRACTICE.

4. In 2002, I published with Dr. Peter Vander Nat, then a senior economist with the Federal Trade Commission ("**FTC**"), the first academic paper presenting a methodology for identifying an illegal pyramid scheme. In 2014, Dr. Vander Nat and I published the first academic paper to trace important historical trends in direct selling, multilevel marketing, and pyramid schemes.

5. For over twenty-five years, I have taught a range of university courses, including: retailing, channels of distributions, strategic marketing, marketing planning, business ethics, and a new course on Ponzi schemes and pyramid schemes. A copy of my Curriculum Vitae is attached to this affidavit as **Exhibit "1"**.

6. I also served as an expert witness for and/or a consultant to federal and state prosecutors and in private cases. These matters are listed in **Exhibit "1**", which also lists all publications I authored over the last ten years, and cases in which I have testified as an expert at trial or by deposition over the last four years.

7. In *FTC v. BurnLounge, Inc.*, 753 F.3d 878, 883 (9th Cir. 2014), the Ninth Circuit cited a portion of *United States v. Gold Unlimited*, 177 F.3d 472, 479-82 (6th Cir. 1999), where the Sixth Circuit referenced my work for the government in that case.

8. In 2021, I co-planned and hosted the first international conference on multi-level marketing, titled *Multilevel Marketing: The Consumer Protection Challenge*, a virtual meeting that included a keynote address by FTC Commissioner Noah Joshua Phillips, federal regulators from four countries, federal and state prosecutors, academics, journalists, private attorneys, and social media activists, among others. Over four hundred attendees joined from over two dozen countries. I also co-planned and hosted the same conference in 2022 and 2023.

9. In October 2021, I gave an invited keynote address to attendees at a workshop on pyramid schemes hosted by the International Consumer Protection Enforcement Network.

10. I have been retained by the Defendant in this lawsuit to provide an expert opinion on the business practices of Primerica Inc. and its subsidiaries, some of which are named as Plaintiffs in this action. My testimony will specifically address Primerica's business practices, messaging, earnings, and multilevel marketing ("**MLM**") tendencies.

11. Because MLM models can differ and companies may or may not comport to their own statements and policies, I focus on how Primerica operates in practice. I do not purport to draw any legal conclusions.

12. I certify that I am aware of my duty as an expert witness to assist the court, and not be an advocate for any party. I have made this affidavit and have given this written testimony in conformity with that duty. If I am called on to give further testimony, it will be in conformity with that duty.

Primerica: An MLM company

13. Despite company claims to the contrary, "No, Primerica is not an MLM,"[1] in practice Primerica operates an MLM business model utilizing endless chain recruitment. Essentially, the business model incentives participants to pursue rewards (i.e., earnings) by recruiting others who join for the same purpose and by selling to non-participant consumers. Purchases of insurance and financial services by newly recruited participants constitute a valuable buyer base that generates upline rewards with or without eventual sales to non-participant consumers. Enforcement actions and successful pyramid scheme prosecutions have tainted

[1] Primerica, "Primerica Misconceptions FAQS," attached to this affidavit at **Exhibit "2"**.

the MLM label, causing some MLM firms like Primerica to try to distance themselves from the label.

14. In 1998 the President of Direct Selling Association (DSA) provided a description of multilevel marketing, "In Amway and other multilevel companies, you can make money not only from your own sales efforts but also from the sales efforts of those people you have personally recruited—then from the people they recruit, and so on."[2] The definition fits the Primerica model in practice. From 2010 forward the business media, popular press,[3] and academics have explicitly identified Primerica as an MLM company.[4] Perhaps most telling, Primerica affiliated itself with the MLM model when in 2011 it hired a former Director of the Bureau of Consumer Protection at the FTC and former Chairman of the FTC to craft a two-page comment to argue for the exclusion of multilevel marketing under the final version of the new FTC Business Opportunity Rule.[5] Clearly Primerica was concerned as to the implications of including the MLM industry under the new Rule. One wonders why, if Primerica were not operating an MLM model, it would go to such lengths.

15. The MLM model as practiced by all MLM companies familiar to me relies upon endless chain recruitment. So too do all pyramid schemes. Sometimes also referred to as pyramid selling, chain referral, and chain letter schemes, pyramid schemes are characterized by recruited members who pay to obtain the right to (a) sell a product, (b) recruit others into the scheme and (c) earn rewards unrelated to product sales to ultimate users. Here I refer to "ultimate users" as sales to non-participant consumers, sometimes referred to as "retail sales." Though the Ninth Circuit in the US has recognized some sales to participants for their own use as sales to "ultimate users," it ultimately found BurnLounge to be a pyramid scheme "because BurnLounge incentivized recruiting participants, not product sales."[6]

16. Each country, of course, follows the laws of that country. As much of the global enforcement effort against MLM companies has been in the US, the 2017 statement by the FTC can be instructive as to the distinction between an illegal pyramid scheme and a legal MLM model:

> For companies acting within the law, the business is driven by selling products to real customers. Who do we mean by "real customers"? People unaffiliated with the company who actually buy and use the product the MLM sells – real retail sales, in other words. And by "real sales," we mean

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[2] Black D. *Pyramid power: Network marketing leaders' accounts of professional development and success.* [Order No. NQ63816]. University of Toronto (Canada); 1999. p. 53. Attached to this affidavit at **Exhibit "3"**.

[3] Veneziani, V. Business Insider: "Meet Primerica, The New Wall Street IPO That's Really a Multi-Level Marketing Scheme," April 1, 2010. Attached to this affidavit at **Exhibit "4"**; Lisa, A. Yahoo Finance: "8 Controversial MLM Schemes to Stay Away From," September 27, 2021. Attached to this affidavit at **Exhibit "5"**; Carter, Z. D. HuffPost: "Senate Republicans Think Herbalife Is A Good Model For Your Retirement Savings," July 20, 2015. Attached to this affidavit at **Exhibit "6"**.

[4] Groß C, Vriens D. The role of the distributor network in the persistence of legal and ethical problems of multi-level marketing companies: JBE. *J Bus Ethics*. 2019;156(2):333-355. Attached to this affidavit at **Exhibit "7"**.

[5] Federal Trade Commission, Project No. R511993, "Comment of Primerica Financial Services, Inc. on the Revised Notice of Proposed Rulemaking on the Business Opportunity Rule R511993." May 27, 2008. Attached to this affidavit at **Exhibit "8"**.

[6] *BurnLounge, Inc. v Bernet*, 771 F.3d 1175, United States Court of Appeals, Ninth Circuit, 2014. Attached to this affidavit at **Exhibit "9"**.

> sales that are both profitable and verifiable – retail sales that can be confirmed. Contrast that with MLMs built primarily on bringing in more and more recruits and racking up sales to other insiders. Very few people are going to make money and most participants will be left in the lurch.[7] (FTC, January 10, 2017)

17. The priority placed on continuous recruitment and the necessity to recruit to achieve rank is apparent in the video in question but also, perhaps more importantly, in documents entitled "Primerica Orientation Manual" and the "Fast Start Planner," attached to this affidavit as **Exhibit "10"**. Both documents repeatedly highlight the importance of endless recruitment. Thus, in terms of Primerica business practices, the company clearly employs the MLM model and prioritizes continuous recruitment.

18. The messaging by Primerica comes mostly from current participants who have a vested interest in successful recruitment. Often the messages are face-to-face, which makes systematic documentation difficulty, though they also may be conveyed by upline representatives to larger groups, both practices on display in the video in question. The messaging may rely on false comparisons (e.g., the United States government is a pyramid shaped triangle, colleges recruit, the military recruits, etc.). Clearly, many governmental and non-governmental organizations are hierarchical but, unlike the MLM model, moving up the hierarchy does not require recruiting others to buy into the organization who then recruit others. Similarly, many organizations rely on ongoing recruiting, such as to fill college seats or meet required military readiness. Ongoing recruitment is not equivalent to nor based on the same incentives as endless chain recruitment

19. To increase appeal and secure new recruits, MLM participants may rely on misleading claims about the quality or appropriateness of a product or service and/or about potential earnings. Such misleading claims have been documented in FTC cases. In addition, the non-profit TruthInAdvertising.org (TINA.org) conducted original research on misleading product and earning claims in the MLM industry:

> …a TINA.org investigation has found that 97 percent of DSA member companies selling nutritional supplements have distributors marketing their products with illegal health claims. Not only are distributors making dubious claims but TINA.org also documented DSA member companies making health claims that violate the law.[8] (TINA.org)
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> Between June and November 2017, TINA.org investigated every company on the November 29, 2017 Direct Selling Association (DSA) membership list and found that more than 97 percent have made or are making – either

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[7] Fair, L. Federal Trade Commission: "Redress checks and compliance checks: Lessons from the FTC's Herbalife and Vemma cases," January 10, 2017. Attached to this affidavit at **Exhibit "11"**.

[8] Truth in Advertising: "Is the DSA Ignoring Illegal Health Claims?" September 15, 2017. Attached to this affidavit at **Exhibit "12"**.

> directly or through their distributors – false and unsubstantiated income claims to promote the companies' business opportunity.[9] (Tina.org)

20. When it comes to misleading insurance product claims (not part of Tina.org research), the appropriateness of term life insurance for consumers, apparently without regard to their situation, may also be an issue. To stimulate recruitment and sales a participant may over-emphasize the appropriateness of term insurance, relative to other forms of insurance, particularly when selling to friends and family interested in "helping" the new Primerica participant succeed.

21. Misleading income claims, highlighted in the video in question, are an evident problematic issue for Primerica. The 2017 list of DSA companies with misleading income claims included Primerica. Later TINA.org reported, "In 2020, TINA.org found additional misleading income claims regarding the Primerica business opportunity."[10] Overall TINA.org concluded "Primerica…a Georgia-based multilevel marketing company that sells term life insurance…used unsubstantiated and exaggerated income claims to market its business opportunity."[11]

22. According to Primerica, for the calendar year 2022 members of its North American sales force earned on average $7,479,[12] or approximately $150 per work week (assuming 50 work weeks per year). The same amount as working 20 per week at $7.50USD per hour. However, this is the average and not the median (the point where half earned more and half earned less). In fact, publicly available MLM earnings statements shows the distribution earning of participants to be highly skewed. Thus, the average amount does not represent the typical participant experience.

23. As described in the Huffington Post article in **Exhibit "6"**, "More than 190,000 new recruits paid a fee to sign up for Primerica in 2014, according to the company's annual report with the Securities and Exchange Commission. But Primerica only boosted its total licensed sales force by 3,700 that year, and each member of the sales team earned an average of $6,030." Thus, more than 98% of recruits who paid the joining fee failed to qualify for earnings. Here too, the average of $6,030 for the remaining 1.9% would not be the typical experience. The typical participant likely earned $0 if the earnings distribution of participants in Primerica resembles those of other MLM companies.

24. The high rate of recruits who pay a fee and fail to qualify necessarily means recruiting large numbers of new recruits each year. In years 2021 and 2022 over 700,000 new recruits paid to join Primerica. Yet the total number of "Life-licensed independent sales representative" at the end of 2022 exceeded the number at the end of 2020 by only 301 – 135,208 compared to

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[9] Truth in Advertising: "Multilevel Marketing: The Day Job that Doesn't Pay." December 18, 2017. Attached to this affidavit at **Exhibit "13"**.

[10] Truth in Advertising: "Primerica Income Claims Database."

[11] Truth in Advertising: "Primerica Investigation."

[12] Primerica: "Important Earnings Statement," attached to this affidavit at **Exhibit "14"**.

134,907. The high churn rate and low monthly rate of new policies issued by licensed participants (reported as .18 per month for 2022) highlights the highly improbable path to even minimum wage income, let alone the levels of income described in the video in question.[13]

25. In summary, Primerica operates an MLM model with characteristics similar to other MLM companies, with misleading income claims, a high failure rate, and a low probability of success with the typical qualified participant likely earning $0 income. I could not find any company messaging that conveyed the typical experience nor could I find data on the earning distribution of qualified participants. In my experience, the video in question and the absence of data on what a typical participant experiences intentionally inhibit informed choice.

26. I was not physically present before the commissioner, but was linked with the commissioner using video conferencing technology in accordance with the process described in Court of King's Bench of Alberta's Notice to the Profession and Public dated March 25, 2020 (NPP#2020-02).

SWORN BEFORE ME in the City of Edmonton, Province of Alberta this 28th day of September, 2023.	)	
______________________________	)	William W. Keep **WILLIAM W. KEEP**

[13] Primerica, Inc. 2023 10K, Attached to this affidavit at **Exhibit "15"**.

134,907. The high churn rate and low monthly rate of new policies issued by licensed participants (reported as .18 per month for 2022) highlights the highly improbable path to even minimum wage income, let alone the levels of income described in the video in question.[13]

25. In summary, Primerica operates an MLM model with characteristics similar to other MLM companies, with misleading income claims, a high failure rate, and a low probability of success with the typical qualified participant likely earning $0 income. I could not find any company messaging that conveyed the typical experience nor could I find data on the earning distribution of qualified participants. In my experience, the video in question and the absence of data on what a typical participant experiences intentionally inhibit informed choice.

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SWORN BEFORE ME in the City of Edmonton, Province of Alberta this 28th day of September, 2023.)

WILLIAM W. KEEP

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

[13] Primerica, Inc. 2023 10K, Attached to this affidavit at **Exhibit "15"**.

REMOTE COMMISSIONING CERTIFICATE

CANADA

PROVINCE OF ALBERTA

I, DEVYN TAYLOR ENS, a Commissioner for Oaths in and for Alberta, DO HEREBY CERTIFY that:

1. The process for remote commissioning of affidavits specified in Notice to the Profession and Public NPP#2020-02 dated Match 25, 2020 (the "Process") has been followed for the attached affidavit; and

2. I am satisfied that the Process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and me to be physically present together.

DATED at Edmonton, Alberta this 28th day of September, 2023.

Devyn Taylor Ens
A Commissioner for
Oaths in and for Alberta

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

This is Exhibit " A " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

William W Keep — Curriculum Vitae

Home Address:
196 High Meadow Lane
Mystic, CT 06355-1652
203-915-3165
keep@tcnj.edu

Education

PhD 1991	Eli Broad College of Business, Michigan State University Major: Marketing Minors: Philosophy, Psychometrics
BA 1981	James Madison College, Michigan State University Dual Major: Social Science and Economics
1970-1974	United State Coast Guard (active duty)

Electronics Technician — United State Coast Guard (Active Service 1970-1974)

Appointments

2023 – Present	Professor of Marketing Emeritus
2009 – 2023	Professor of Marketing
2018 – 2020	Interim Provost / Vice President for Academic Affairs
2009 – 2018	Dean, School of Business, The College of New Jersey
2007 (January – June)	Dean, Sprott School of Business, Carleton University
2002 – 2005	Associate Vice-President for Academic Affairs, Quinnipiac University
2001 – 2009	Professor of Marketing, Quinnipiac University
1999 – 2002	Director of Assessment, School of Business, Quinnipiac University
1998 – 2001	Associate Professor of Marketing, Quinnipiac University
1991 – 1998	Assistant Professor of Marketing, University of Kentucky

Research
- Competitive Channel Strategies
- Long-Term Business Relationships
- Marketing: Ethical & Legal Issues
- Marketing History
- Retailing
- Direct Selling, Multilevel Marketing, and Pyramid Schemes

Consulting
- Multilevel Marketing & Pyramid Schemes (Expert Witness)
- Analysis of Marketing Practices (Expert Witness)
- Marketing from the Inside Out
- Marketing Equity and Integrity
- Assessment of Strategy Implementation

Teaching
- Marketing Management – MBA
- Marketing Planning – MBA
- Top Management Leadership & Ethics – MBA
- Marketing Communications – MBA
- Channels of Distribution
- Retailing
- Ponzi Schemes, Pyramid Schemes & other Business Fraud
- Marketing Strategies: Case Analysis
- Business Ethics
- Marketing Principles
- Services Marketing
- Business-to-Business Marketing
- Database Marketing

Current Projects

Working paper: "Lawful but awful. An institutional theory lens on how endless-chain recruiting in multi-level marketing has become an accepted business practice," with Dr. Claudia Gross* and Dr. Dirk Vriens*, Radboud University Nijmegen, The Netherlands

Peer-Reviewed Journal Publications

William W Keep (2022), "Why is historical research important in marketing?" *Japan Marketing History Review*, 1(1), 11-17

William W Keep and Peter J Vander Nat (2014), "Multilevel Marketing and Pyramid Schemes in the United States: An Historical Analysis," *Journal of Historical Research in Marketing*, 6 (2), 188-210

Tarique Hossain, William W Keep, and Susan Peters (2012), "Does Corruption Impede and Bilateral Tax Treaties Help Foreign Direct Investment?" *International Journal of Business Insights and Transformation*, 4 (3), 40-47

David Burns, Chris Manolis, and William W Keep (2010), ''Fear of Crime on Shopping Intentions: An Examination," *International Journal of Retail & Distribution Management*, 38 (1), 45-56

William W Keep and Gary P Schneider (2010), "Deception and defection from ethical norms in market relationships: a general analytic framework," *Business Ethics: A European Review*, 19 (1), 64-80

D G Brian Jones and William W Keep (2009), "Hollander's doctoral seminar in the history of marketing thought," *Journal of Historical Research in Marketing*, 1 (1), 151-164

William W Keep (2009), "Furthering Organizational Priorities with Less Than Truthful Behavior: A Call for Additional Tools," *Journal of Business Ethics*, 86 (April), 81-90

William W Keep (2003), "Adam Smith's Imperfect Invisible Hand: Motivations to Mislead," *Business Ethics: A European Review*, 12 (October), 343-353

Peter J Vander Nat and William W Keep (2002), "Marketing Fraud: An Approach for Differentiating Multi-Level Marketing From Pyramid Schemes," *Journal of Public Policy and Marketing*, 21 (Spring), 139-151

Jay Lindquist, William W Keep and Robert Dahlstrom (2000), "Comparing Shared Benefits: Shopping Center versus Catalog Shopping," *Journal of Marketing Management/Marketing Management Journal*, 10 (Spring), 131-141

Stanley C Hollander, William W Keep and Roger Dickinson (1999), "Marketing Public Policy and the Evolving Role of Marketing Academics: An Historical Perspective," *Journal of Public Policy and Marketing*, 18 (Fall), 265-270

William W Keep, Stanley C Hollander and Roger Dickinson (1999), "The Challenge of Cooperative Business Relationships," *Global Outlook*, XI (1), 63-76

William W Keep, Stanley C Hollander and Roger Dickinson (1998), "Forces Impinging on Business-to-Business Relationships in the United States: An Historical Perspective," *Journal of Marketing* 62 (April), 31-45

Jule B Gassenheimer and William W Keep (1998), "Generalizing Diversification Theory Across Economic Sectors: Theoretical and Empirical Considerations," *Marketing Theory and Practice*, 6 (1), 38-47

Fred Phillips, Andrew W Donoho, William W Keep, Walter Mayberry, John M McCann, Karen Shapiro and David Smith (1997), "Electronically Connecting Retailers and Customers: Summary of an Expert Roundtable," *Journal of Shopping Center Research*, 4 (Fall/Winter), 63-93

William W Keep and Patricia J Daugherty (1997), "Carrier Selection and Shippers' Perception of Truck Versus Intermodal Transportation," *Business and Public Affairs*, 43 (Spring), 2-10

William W Keep, Stanley C Hollander and Roger J Calantone (1996), "Retail Diversification in the United States: Are There Performance Differences?" *Journal of Retailing and Consumer Services*, 3 (1): 1-9

William W Keep and Jay D Lindquist (1995), "Consumer Patronage of Shopping Centers and In-home Retail Formats: A Time Diary Approach," *Journal of Shopping Center Research*, 2 (Spring/Summer): 7-26

William W Keep and Jule Gassenheimer (1995), "The Effect of Diversification on Manufacturers, Wholesalers, and Retailers," *Journal of Managerial Issues*, 7 (Spring): 13-27

Chris Manolis, William W Keep, Mary L Joyce and David R Lambert (1994), "Testing the Underlying Structure of a Store Image Scale," *Educational and Psychological Measurement*, 54 (Fall): 628-645

> Scale reprinted in: *Handbook of Marketing Scales: Multi-item Measures for Marketing and Consumer Behavior Research*, 2nd edition, William O Bearden, Richard G Netemeyer, and Mary F Mobley eds

William W Keep, Glenn S Omura and Roger J Calantone (1994), "What Managers Should Know About Their Competitors' Patented Technologies," *Industrial Marketing Management*, 23 (July): 257-264

William W Keep (1994), "Structuring the Macromarket: Lessons from Alexander Hamilton," *Journal of Macromarketing*, 14 (Spring): 23-30

William W Keep and Stanley C Hollander (1992), "Nonstore Retailing: A Look at the Mail Order Experience," *Journal of Marketing Channels*, 1 (3): 61-83

Book Chapters, Books, Cases and Abstracts

William W Keep (2019), "S.C. Hollander: Retailing and Marketing Scholar," In History of Marketing Thought in the United States, part 2: 157-185. Marketing History Society of Japan, ed.

William Keep (2005), "Rewriting Business as Usual," in *Direct from the Disciplines*, Mary T Segall and Robert A Smart eds, Portsmouth, NH: Heinemann Press, 9-17

Kelly Tian and Bill Keep (2002), *Customer Fraud and Business Responses*, Westport, CT: Greenwood Publishing, Quorum Books

Chinese Translation published in 2005

William W Keep and Roger Dickinson (1998), "The Negotiation Ratio," retailing case in *Retail Management*, Barry Berman and Joel R Evans, 7th edition, Upper Saddle River, NJ: Prentice Hall, 468

Fred Phillips, Andrew Donoho, William W Keep, Walter Mayberry, John M McCann, Karen Shapiro and David Smith (1997), "Electronically Connecting Retailers and Customers: Interim Summary of an Expert Roundtable," in *Electronic Marketing and the Consumer*, Robert A Peterson, ed., Thousand Oaks, CA: Sage, 101-122

Joseph Hair Jr. and William W Keep (1997), "Electronic Marketing: Future Possibilities," in *Electronic Marketing and the Consumer*, Robert A Peterson, ed., Thousand Oaks, CA: Sage, 163-173

Stanley C Hollander and William W Keep (1992), "Mass Merchandising/Traditional Retailing," in *The Future of US Retailing: An Agenda for the 21st Century*, Robert A Peterson, ed., New York: Quorum Books: 129-160

William W Keep (1990), abstract review of *Merchants and Manufacturers* by Glenn Porter and Harold C Livesay, *Journal of Marcomarketing*, Spring

Conference Presentations/Publications

Multilevel Marketing: The Consumer Protection Challenge Conference (2021), co-organizer and host of virtual conference with attendance of 400+ from more than two dozen countries

William W Keep (2015), "Five Decades of Change: The History of Avon's Challenges 1964-2014," presented at the 17th Conference on Historical Analysis and Research in Marketing (published abstract)

William W Keep and Peter Vander Nat (2013), "Multilevel Marketing: A Historical Perspective" presented at the 16th Conference on Historical Analysis and Research in Marketing (published abstract)

William W Keep (2009), "The Underpinnings of Retail Conglomerates: An Historical Analysis" presented at the 14th Conference on Historical Analysis and Research in Marketing (published abstract)

William W Keep (2008), "Meso-Market-Ethics (MME): The Confluence of Market Segments, Ethics, and Time," accepted at 33rd Annual Meeting of the Macromarketing Society, Clemson, SC

William W Keep (2005), "Business *in* Society: A look at obituaries of business leaders in the mid-1800s" presented at the 12th Conference on Historical Analysis and Research in Marketing (published abstract)

William W Keep (2003), "Adam Smith's Imperfect Invisible Hand," full paper presented and included as addendum to proceedings at The Challenge of Business Ethics, a joint meeting of the 7th European Business Ethics Network-UK (EBEN-UK) Annual Conference & The 5th Ethics and Human Resource Management Conference (published paper)

Robert Smart, Mary Segall, Signian McGeary, Bill Keep, Andrew Delohery, and Sean Duffy (2003), "Lobster Tails! and Bean(s): Making WAC Palatable" presented at the 54th Annual Convention of the Conference on College Composition and Communication (published abstract)

William W Keep and David Aron (2002), "Powered by SRAM," case based on actual company presented at the Direct Marketing Education Foundation Educator's Conference, October 20-23, case won third prize (published paper)

William W Keep (2001), "The Challenge of Marketing Partnerships in an E-Commerce Environment," 2nd World Congress on the Management of Electronic Commerce, Ontario, Canada, January 17-19 (published paper)

William W Keep (2000), "The Customer-Retailer Internet Service (CRIS)," case presented at the 1st World Congress on the Management of Electronic Commerce, Ontario, Canada, January 19-21 (published paper)

William W Keep, Jay Lindquist and Robert Dahlstrom (1999), "Consumer Perceptions of Mail Order Catalog Shopping Benefits: An Empirical Investigation," 6th International Conference on Recent Advances in Retailing and Services Science (published abstract)

Roger Dickinson and William W Keep (1997), "The Robinson-Patman Act − An Historical Perspective," 8th Conference on Historical Research in Marketing and Marketing Thought (published paper)

Fred Phillips, Andrew Donoho, William W Keep, Walter Mayberry, John M McCann, Karen Shapiro and David Smith (1996), "Electronically Connecting Retailers and Customers: Interim Summary of an Expert Roundtable," Electronic Marketing and the Consumer Symposium, sponsored by the University of Texas at Austin and the IC^2 Institute (published paper)

William W Keep, Stanley C Hollander and Roger Dickinson (1996), "Relationship Commitment, Trust and Non-Opportunistic Behavior: Comparing Selected Business and Social Values," Proceedings of American Marketing Association Summer Educator's Conference, C Droge and R Calantone ed., American Marketing Association, 289-297 (published paper)

William W Keep, Stanley C Hollander and Roger Dickinson (1996), "Buyers, Sellers, and Changing Social Values," 20th Macromarketing Conference (published abstract)

William W Keep, Stanley C Hollander and Roger Dickinson (1995), "Are We Bonding Better in a Better World: Some Perspectives on Channel Relationships," 7th Conference on Historical Research in Marketing and Marketing Thought, K M Rasulli, S C Hollander and T R Nevett eds, Michigan State University: 315 (published paper)

William W Keep and Elizabeth Alexander (1995), "Society and Innovation: An Historical Look at the Shaker Experience," 7th Conference on Historical Research in Marketing and Marketing Thought, K M Rasulli, S C Hollander and T R Nevett eds, Michigan State University: 363-373 (published paper)

William W Keep, Stanley C Hollander and Roger J Calantone (1994), "Another Look at Retail Diversification: Some Evidence and Some Contradictions," Proceedings of the 17th Annual Conference of the Academy of Marketing Science, E J Wilson and W C Black eds, Academy of Marketing Science, 1994, 175 (published paper)

William W Keep (1993), "Structuring the Macromarket: Lessons from Alexander Hamilton," sole author, 6th Conference on Historical Research in Marketing and Marketing Thought, J Schmidt, S C Hollander, T Nevett and J N Sheth eds, Michigan State University: 89-99 (published paper)

William W Keep and Glenn S Omura (1992), "A Patent Based Study of the Relationship Between Industry Research Structure and Research Activity," Proceedings of American Marketing Association Educator's Conference, R P Leone and V Kumar eds, American Marketing Association, 42 (published abstract)

Stanley C Hollander and William W Keep (1990), "Mass Merchandising/Traditional Retailing," with, Retailing in the Year 2000: An Academic Symposium, sponsored by The Direct Selling Education Foundation, the University of Texas at Austin, and IC^2 Institute, 1990 (published paper)

William W Keep (1990), "Competition Between Specialty and NonSpecialty Outlets: The Effect of Consumer Expertise," Proceedings of the 13th Annual Conference of the Academy of Marketing Science, BJ Dunlap ed., 1990, 441-446 (published paper)

William W Keep, Daniel L Wardlow and Glenn S Omura (1988), "Survivability of Entrepreneurs as a Function of Evolutionary Market Change and Task Complexity," UIC Symposium on Marketing and Entrepreneurship, G E Hills, R W LaForge and B J Parker eds, 1988, 47-61 (published paper)

Grants and Awards Received

Principal Grant Writer: co-authored Faculty Development Grant for Writing Across the Curriculum ($144,000) from The Davis Educational Foundation, grant received summer, 2004

Authored Assessment Section: Program Development Grant ($79,000) from US Department of Education, Undergraduate International Studies and Foreign Language Program (Title VI) for Minor in European Union Studies

Authored Assessment Section: Program Development Grant ($88,115) from US Department of Education, Undergraduate International Studies and Foreign Language Program (Title VI) for Minor in Latin American Studies

Faculty Research grants-in-aid for research-related expenses, Quinnipiac University: 1999, 2005

Grant from Teaching and Learning Center, University of Kentucky to attend the Lilly Conference on College Teaching, University of Miami, Oxford, Ohio, 1996

Mini-Grant from University of Kentucky to attend Electronic Marketing and the Consumer Symposium, Austin, Texas, 1996

Research Grant ($8,500) from the International Council of Shopping Centers Educational Foundation for research program "Consumer Patronage of Shopping Centers and In-Home Shopping Formats: A Time Diary Approach," 1994-95

Internationalizing the Curriculum Grant, for material that contrasts European and United States retailing, Office of International Affairs, University of Kentucky, 1994

Committee Work
Member: President's Cabinet
Member: Bias Response Team
Convener: Council of Deans
Convener: Academic Leaders
Co-Chair: Steering Committee
Co-Chair: Committee on Strategic Planning and Priorities
Co-Chair: Campus Emergency Response Team
Member (non-voting): College Promotion and Tenure Committee
Member: Presidential Search Committee
Member: Continuous Quality Improvement Committee
Member: Undergraduate Curriculum Committee

Professional Service
Accreditation Team: Association for the Advancement of Collegiate Schools of Business
Editorial Review Board: *Journal of Historical Research in Marketing* (2008 − present)
Board Member: Middle Atlantic Association of Colleges of Business Administration (2011-13)
Editorial Review Board: *Journal of Macromarketing* (2004 – 2009)
Editorial Review Board: *Journal of Managerial Issues* (1995 − 2000)
Vice President: CHARM (Marketing History Association) – (2021)
Treasurer: CHARM (Marketing History Association) – (2003 − 2005)

Reviewer (ad hoc):
Journal of Public Policy and Marketing
Journal of Business Ethics
Journal of Marketing
Business History
Journal of Retailing and Consumer Services
Macromarketing Conference

Academy of Marketing Science Conference

Program Chair: CHARM (Marketing History Association) Conference (2009)
Special Session Co-Chair: *Journal of Public Policy and Marketing* Conference (2001)
Presenter/Reviewer: Direct Marketing Education Foundation Educator's Conference
Track Co-Chair/Discussant: Retail Conference, sponsored by American Collegiate Retail Association and Academy of Marketing Science (1997)
Discussant: Annual Conferences, Academy of Marketing Science
CHARM (Marketing History Association) Conferences

Memberships
American Marketing Association

Media Mentions
Numerous radio, television, newspaper, and popular press interviews on contemporary marketing topics: *Bloomberg TV*, *Business Talk Radio* (James Campbell show), *Fox Television (national and regional), Businessweek, The New York Times, The Wall Street Journal, CNBC, Financial Times, Washington Post, among others*

Dozens of published opinion pieces in outlets including: *The Chronicle of Higher Education, CNBC online, Seeking Alpha, The Hill, Trenton Times, New Haven Register, The Providence Journal,* and *The Hartford Currant,* among others.

Expert Witness Consultant (*indicates multilevel marketing:
In Re: PFA Insurance Marketing (2021 to 2023)* - deposed
https://www.pfasettlement.com/

Lavigne v Herbalife Ltd. (2019 to 2023)* – deposed
https://topclassactions.com/lawsuit-settlements/closed-settlements/herbalife-events-12-5m-class-action-settlement/

United States v. Richard Maike, (2017 to 2022)* – court testimony
https://www.justice.gov/usao-wdky/us-v-maike-et-al

Federal Trade Commission v. Dluca, Gatto, Pinkston, and Chandler, d/b/a Bitcoin Funding Team and My7Network (2018)*
https://www.ftc.gov/enforcement/cases-proceedings/172-3107/federal-trade-commission-v-thomas-dluca-et-al-bitcoin-funding

NXIVM Corporation et al v Ross Institute et al (2017)*
https://www.gpo.gov/fdsys/granule/USCOURTS-njd-2_06-cv-01051/USCOURTS-njd-2_06-cv-01051-5/content-detail.html

Freedman v Nu Skin Enterprises Inc. et al, (2016)*
http://wwwlaw360com/articles/764650/nu-skin-pays-47m-to-end-investor-row-over-china-ops

Calvin L Raup and Angela J Raup, v Wells Fargo Bank, NA; et al, (2013)
https://www.law360.com/cases/51001d3b3e15cd7656000001

Schneider v Wells Fargo Bank, NA et al (2013) – deposed
https://scholar.google.com/scholar_case?case=7434377468653142558&hl=en&as_sdt=6&as_vis=1&oi=scholarr\

Yvonne Day, et al v Fortune Hi-Tech Marketing, et al (2011)*
http://wwwca6uscourtsgov/opinionspdf/13a0827n-06pdf

Proctor & Gamble v Amway Corporation (1998-2008)* – deposed twice
http://caselaw.findlaw.com/us-5th-circuit/1453950.html
http://caselaw.findlaw.com/us-10th-circuit/1213852.html
http://caselaw.findlaw.com/us-5th-circuit/1296426.html

US Securities & Exchange Commission v International Heritage, Inc., Stanley H Van Etten, Claude W Savage, Larry G Smith and International Heritage, Incorporated (2002)* – deposed
https://www.sec.gov/litigation/litreleases/lr15672.txt

United States Federal Trade Commission v Alpine Industries (2000)* – deposed
http://wwwftcgov/opa/2000/04/alpineindustries2shtm

SEC v Le Club Privie (2000)*
(http://wwwsecgov/divisions/enforce/claims/leprivehtm)

State of Florida v International Metals & Trade Company (IMTC) (2000)*

Commonwealth of Kentucky v Travelmax (1996)* – court testimony

US Department of Justice v Gold Unlimited (1996)* – court testimony
http://caselaw.findlaw.com/us-6th-circuit/1390933.html

This is Exhibit " 2 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

PRIMERICA MISCONCEPTIONS FAQS

Is Primerica legitimate?

Yes. Primerica is a financial services company that has been in business for over 40 years. Primerica has over 2,000 corporate employees in the United States and Canada who support approximately 130,000 independent, life licensed representatives across North America[ii].

Primerica is publicly traded on the New York Stock Exchange under the stock symbol "PRI". Primerica is rated A+ by the Better Business Bureau (BBB)[iii].

Primerica Life Insurance Company has a "Superior" A+ rating by AM Best[iv]. Through its insurance company subsidiaries, Primerica was the #2 issuer of term life insurance coverage in North America in 2020[ii,iv]. Every year, Primerica pays out over a billion dollars in life insurance benefits to clients' families.

Is Primerica a trustworthy company?

Yes, Primerica is a trustworthy company. The Company has been in business for over 40 years and pays over a billion dollars in life insurance benefits to clients' families each year. Primerica was the #2 issuer of term life insurance coverage in North America in 2020[ii,iv] through its insurance company subsidiaries. Primerica Life Insurance Company's credit rating is rated A+ "Superior" by AM Best[iv].

Is Primerica an MLM?

No, Primerica is not an MLM. Primerica is a financial services company that pays compensation to its representatives based on an insurance agency model[vi].

Primerica has been in business for over 40 years, is publicly traded on the New York Stock Exchange under the stock symbol "PRI" and is rated A+ by the Better Business Bureau. Primerica paid $1.7 billion in life insurance benefits to clients' families in 2020 and was the #2 issuer of term life insurance coverage in North America in 2020 through its insurance subsidiaries[ii,v].

Is Primerica a pyramid scheme?

No, Primerica is not a pyramid scheme.

Primerica is a leading financial services provider that has been in business for over 40 years, is publicly traded on the New York Stock Exchange under the stock symbol "PRI", and is rated A+ by the Better Business Bureau[iii].

Primerica's independent representatives earn commissions based on personal sales and the sales of the team they recruit and train: representatives do not earn income from the recruitment of other representatives. Representatives expand their businesses by adding representatives to their teams to increase the number of clients they are able serve. Primerica's independent representatives must maintain proper state and federal training and licensing requirements to recommend financial products.

This is Exhibit " 3 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

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Pyramid Power:

Network Marketing Leaders' Accounts of Professional Development and Success

by

Douglas Black

A thesis submitted in conformity with the requirements for the degree of Doctor of Education

Department of Adult Education,
Community Development, and Counselling Psychology

Ontario Institute for Studies in Education of the University of Toronto

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Loved Those Products

Several interviewees mentioned that their first introduction to network marketing was through the products. Stories abound in the industry of people who started by simply enjoying the products—especially those that have health benefits, as can be seen in Marijke's comment, below. Often, the story is told, a friend noticed the person's improved health, and ordered some products, and so on until one day a commission cheque arrived in the mail from the company. Some people claim that they did not even know there was a business attached to the products. Others state that they simply used the products happily for a year or for several years, until circumstances changed in their lives and they were ready to look at the financial opportunity that up until then they understood only vaguely.

> I found out about AIM International when a customer recommended a product from the company. I tried it and was really impressed, so I contacted AIM and said, "I love this product, but I don't want to get involved with network marketing. I just want the product." They told me it was exclusive to AIM, and the only way to sell it was through network marketing, so I ended up joining. (Sam C.)
>
> I was familiar with the products because I was a consumer for two years—a very happy consumer, but I didn't know anything about network marketing. It wasn't until my sponsor's sponsor invited me to go to a workshop that I found out at all about the industry. (Marijke)
>
> I had just graduated from school and was delivering pizzas for Domino's while trying to set up my own screen printing and graphic design business. I met Linda and she encouraged me to buy a Pre-Paid Legal Services membership [a network marketing company] to help me save money on the legal costs of starting the business. That's how I discovered the opportunity that came with it, and I was interested right away. (Brad)

I started out simply as a product user based on what Johnny Keller, who is now one of our mentors, and his wife told me about Royal BodyCare [a network marketing company]. I used the products for about 13 months before Miyuki said to me one day, "You know, John, I think I might want to start getting back into something, with the kids going back to school." We discussed the possibility of network marketing with Royal BodyCare, and that was the first time we started to seriously consider a Networking business. I flew out to the company headquarters in Vancouver just to check it out and meet the scientists, and when I came back, we started approaching people a little bit. (John E.)

Distributors are often told to become a "product of the product," meaning that they must use the company's products exclusively and continually, gaining knowledge about them as they do. More important, say industry experts, is to develop such strong feelings about the benefits of the products that distributors begin describing them to prospects with missionary zeal (Poe, 1995). As can be seen in the following quotation from Biggart (1989), the product does not need to be a cure for cancer to inspire fervour:

The speaker was a charismatic man who had come to lead [the audience] on a "crusade" to overturn an "evil" and predatory force in American society. A gifted orator, he painted pictures of how American families were imperiled by this evil force, a powerful enemy he was committed to annihilating by the year 2000. . . . The speaker's name is Art Williams, and the evil he is committed to overturning is the whole-life insurance industry. (p. 1)

Biggart (1989) observes that whole-life insurance seems an improbable enemy, and, in fact, traditional insurers see Williams's distributors as the unethical enemy (Press, 1994). Nevertheless, soon after his rousing speech, Williams's company, now called Primerica Financial Services, sold more term insurance than Prudential, the previous industry leader. Evidently, he was able to convince a great many people that his product was one they should be passionate about.

This is Exhibit " 4 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

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businessinsider.com

Meet Primerica, The New Wall Street IPO That's Really A Multi-Level Marketing Scheme

Vince Veneziani

10–12 minutes

Citigroup spins it off today. But what the heck is it?

Citigroup (C) has officially priced the IPO of its spinoff of Primerica.

At $15 per share, the pricing went strong.

Warburg Pincus will pick up 22% to 33% of shares and Citigroup will retain 32% to 46% of equity, which it will divest after Primerica begins trading.

But will investors buy Primerica's stock?

That depends if they can figure out what Primerica actually does first.

What Does Primerica Do?

They'll deny it, but basically, it's a multi-level marketing (MLM) company for finance.

Primerica employs, according to their prospectus, over 100,000 representatives who go out and sell financial products like term life insurance, mutual funds, life insurance, and annuities. Almost all the products offered by Primerica are from Citigroup, its corporate parent.

All the mutual funds and annuities are sold through Primerica's licensed broker/dealer subsidiary, PFS Investments.

The goal is for the rep to push these products in a "warm market," which includes your family and friends who you'd be more comfortable selling to.

The rep receives a commission for these sales and his recruiter, recruiter's recruiter and so on all receive a portion of the sale.

Reps are encouraged to recruit more people to continue bringing in sales and revenue. All this information can be found in the "Business" section of the prospectus, beginning on page 104.

But don't expect to go making $100,000 a year as a salesperson.

According to Primerica, these 100,000 reps make on average, $5,156 a year. Hardly enough to do anything with let alone live on.

Higher ups who run district sales offices are called RVPs or regional vice presidents. They make significantly more money.

Know why?

Primerica employs an 11-tier upside system in which you get a kickback of commissions from your recruits, your recruit's recruits, and so on up until the 11th level. (This information can be found on page 112 of the prospectus.)

It takes about 10-seconds of Googling to reveal that there is widespread skepticism towards the company's business model.

A site called Pink Truth discusses how despite Primerica's claims it's not an MLM or pyramid scheme, it in fact, is:

Primerica is Multi-Level Marketing

No matter how many times representatives of Primerica say that the company is not an MLM, that doesn't change the fact that it is. The company's website says (bold added by me):

Personal Income: Primerica has more than 100,000 representatives. Actual gross cash flow is, among other factors, dependent upon actual organization size, the number of sales and the override spread on each sale, and the ability and efforts of you and your downlines. There is no guarantee that you will achieve any specific cash flow level. Commissions are subject to deferred compensation account withholding and applicable taxes. RVPs are responsible for their own business expenses and pay for all office expenses for their base shop representatives. The Company may from time to time modify, supplement or terminate any compensation program in any manner. Further details are available from Primerica Financial Services, Inc.

No Inventory to Buy

If you can get a Primerica supporter to admit that the company is an MLM, the next argument is that it's not "bad" like other MLMs. They don't have inventory frontloading like MLMs that are product-based. That's true, but that doesn't mean that Primerica is immune from abuse of representatives

.

Here's more from Articlesbase:

Primerica Financial Services is a financial services company that is structured through the MLM business model. Representatives can earn either by selling various financial products and services like life insurance, mutual funds, variable annuities, segregated funds, loans, long-term care insurance and pre-paid legal services or by actively recruiting more representatives to do the same and get a commissions from their sales. Using an MLM business model to sell financial services might draw some criticism, but so far, it has paid off well for Primerica.

So... How to Get A Job At Primerica

How does one become a sales rep? Good question.

We spent several days calling local Primerica "offices," which are just people's apartments and homes and a cellphone number linked to that address. None of the numbers in Manhattan or Queens worked, so we called Mark Supic, Primerica's Executive Vice President of Corporate Relations who works at the company's headquarters in Duluth, Georgia.

Mr. Supic said he could not comment on anything due to the quiet period related to the IPO filing. So we asked Mr. Supic how we could go about finding a local sales representative. He told us to "look through the white pages or use MSN white pages."

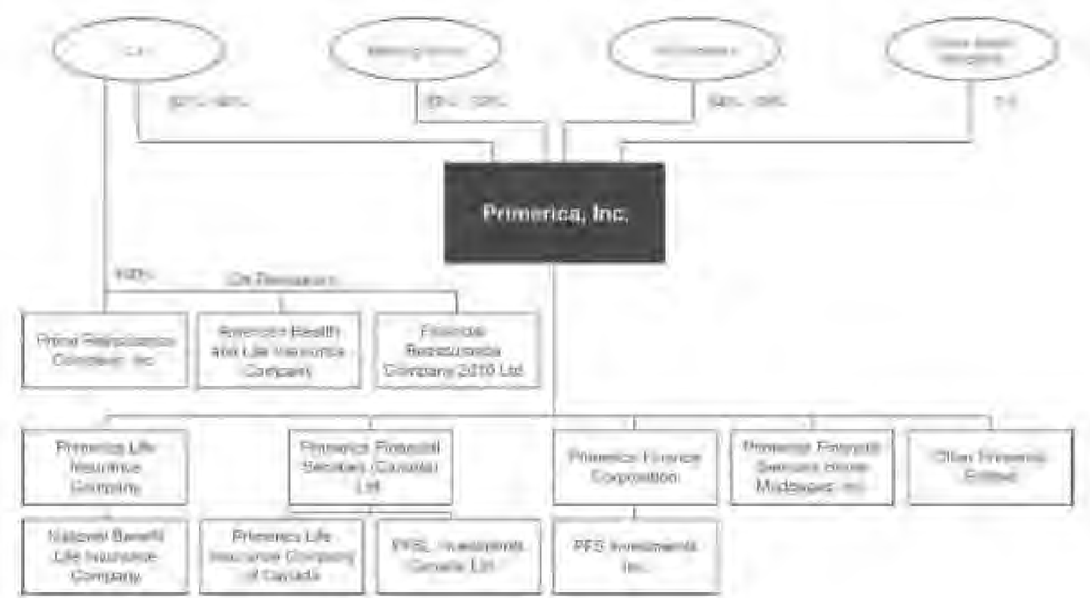
Financial Details

Whatever your opinion of Primerica, you can't ignore that it's a real company.

In 2009 alone Primerica did $2.22 billion in revenue. Here are some basic facts about the state of the company's finances as found in the S-1 filing, page 14:

- Revenue in 2008 was $2.19 billion with net income of $167.6 million; 2007 saw revenue of $2.39 billion and net income of $593.6 million.
- Growth has essentially been flat over the past three years.
- Most of Primerica's revenue is derived from direct premium payments.
- Term life insurance is Primerica's best selling product.
- $300 million of revenue was drawn in 2009 from investment and savings products.
- 2009 saw sales commissions of $34.3 million.

Below is a chart showing Primerica's corporate structure after the IPO.



Primerica

Where Have All The Sales Reps Gone?

Unable to find a local sales representative to speak with, we hit the Internet and scoured around for first-hand accounts of Primerica.

This message on Scam.com purporting to come from a company rep explains offers some first-hand perspective. He writes first hand detailing how Primerica's compensation system works:

I could go on forever about my experience with Primerica. So instead of detailing conversations and experiences I will do what no one at my base shop, and no person to ever attack or defend Primerica, has done. I'm going to lay out some FACTS and hopefully these FACTS will ANSWER some QUESTIONS:

1. In the month of February 2007, Primerica recruited 16,500 people at $199 a piece. The $199 is supposed to be used for a background check, and the Group 1 Life/Health Licensing process. Any current or former representative will tell you that there is a "formula for success" in regards to recruits;

For every 10 people you recruit, 6 will quit and 4 will pursue their life license. Of the 4 that pursue 1 will fail the test and quit, 1 will pass the exam and never sell insurance, 1 will pass, do

2-3 transactions and quit and 1 will become a "success." So, for every 10 recruits, 7 do nothing with the $199.

Let's do a little bit of math for the month of February. 16,500 divided by 10 is 1650. There are 1650 groups of 10. According to the "formula of success" 7 out of the 10 will not use the $199 they paid. 1650 multiplied by 7 is 11,550 people who did not use their $199 fee for licensing. 11,550 times $199 is
$2,298,450. The goal for March is 30,000 recruits. 30,000 divided by 10 is 3000 times 7 is 21,000 times $199 is $4,179,000. In one month off of recruits alone Primerica made enough to pay the "guy on the CD who makes 2 Million Dollars a year" his money for the year and some change.

Can people get refunds? Absolutely. I am in the process of getting three of them right now. After the initial three to four days of processing your $199 loses $40 of value for background checks which actually only cost $20. The other $20 is said to be an administration fee. So in February, had everyone who didn't go after their Group 1 Life/Health license received a refund of $150, Primerica still profited $20 times 11,550 or $213,000.

Recruit. Recruit. Recruit.

Primerica asks their reps for quite a bit. **Becoming a Primerica rep requires you to pay a $199 (now $99) fee and highly recommends paying a $25-a-month fee for access to Primerica Online** as noted on page 108 of the prospectus. 100,000 reps times $25 a month equals $2.5 million a month from its own employees.

Of course, Primerica has a response

When you visit Primerica.com, you're greeted with a lack of information and no way to find a local representative in your area. Furthermore, a blog setup by the company at AskPrimerica.com features a post with a video entitled "Primerica Scam: The Real Picture." In this official blog post, Primerica attempts to defend itself by telling a sob story from the point of view of a current employee. The employee then speaks briefly in a video (embedded below) in which he talks about how Primerica is such a great "opportunity" and yet, never explains what the actual opportunity is.

To summarize, it must be said that we have no doubt Primerica is a legit business. Half a billion in net income is certainly nothing to scoff at either.

We shall see how investors feel once they procure an equity stake in the company when it trades under the NYSE ticker "PRI".

Below, the full 300-page prospectus is below for your extended reading pleasure.

Primerica

This is Exhibit " 5 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

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finance.yahoo.com

8 Controversial MLM Schemes To Stay Away From

Andrew Lisa

8–11 minutes

Matthew Kaiser 7 / Shutterstock.com

Sooner or later, you'll encounter a golden opportunity to make big piles of fast cash as a brand's "contractor" or "distributor." The details will be vague, but all you'll have to do is sell essential oils, insurance, workout supplements or whatever else you can imagine to your friends and family and recruit them to come along and do the same.

See: *9 Successful Money-Making 'Schemes' That Are Actually Legal*

Find Out: *Need Money Now? 19 Ways To Make Money Fast*

Be warned. It's either a multilevel marketing (MLM) operation or a good, old-fashioned pyramid scheme — and the line between the two is blurry at best.

These "remote-work opportunities" flourished during the pandemic as the unemployed and underemployed scrambled to find ready-made side hustles. Most people quickly learned what the FTC has been warning about for years. That MLM businesses are often outright scams, and even when they're not, 99% — that's an actual FTC statistic — of everyone who joins will never make any money. Most wind up losing money and virtually all profits go to a tiny sliver of TOPPs (top-of-the-pyramid promoters). Time interviewed an expert who said the chance of profiting is statistically lower than that of winning the lottery.

Check Out: *What It's Like To Job Hunt During a Pandemic*

As with everything, some MLM businesses are worse than others. Meet these companies that took the old-school Tupperware/Avon model of direct-sell side hustles and made it into the modern-day MLM monster.

Last updated: July 16, 2021

George Rudy / Shutterstock.com

Beachbody

The Time article that quoted the lottery statistic was part of a larger story about a woman who used the popular Beachbody program to lose weight and get in shape with impressive results. Her physical transformation convinced the financially struggling mom to become a Beachbody fitness coach herself.

She was soon spending $135 a month in fees required to sell the program. Finding new clients, coaching those she already had and managing it all was so all-consuming that she stopped working out herself and put the weight back on. In the end, she lost thousands of dollars and countless precious hours with her children.

She was hardly alone. Time, the Anti-MLM Coalition and Economic Secretariat have reported stories of people with no fitness coaching qualifications or experience whatsoever under intense pressure to sell supplements, merchandise and workout programs to hard-to-find clients as frontloaded inventory and expenses piled up. Although Beachbody is a legitimate company, most who join its MLM team are gone within 24 months.

Look Out: *15 Coronavirus Scams To Avoid at All Costs*

PeopleImages / Getty Images

Primerica

Like Beachbody, insurance MLM firm Primerica is a legitimate and long-established company. But as the Duford Insurance Group points out, people often assume it’s a scam because of the company’s long history of using high-pressure MLM sales and recruiting as its primary business model.

Like Beachbody’s fitness coaches, most recruits join Primerica with no background in insurance whatsoever, yet they face intense pressure to sell complicated insurance products quickly. They face even more pressure to recruit downline and offer the same “opportunity” to new people. That's the only real way to make real money, which almost none of its reps do.

When Primerica went public in 2010, Business Insider wrote an article with the headline: “Meet Primerica, the Wall Street IPO That's Really A Multi-Level Marketing Scheme.” The company has faced multiple lawsuits in the ensuing years. Primerica was the reason that the Anti-MLM Coalition was founded.

Check Out: *Feel Like You're Retired With One of These Laid-Back Jobs*

Miosotis_Jade / Shutterstock.com

Amway

Amway recently published a post on its website titled “Is Amway a pyramid

scheme?" The first sentence of the post is "No, Amway is not a pyramid scheme." The reason the health, beauty and homecare MLM had to publish the post in the first place, however, is that so many of the "independent business owners" (IBOs) who were churned through Amway's sales and recruiting machine would disagree.

They have plenty of legal precedent to back their case. Amway, not so much.

The company settled a class-action lawsuit in 2010 for $54 million over deceptive business practices and f0r misleading its IBOs about how much money they could make and what expenses they would incur. That was hardly the only suit Amway faced. Most recently in 2020, a California-based suit alleged basically the same thing as the 2010 suit — that despite its website's claims, Amway is indeed a pyramid scheme.

Good To Know: *6 Career Mistakes To Avoid During an Economic Downturn*

Evgenij918 / iStock.com

LuLaRoe

In 2019, Buzzfeed News was the first to report that controversial women's apparel brand LuLaRoe had fired every single one of its warehouse workers five days before Christmas. The company was buckling under the mounting legal drama

surrounding its MLM business model.

Two years earlier, a group of disgruntled former “consultants” had filed a class-action lawsuit with familiar themes about a classic recruitment-based pyramid scheme dressed up as a business. They’d dumped thousands of dollars each into startup costs that they were led to believe they would recoup as their business started booming, but the boom never came. Dozens declared bankruptcy. One year later a supplier sued LuLaRoe for $49 million for lack of payment. A year after that, another class-action suit accused the company of fraud.

Related: [Pro Athletes Who Have Lost Millions of Dollars]

Africa Studio / Shutterstock.com

Neora

In 2019, the FTC sued wellness/skin care/supplement MLM company Neora, “alleging that the company operates as an illegal pyramid scheme and falsely promises recruits they will achieve financial independence if they join the scheme,” according to a public statement from the FTC.

Like all MLMs that swerve into pyramid scheme territory, Neora placed a higher premium on fresh blood than on making sales. The complaint alleged that a

company training video said the three keys to success at the company was "Number one: Recruit. Number two: Recruit. Number three: Recruit."

Read More: *Cinnamon Toast Crunch and 9 Other Big Brands Who Stumbled During Huge PR Scandals*

Creativeye99 / Getty Images/iStockphoto

Herbalife

Supplement company Herbalife is one of the most visible names in the MLM industry — a lot of times, for all the wrong reasons. In 2016, Herbalife paid $200 million to settle a complaint with the FTC that it was operating as an illegal pyramid scheme where virtually none of its independent distributors made any money. In a new legal strategy, the lawsuit targeted the high-level TOPPs who led the training seminars and appeared in the recruitment videos.

Herbalife promised to restructure its business model as part of the settlement, but its woes were far from over. In 2019, Herbalife settled with the SEC for $20 million for misleading investors. In 2020, Herbalife paid $123 million to settle criminal and civil penalties related to a Chinese bribery case.

Big Mistakes: *Fox News and 25 Other Companies That Have Faced Public*

Backlash

agrobacter / Getty Images/iStockphoto

AdvoCare

In 2019, supplement MLM company AdvoCare agreed to pay $150 million to settle charges from the FTC that it had operated as an illegal pyramid scheme. The themes were familiar.

Recruiting took priority over everything, including sales. The company was alleged to have inflated its profits to mislead investors. It misled recruits by inflating their potential earnings and misrepresenting their upfront costs, which included thousands of dollars worth of merchandise that they had to purchase upfront in order to sell.

Ouch: *Biggest Product Flops From 20 Major Companies*

Rawpixel / Getty Images/iStockphoto

Younique

As part of a larger report on the pitfalls of the MLM-based beauty industry, the Guardian reported on Younique "presenters" — mostly struggling women — who fell into a familiar trap. The lure of financial independence convinced them to sign up, only to learn that they had to keep purchasing merchandise to maintain their presenter status.

There are eight different status tiers at Younique. The higher you climb, the more commission you earn, but the climb proved impossible for many as inventory piled up, expenses grew, and relentless pressure from the company became unbearable. In 2019, Younique settled an unrelated class-action lawsuit for $3.25 million.

[rock-component slug="more-from-gobankingrates"]

Photo Disclaimer: Please note photos are for representational purposes only.

This article originally appeared on GOBankingRates.com: 8 Controversial MLM Schemes To Stay Away From

This is Exhibit " 6 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

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huffpost.com

Senate Republicans Think Herbalife Is A Good Model For Your Retirement Savings

Zachary D. Carter

6–7 minutes

WASHINGTON -- In 2010, Citigroup decided to sell what was widely regarded as one of its dodgiest operations. The struggling Wall Street titan was trying to streamline its management structure and upgrade its reputation after a massive government bailout, and one line of business its executives could live without was Primerica.

Primerica, now an independent company, is a financial services operation modeled on multi-level marketing enterprises like Amway, Nu Skin and Herbalife. Unlike traditional retirement and insurance firms that employ a relatively small number of highly paid financial professionals, Primerica had more than 98,000 people enlisted in its sales force last year, recruited through feel-good videos and pitches to the family and friends of existing salespeople.

If you're willing to work hard enough, Primerica tells prospective "entrepreneurs," you can run your own successful business selling insurance or retirement packages. Primerica agents get paid a commission on each sale, and -- just like Amway and Herbalife -- also earn commissions for sales their recruits make. And a commission on their recruits' recruits, and their recruits' recruits recruits. And so on.

And like other multi-level marketing operations, Primerica holds huge, splashy motivational conferences for its sales team, where executives fete top earners amid fireworks and flowers. As with Herbalife, Nu Skin and similar platforms, the pitch to prospective Primericans is a vague, highly emotional appeal that suggests not only financial rewards, but the revitalization of a lifestyle. In one promotional video, Rob Cooper of Fort Worth, Texas, encourages his audience not to settle for "a mediocre life like everybody else does."

"One of the greatest thing[s] Primerica has to offer is they encourage goals, they encourage dreams," Cooper says. "And you really know -- man, if you're willing to go out there and work hard, then you can actually achieve everything you ever wanted to achieve."

"The same life. The same boring routine," says Houston's David Farmer in another video. "I didn't want that life … I saw Primerica as my way to take back control of my life."

"I always wanted to be somebody," says Jeff Fieldstad of Las Vegas in another. "I always wanted to do something great."

Of course, for most people, it doesn't quite work out that way. More than 190,000 new recruits paid a fee to sign up for Primerica in 2014, according to the company's annual report with the Securities and Exchange Commission. But Primerica only boosted its total licensed sales force by 3,700 that year, and each member of the sales team earned an average of $6,030.

Senate Republicans are apparently sold. The GOP has called on Primerica President Peter Schneider to testify against a new Obama administration retirement security proposal at a Tuesday hearing before the Senate Committee on Health, Education Labor and Pensions.

The Department of Labor rule would impose a "fiduciary duty" on investment advisers, requiring them to act in the best interests of their clients. It would bar account managers from steering people into financial products that maximize benefits for investment specialists, rather than retirees. The Obama administration calculates that Americans lose $17 billion a year to hidden fees and conflicted investment advice.

In other words, the rule is designed to prevent exactly what 238 Florida workers said Primerica did to them in the years leading up to the financial crisis -- steer them into inappropriate financial products for the personal financial gain of the sales team.

In 2012, lawsuits began pouring in, alleging that Primerica reps had convinced Florida firefighters, teachers and other public workers to invest in inappropriate retirement products. Even though the workers were near retirement, Primerica representatives encouraged them to ditch their government pension plans for much riskier government 401k accounts, which do not guarantee a minimum monthly payout in

retirement. Dumping a pension plan for a 401k on the verge of retirement is frowned upon in the investment advice world. It needlessly jeopardizes retirement security, while offering little potential benefit.

But the scheme posed major potential profits for Primerica's sales reps. Once these workers retired and moved out of their government plans, Primerica agents stood to profit from managing their retirement assets. Had they stayed in the pension programs, retirees would have simply collected their monthly payments, leaving nothing for Primerica to manage, and no commissions for Primerica agents to harvest. In January 2014, Primerica set aside $15.4 million to settle allegations involving 238 such cases.

Primerica told HuffPost that Florida state regulators did not object to its agents' actions. The company also said that the retirees it settled with never actually signed up for Primerica products after taking the company's investment advice. Indeed, the workers were so steamed by the lousy advice that they did not ultimately ask Primerica to manage their now-diminished assets in retirement.

It's not terribly shocking that a financial company run like Amway would run into trouble. But it is perhaps surprising that Senate Republicans seem to think Primerica makes for a sympathetic ally in their public campaign against a financial reform proposed by President Barack Obama.

"The unintended consequences of the DOL's proposed rule will be to make it more difficult for these households to receive desperately needed retirement guidance," Primerica told HuffPost in a written statement.

The GOP's disdain for the fiduciary duty rule is clear from the hearing's title: "Restricting Advice and Education: DOL’s Unworkable Investment Proposal for American Families and Retirees." Unworkable, apparently, because Americans might miss out on the opportunity to receive investment advice from someone looking to cash in on a get-rich-quick operation.

This is Exhibit " 7 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

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ORIGINAL PAPER

The Role of the Distributor Network in the Persistence of Legal and Ethical Problems of Multi-level Marketing Companies

Claudia Groß[1] · Dirk Vriens[1]

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Abstract Multi-level marketing companies (MLMs) such as Amway, Herbalife, or Tupperware differ from most other companies. They market their products and services by means of self-employed distributors who typically work from home, sell products to end consumers, and recruit, motivate, and educate new distributors to do the same. Although the industry's growth seems to illustrate the attractiveness of MLMs, the industry has been facing several legal and ethical problems. In this paper, we focus on these problems and argue that an extended MLM model may help us to understand why such problems continue to occur, despite the countermeasures that have been implemented. By explicating how problems relate to a specific but often overlooked characteristic of MLMs, i.e., the so-called distributor network, we provide an extended understanding of (a) MLMs' mode of operation, (b) the sources of their legal and ethical problems, and (c) the reason that currently implemented and suggested countermeasures may not suffice. Moreover, based on our extended understanding of MLMs and their problems, we propose additional countermeasures.

Keywords Corporate ethics · Illegal behavior · Multi-level marketing · Unethical behavior

✉ Dirk Vriens
d.vriens@fm.ru.nl

Claudia Groß
c.gross@fm.ru.nl

[1] Institute for Management Research, Radboud University Nijmegen, PO Box 9108, 6500 HK Nijmegen, The Netherlands

Introduction

Multi-level marketing companies (MLMs) such as Avon, Amway, Herbalife, Mary Kay Cosmetics, Tupperware, and Vemma represent a growing industry worldwide (WFDSA 2016). In 2015, more than 103.3 million people around the world worked for MLMs, creating a retail turnover of approximately 183.7 bn US Dollars (for worldwide as well as regional numbers see WFDSA 2016). Typically, self-employed, unsalaried, and independent MLM distributors are entitled to earn money in two ways (Brodie et al. 2004). First, by selling company products 'directly' to consumers, i.e., on a 'face-to-face [basis] … away from a fixed retail location' (Peterson and Wotruba 1996, p. 2). Typical products and services sold to non-members ('ultimate consumers') are, for example, cosmetics, energy supply, food storage products, insurances, jewelry, loans, nutritional supplements, phone contracts, and wine (DSN 2012). Making money this way is characteristic for so-called 'direct selling organizations'—to which MLMs belong. A second way for MLM distributors to earn money is by recruiting, training, and motivating new distributors, and building a so-called 'downline' of members (Brodie et al. 2002). When downline members buy products from the company or recruit new members to do the same, the recruiters (the 'upline') earn override commissions on the product purchases of their downline. This results in a 'hierarchy of recruiters/sellers' which is distinctive of MLMs. Almost all direct selling organizations employ this 'multi-level marketing' structure (DSN 2012), which means that almost all direct selling organizations are also MLMs.

The attractiveness of multi-level marketing has several reasons: for companies it seems an attractive marketing strategy, consumers appreciate buying products from

friends and family members, and for distributors MLM companies offer an easy way to try an entrepreneurial experience as well as a way to buy products cheaper.[31] Whereas other authors have described and explained several advantages of the industry (Albaum and Peterson 2011; Brodie et al. 2004; Crittenden and Albaum 2015), this article focuses on its problems: since their very beginnings in the 1920s of the last century, the industry has had to face and deal with problematic behavior on the individual distributor as well as the company level (e.g., see Biggart's historical overview chapter 2, 1989). These problems include that (1) some MLM companies operate as de facto pyramid schemes (Juth-Gavasso 1985; Keep and Vander Nat 2014; Koehn 2001; Vander Nat and Keep, 2002; Walsh 1999b), (2) income opportunities are misrepresented (Groß and Jung 2009; Herbig and Yelkurm 1997; Koehn 2001; Taylor 2014; Walsh 1999a), (3) customers are harmed by exaggerated and/or illegal product claims (Koehn 2001), (4) distributors misuse their friends and family members to earn money (Bloch 1996; Koehn 2001; Lan 2002; Walsh 1999a), and (5) that some MLMs have cult-like organizational cultures (Bromley 1998; Groß 2010) that restrict their members' ability to reflect on the (ethical) quality of the company's business practices.

To overcome these problems, governments have taken regulatory actions.[28] Direct selling associations, on their part, have created voluntary industry Codes of Ethics (DSE 2015; Seldia 2011; WFDSA 2008)[3] and set up complaint procedures.[2] Although such measures have prevented misbehavior (Chonko, Wotruba and Loe 2002; Wotruba, Chonko and Loe 2001), the industry's legal and ethical problems have not been resolved yet as the temporary shutdown of Vemma in the USA in 2015[4] and the Herbalife settlement in 2016[1] demonstrate (see for further evidence "Appendix"). Accordingly, critical commentators of the industry have suggested that central aspects of MLMs' business model need to be changed.[5] The US Federal Trade Commission (FTC), for example, has asked 'multi-level marketers … to take effective action to halt the practices that understandably damage the credibility of the whole industry' (Ramirez 2016, p. 2). Suggestions include changing the business model from a focus on recruiting to a focus on product sales (Ramirez 2016),[28] prohibiting the recruitment of new distributors by existing distributors[6], reducing the number of levels within the 'hierarchy of distributors' (Hyman 2009; Peterson and Albaum 2007; Sparks and Schenk 2006), and asking MLMs to disclose what they actually are: 'buying clubs' instead of opportunities to become rich (Hyman 2007, 2009).

Although we agree that such measures would indeed help to alleviate certain problems, we seek to add a different factor to this discussion here. We argue that existing measures may not be able to solve all legal and ethical problems, because they do not, in our view, pay enough attention to one specific and important characteristic of MLMs, which we call the 'distributor network' (DN). Often it is by means of this network, rather than by MLM headquarters, that distributors are trained and socialized in particular (both ethically and legally sound as well as problematic) ways. Although it has been analyzed that this DN influences the behavior of individual distributors (Biggart 1989; Lan 2002; Pratt 2000a,b), its ways of operating and its relevance for the persistence of MLMs' problematic behavior has received little explicit attention. In this paper, we argue that we need: first, a better conceptualization of the DN; second, a better understanding of how the DN relates to headquarters, individual distributors, and organizational 'outsiders'; and third, more insight into DN's role in the occurrence and persistence of problems. The main goal of our conceptual paper is to introduce an extended model of MLMs that includes the DN. In addition, we set out to show that such a model can indeed shed more light on the sources of MLMs' ethical and legal problems, explain why some problems persist despite implemented countermeasures, and help to find new countermeasures.

We structure our paper as follows. In the next section, we first share our observation that several legal and ethical problems of MLMs persist despite implemented countermeasures. To do so, we provide an overview of problems and countermeasures. In ''Understanding how MLMs operate: A 'prevailing' and an 'extended' model'' section, we first discuss the 'prevailing model' of MLMs and introduce our extended model. In ''Why legal and ethical problems persist, despite exiting countermeasures '' section, we revisit the discussed problems and implemented countermeasures and argue why our extended model may help to better understand why certain problems persist despite the formulated mitigating measures. In ''Reflecting on additional countermeasures'' section, we reflect on additional countermeasures. In ''Conclusion'' section, we conclude and suggest avenues for further research.

The Legal and Ethical Problems of MLMs and Existing Measures to Deal with them

Since the beginnings of the industry in the early twentieth century, a broad range of actors, such as industry associations, consumer watchdogs, and governmental agencies, have dealt with problems of the MLM industry. The first code of ethics for MLM, for example, was already created in the 1930s by an early industry association in the USA, responding to the public critique on how companies and their distributors operated (Biggart 1989). Although many actors have discussed industry problems, academic

research into MLMs' legal and ethical problems has been rather limited; Koehn (2001), to our knowledge, is the only author providing an overview.

As the paper's goal is to argue that an extended MLM model may help us to understand why MLMs' legal and ethical problems persist despite existing countermeasures, we first provide, in this section, an overview of the legal and ethical problems and existing countermeasures (see Table 1).

Our overview differs from earlier research (notably Koehn's 2001) in four ways. First, we include existing countermeasures. Second, as academic research is rather limited, we supplement academic insights with a broad range of empirical sources, including consumer-related research, publications by watchdogs, media and governmental organizations (see "Appendix"). Third, we extend Koehn's (2001) overview of existing problems by adding a fifth problem category (see last row Table 1). Fourth, we briefly indicate why business practices that seem ethically neutral in non-MLM contexts become ethically problematic in the context of MLMs.

Illegal Pyramid Schemes

An investigation of the US Federal Trade Commission into the Amway Corporation in the 1970s spurred the debate of whether MLMs were illegal pyramid schemes. In its 1979 defense, Amway produced several guidelines to mitigate the problems, convincing the FTC that it was operating legally. Ever since, however, researchers (Juth-Gavasso 1985; Keep and Vander Nat 2014; Koehn 2001; Vander Nat and Keep 2002; Walsh 1999a) as well as consumer advocates[8] have questioned whether the 1979 FTC decision, the legal standards that have been developed since

Table 1 Overview of legal and ethical problems of MLMs and existing countermeasures

Legal and ethical problems of MLMs			Existing countermeasures
Problem category	Dimensions	Ethical dimension	
1. Illegal pyramid schemes	Focus on recruitment instead of product sales Substantial upfront fees Inventory loading	Misleading (future) distributors by untruthful promises	10-customer rule 70% rule Low upfront fees Restricting levels for override commissions Buyback policies, regulated by governmental rules and Codes of Ethics (company and industry level)
2. Misrepresenting the business	Earnings misrepresentations Misrepresentation of selling and recruitment potential	Misleading (future) distributors by untruthful promises	Industry Codes of Ethics Company Codes of Ethics Governmental rules
3. Harming customers	Providing misleading product information to (internal and external) consumers Product sales by laymen Exploiting the professional–client relationship	Misleading customers by untruthful promises Misusing trust in professional settings and reducing professional independence	Governmental rules preventing product misrepresentations National rules and Codes of Ethics for health professionals
4. (Mis-)using trust in private social relations	Instrumentalization of private social relations	Restricting consumers' autonomy Misusing trust in private social relations	Buyback policies, regulated by governmental rules and Codes of Ethics (company and industry level) Easy cancelation policies by industry associations' Codes of Ethics) Fair treatment of customers, regulated by industry associations' Codes of Ethics
5. Total institutions	Socialization along company beliefs Instrumentalization of spiritual needs for economic purposes	Restricting ability for reflection on ethical quality of business practices and endangering distributors' moral autonomy	Company rules for how to educate members Watchdog organizations in some countries

then, and MLMs self-regulation efforts are sufficient to prevent such illegal practices (see for a comparable recent case the 2016 Herbalife settlement; Ramirez 2016[1]).

Whereas the distinction between legal and illegal practices needs to be made per company (Keep and Vander Nat 2014), three main characteristics are used to distinguish legal MLM companies from illegal pyramid schemes (Keep and Vander Nat 2014; Koehn 2001; Vander Nat and Keep 2002; Walsh 1999a). The first and most important characteristic is that illegal schemes focus on growth by recruiting new members instead of growth by selling products to clients. Like the classic Ponzi schemes, systems based on growth by recruiting are unsustainable. When the number of new recruits increases, market saturation is quickly reached. As a result, it gets more and more difficult for (new) members to earn money by recruiting and thus to gain a return on their investment. Whereas the increase of organizational members might be an ethically neutral business practice in many situations, in the case of pyramid schemes it is problematic (and illegal). The reason is that consumers join these systems based on untruthful promises. First, consumers are promised an income opportunity. However, income is very unequally distributed (Hyman 2007; Lorenz and Mazzoni 2010) and growth based on recruitment implies that by exponential progression only those at the top can earn back their investment (Bosley and McKeage 2015; Pareja 2008). Second, consumers are promised that *everyone* can reach the top, not only the first to join. However, research indicates that those very few members who earn money are the early adopters, whereas those who join later lose money (Bosley and McKeage 2015). To summarize, distributors are misled as they are made to expect something different than what they encounter (Hyman 2009).

A second feature of illegal schemes refers to the substantial upfront fees for entering the company and/or the pressure for existing distributors to invest large sums into motivational material and seminars. Investing money for starting up a business is a normal and as such ethically neutral practice. In the case of pyramid schemes, however, it is ethically problematic. The reason is the same as with growth by recruiting, i.e., deceptive information (Hyman 2009). Consumers invest because they are promised that they can expect to earn (far) more than they invest. As explained above, this is not the case in schemes that are based on recruiting (Bosley and McKeage 2015; Hyman 2007; Lorenz and Mazzoni 2010; Pareja 2008). Thus, the deception does not lie in asking (future) distributors to make (up-front) investments. The problem is that distributors make these investments based on wrong information.

A third characteristic of illegal pyramid schemes is inventory loading by internal consumption (Keep and Vander Nat 2014; see also Muncy 2004). Members are enticed to purchase products, which they are neither able to consume nor sell (in a reasonable amount of time). Whereas some authors argue that internal consumption is a widespread and ethically neutral business practice (Albaum and Peterson 2011; Crittenden and Albaum 2015; Peterson and Albaum 2007), the ethical problem—once more—is not the business practice as such. The problem arises in the context of MLMs that connect internal consumption with a business opportunity, i.e., the hope to earn money. The then-chairwoman of the FTC explained in 2016: 'When a product is tied to a business opportunity, experience teaches that the people buying it may well be motivated by reasons other than actual products demand' (Ramirez 2016, p. 6).

At some MLMs, members are enticed to buy products a) to reach a certain and/or higher status level, including higher commissions or higher paybacks from purchases or b) to be entitled to certain commissions. For example, to earn commission on one's group turnover, one is required to also purchase a certain amount of products in the respective month. In both cases, buying company products is stimulated by income motives, not by consumption needs. This is, we argue, a very particular form of 'internal consumption' that does not, to our knowledge, exist outside the MLM context. 'Internal consumption' at MLMs thus turns into an ethically (and legally) problematic practice under two conditions: (a) when commission systems entice distributors to buy more than they need themselves and (b) when the commission system entices distributors to purchase more products than they can sell (in a reasonable amount of time). Companies that have only few end consumers and a high level of internal consumption are actually buying clubs (Hyman 2009). When such companies promote membership as an income opportunity, they misrepresent their true nature.

The ethical (and legal) problem is thus deception: distributors join a company to earn money, but overspend by buying company products they neither need nor are able to sell (for empirical evidence see for example Bhattacharya and Mehta 2000; Cahn 2006; Pratt 2000a; Ramirez 2016).[11,12,13]

To avoid the described legal and ethical problems, governments have set up countermeasures, partially building on Amway's FTC defense in 1979. The 'ten-customer rule,' for example, originally introduced by Amway, is a measure to ensure that distributors do not only recruit but actually sell products to at least ten ultimate users per month (see also Keep and Vander Nat 2014). The so-called '70% rule' asks distributors to sell at least 70% of what they buy from the company. The rule is meant to (a) prevent inventory loading, (b) prevent a focus on recruiting, and (c) support the sales of products to end consumers as such sales ensure a sustainable form of income to distributors. In addition, many MLM companies

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restrict the amount of downline levels for which individual distributors receive override commissions. This solves, according to a several authors (Peterson and Albaum 2007; Sparks and Schenk 2006), the problem of exponential progression and unsustainability. To prevent high upfront costs, Industry Associations promote that 'any fee shall represent reasonable value,' i.e., relating to the value 'of the materials, products, or services provide[d] in return' (Seldia 2011, p. 25; see also DSE 2015; WFDSA 2008). Finally, industry associations (DSE 2015; Seldia 2011; WFDSA 2008) and governments[9] have set up buyback policies to ensure that returning inventory is easy and financially sound. However, despite these countermeasures, empirical evidence mounts that at some MLMs the described problem persists (Babu and Anand 2015; Bosley and McKeage 2015; Keep and Vander Nat 2014; Koehn 2001; Taylor 2014).[7,8,10] As the FTC chairwoman concludes in her keynote remarks to the Direct Selling Association Business and Policy Conference in 2016, the MLM industry 'should undertake [more] in order to operate lawfully and prevent consumer harm' (Ramirez 2016, p. 21).

Misrepresenting the Business Opportunity

The attractiveness for people to join an MLM is fueled by promises to 'get rich quickly' and the ease of selling products, i.e., the 'unlimited' market potential (Koehn 2001). While misrepresenting the true nature of a business opportunity is related to pyramid schemes (see above), it also seems to be a common practice in 'legal' MLMs in the sense that relevant information about the business opportunity is not presented truthfully or withheld (see accounts by former distributors, such as Andrews 2001; Smith 2013; Sonnabend 1998; for research see Groß 2008; Koehn 2001; Muncy 2004; for consumer advocates, see "Appendix"[11,12,13]; for FTC see Ramirez 2016).

Whereas overstating the quality of products and services might be a common and also ethically neutral business practice, in the MLM context overstatements seem to be so widespread, that they have been discussed as ethically problematic (Koehn 2001). Most MLMs present working for them as an attractive 'business opportunity,' enabling distributors to earn a handsome amount of money, either part time or full time (Koehn 2001). Legal, but still recruiting-oriented companies seek to make newcomers believe that recruiting others is the silver bullet to earning a substantial amount of money or to becoming rich in a rather short time (Groß and Jung 2009; Koehn 2001; Walsh 1999a). Newcomers and existing distributors are motivated by exemplary calculations demonstrating the ease of recruitment, the ease of selling, and the high market potential. In motivational material (handbooks, leaflets, videos, etc.) and seminars, success stories by those who 'made it' are presented (Ramirez 2016).[14,15] The emphasis is on how simple the business is. This promise is ethically problematic in the case of the MLM industry as actual numbers demonstrate the low likelihood of success, the low average income, and the unequal distribution of income (Biggart 1989; Hyman 2007; Lorenz and Mazzoni 2010; Pratt 2000a; Ramirez 2016; Taylor 2014).[11,12,13] It is ethically problematic to inflate promises and not provide relevant and accurate information about the business opportunity, as these constitute forms of deception (Hyman 1990, 2009).

The problem of misleading distributors is aggravated when companies 'target the unemployed and income-deprived population[s]' (Franco and Gonzalez-Perez 2016, p. 40; for an opposite point of view in the context of developing countries see Fadzillah 2005, Scott et al. 2012) and/or focus on prospects who 'are desperate for a job' (Koehn 2001 p. 156), i.e., socially vulnerable groups. These are people with an unfavorable status on the job market, such as mothers with (small) children (Biggart 1989), disabled people (Friedner 2014, 2015), or immigrants (Groß 2008). They are attracted by the promise that *everyone* can succeed in the business: a promise that lacks the material substance for most distributors, as described above.

To prevent the misrepresentation of earnings and the market potential of products, companies and industry associations have included rules in their Codes of Ethics for providing 'accurate and complete' information only (Seldia 2011, p. 23; see also DSE 2015; WFDSA 2008). Such rules are in line with federal law in expecting companies to act as '*bona fide* sales organizations which market *bona fide* products to consumers' (Babener, 1998). However, as the FTC states, more needs to be done. MLMs need, for example, 'effective monitoring programs in place to ensure participants do not convey misleading claims or present unrealistic 'lifestyle' testimonials that are true for only a tiny minority of participants to prospective participants[12–17, 28]' (Ramirez 2016).

Harming Customers

In relation to customers, whether internal or external customers, two central ethical concerns can be found in academic and popular literature. First, companies and distributors are found to misrepresent the value and quality of products, and to provide questionable advice and/or make illegal claims (Groß 2008).[18,20,25] Biggart (1989, p. 110) explains that some MLMs suggest their products are 'special and have the power to transform their users in important ways,' such as make them happier, healthier, better parents and better human beings. Whereas the tendency to exaggerate might be typical for the marketing activities of most companies, MLMs seem to be

particularly prone to overstating product qualities (Biggart, 1989).[25] This might be related to the fact that headquarters has little control over distributors' statements that often take place in private settings, i.e., distributors' or clients' homes (Juth-Gavasso 1985).[20] Moreover, MLMs' profit formula and marketing strategy 'everyone can join' implies that, for example, nutritional supplements and nonprescription health products are sold by laymen who might simply lack the knowledge for giving good advice. Although a lack of knowledge can occur in any job or trade, and as a consequence might lead to incomplete, bad, or even harmful advice, the ethical risks connected with lacking knowledge are built into how MLMs work, i.e., non-experts selling products and providing advice. Whoever signs an agreement with a company such as Amway (Nutrilite products), Herbalife, Nikken, ProHealth, Usana, Tahitian Noni, or Vemma becomes a 'health advisor.' In companies like OVG Holding AG, Primerica, Swiss Life Select, non-experts become advisors for wealth creation or retirement building. Whereas people in any job or profession might (sometimes) lack the knowledge to do their job properly, at MLMs distributors are not even required to have any knowledge or education. The in-house trainings provided by MLMs themselves cannot compare to company-independent, certified professional education on health or financial issues. Accordingly, the risk that distributors might (unwillingly) give limited or wrong information and useless or bad advice to consumers is real in MLMs.

A lack of truthfulness becomes particularly problematic, when distributors make illegal claims, for example that nutritional supplements cure all sorts of severe health problems. In its investigation into 62 companies selling nutritional supplements that are members of the Direct Selling Organizations, the watchdog organization TINA found more than 1000 problematic product claims made by 60 different companies.[25] Here, distributors—intentionally or unintentionally—misuse customers' trust (DiMaggio and Louch 1998). In addition, they take advantage of customers' search for a way out of their misery. Many national laws clearly prohibit such claims[19], but consumer advocates[20] as well as the FTC (Ramirez 2016) observe that MLMs' sales actually prosper by such practices. Headquarters, on the other hand, might dodge responsibility by putting the blame on 'a few black sheep' among their independent distributors[20] (for the case of Amway in the USA in the 80s see Juth-Gavasso 1985; for dodging responsibility in general, see Jackall 1988).

A second ethical problem in the distributor–client relationship has been labeled 'exploiting the professional-client relationship' by Koehn (2001). In the USA, health professionals, (e.g., physicians, dentists, or dermatologists) promote and sell nonprescription health products (from MLMs or other companies) in their offices (Dumoff 2000; Ogbogu et al. 2001; Whitaker-Worth et al. 2012). However, it is ethically problematic when distributors exploit their professional status and their trust relationship with their clients to increase their profit. When health professionals earn more money by prescribing 'own' products, their independence is at risk. Under these circumstances, they might not provide the *best* advice and treatment to patients, but the treatment with the highest profit margin. Thus, as Koehn (2001, p. 159) points out, an economic interest thwarts the 'professional's ability to help the client in accordance with his public pledge to do so.'[29]

Aside governmental rules prohibiting certain health claims as illegal[19], a variety of countermeasures exist to prevent the issue of harming customers. These countermeasures relate to health professionals in general as well as to those who are MLM representatives. In the USA, for example, the sales of health-related products by physicians is allowed under certain conditions only (AMA 2010; Whitaker-Worth et al. 2012). In some European countries, professional ethical standards prohibit office-based dispensing of health-related products altogether (see for example Germany Bundesärtzekammer 2015). However, as a consumer advocate documentary on LifePlus in Germany illustrates, Medical Boards may simply lack the financial resources to investigate cases of misuse.[11] So, whereas different national measures exist to mitigate the described problem, the tension between providing independent professional advice and earning money remains—for MLM distributors, employees of non-MLMs, and non-MLM entrepreneurs.

(Mis-)using Trust in Private Social Relations

A fourth problem, often discussed implicitly in existing research, is the use and misuse of trust in private social relations. Customers and (prospective) distributors are mostly approached by people they know: family members, friends, acquaintances, or former classmates (Biggart 1989; Friedner 2015; Grayson 2007; Pratt and Rosa 2003). Enthusiastic distributors seek to promote their business almost everywhere, whether it be at their best friends' dinner party, parent–teacher meetings, or leisure club activities. Whereas we agree with Albaum and Peterson (2011) that it is a *widespread* practice to talk to friends and relatives about one's own business, we argue that it is at least an *ethically sensitive* practice. That is, selling products and promoting a business opportunity in private settings entails using and potentially misusing situations of relatively high trust (DiMaggio and Louch 1998; Kong 2003). Private social ties can make it more difficult for friends and family members to refuse an offer to join a meeting, buy products, or get involved in a company (Bhattacharya and Mehta 2000; Biggart 1989; Bloch 1996;

Friedner 2015; Lan 2002; Pratt and Rosa 2003; Walsh 1999a). Accordingly, consumers' autonomy—i.e., their autonomy to make choices based on own interests, needs, wishes, etc., instead of displaying socially desirable conduct—is restricted (for consumer behavior in embedded markets see Frenzen and Davis 1990). This risk, we would argue, is present in *any* form of selling. However, it manifests itself in a particular intensive way at MLMs because MLMs are *based* on using private relations. Whereas non-MLM sales people might, next to other marketing channels, choose to *also* approach their friends and relatives, for most MLMs, approaching private relations is the *central* marketing strategy and the starting point for (new) distributors (Sparks and Schenk 2001, 2006). Accordingly, at MLMs the risk of misusing trust is higher in comparison with other sales organizations as the marketing activities take place far more often in situations of trust.

An additional reason why selling and recruiting among friends and family members is ethically sensitive is the particular context of the MLM industry. The risk of (mis-)using social trust is aggravated in conjunction with the above described problems of 'misrepresenting the business' and 'harming customers.' As new distributors often approach friends and family members (see sources above), the social harm done when the business or product qualities are misrepresented might be perceived as particularly serious (Scheibeler 2004; Smith 2013; Walsh 1999a).

Several countermeasures have been proposed to deal with the issue of misusing trust in private social relations. Industry associations (DSE 2015, p. 9; Seldia 2011, p. 13; WFDSA 2008, p. 8) have, for example, implemented buyback and cancelation policies (see also governmental rules[9]). These seek to ensure that returning inventory is easy and financially sound and that new distributors can easily withdraw their enrollment with a company. In addition, Industry Codes of Ethics seek to regulate the fair treatment of customers, for example by respecting their privacy or their lack of commercial experience (DSE 2015, p. 9; Seldia 2011, p. 13; WFDSA 2008, p. 9). However, these rules do neither change the central marketing strategy of MLMs, i.e., their focus on the 'warm market,' nor do they change the ethical sensitivity connected to using trust in private social relations. As such, these rules do not prevent the misuse of trust nor do they deal with the social obligation people may feel toward distributors they know (Kong 2003).

Total Institutions: Colonizing Every Aspect of Distributors' Lives

MLMs are well known for their ability to create an enthusiastic as well as a cozy and family-like atmosphere. They are widely described as companies where members and prospects are encouraged to believe in themselves, cheer each other, and envision a better future for themselves and their families (Biggart 1989; Bone 2006; Cahn 2006; Friedner 2014, 2015; Groß 2008; Krige 2012; Lan 2002; Pratt 2000a, b; Sparks and Schenk 2001). Research on the effects of transformational leadership in an MLM company shows that distributors who ascribe a higher purpose to their work are more satisfied as well as more financially productive (Sparks and Schenk 2001). Other studies have shown (Groß and Haunschild 2013; Lan 2002) how a strong belief in a company is supported by constant mutual confirmation among members. Mechanisms are frequent, sometimes daily, phone calls between upline and downline members, and regular local, regional, and (inter-)national meetings and extravaganzas. In some MLMs, distributors are not only taught how to recruit others, but also what a fair and just society is (Groß and Haunschild 2013), and how to feel superior to critics of the company (Lan 2002). Lan (2002 p. 177) concludes that exactly because MLMs and their members are often confronted with criticism by non-members, '[d]istributors need each other to constantly confirm their belief in the moral values of direct selling and its promise of future success.'

According to Bromley (1998), MLMs such as Amway, Mary Kay Cosmetics, Herbalife, A. L. Williams Insurance, Tupperware, Shaklee, and Nu Skin in the USA, are particularly active in nurturing a strong moral self-perception. Bromley (1998) calls them 'quasi-religious corporations' as they do not merely offer a job, but promise to solve problems that are part and parcel of living in a differentiated, modern society. These MLMs represent themselves as a cure-all, i.e., a means to combine work and family, strive for a greater good, and create a better society at the same time (Cahn 2006; Droney 2016; Groß 2010; Gu 2004; Pratt 2000a; Pratt and Rosa 2003).

Whereas Sparks and Schenk (2001) see a positive link between the belief in higher-order motives and distributors' financial performance, other academic research (Bone 2006; Cahn 2006; Groß 2008; Pratt 2000a; Pratt and Rosa 2003) and consumer advocates[12] point out that for most distributors these promises simply remain unfulfilled. When most distributors fail in creating an income, 'helping others' rather serves as a euphemism concealing distributors' own economic interests (Bloch 1996; Cahn 2006; Lan 2002), and family conflicts might even increase as distributors spend less time with their families due to business obligations (Bone 2006; Pratt and Rosa 2003). Besides the ethical problem of unfulfilled (material) promises (see above), a few researchers have pointed out that the strong corporate socialization might turn MLMs into 'total institutions' (Pratt 2000a, p. 59). In this case, companies colonize every aspect of members' lives: their current relationships, their world-view, and their hopes for their future (see also Groß 2010; Lips-Wiersma et al. 2009).

At this point, we must note that the authors we mention in this section do themselves not explicitly label the socialization processes as *ethically* problematic. They do, however, treat them as such. The strong corporate socialization has been problematized by several authors in different MLM settings and national contexts [Bone 2006 (UK); Biggart 1989 (US); Bromley 1998 (US); Cahn 2006 (MEX); Groß 2010 (D); Krige 2012 (ZAF)]. As 'total institutions' (Pratt 2000a), for example, MLMs might undermine distributors' ability to critically reflect on the moral quality of the company's business practices. Restricting organizational members' ability for reflection and thus endangering their moral autonomy (Werhane 1999) might, we argue, in the light of the above described legal and ethical problems of the industry, be considered by itself an ethical problem. As described by the literature on the 'normalization of corruption' (Ashforth and Anand 2003; Ashforth et al. 2008), a strong corporate socialization might make distributors be unaware of ethically problematic aspects of their own as well of their company's behavior—again restricting and limiting their moral awareness. Thus, even though not explicitly discussed as an *ethical* problem in the academic MLM literature so far, we regard the described strong corporate socialization as ethically problematic.

That the strong socialization at some MLMs is regarded as problematic outside academia, is related to the accusation of some organizations being 'quasi-religious' or 'cult-like'[21 22], and is related to the fact that some companies have actually set up guidelines to prevent such accusations. Amway, for example, explicates in its guidelines that (upline) distributors are not allowed to make spiritual, religious, or moral statements on stage or propagate a particular world view (Amway 2012, pp. 5–6). The effectiveness of such rules is open to discussion, however. In particular, the Amway Corporation has been criticized for its cult-like organizational culture and the strong socialization of its members (Andrews 2001; Butterfield 1985; Dean 1996; Sonnabend 1998; Scheibeler 2004). In some European countries, church-run 'cult-advice offices' occasionally provide advice to friends and family members who are concerned about how MLMs operate.[22] However, as monitoring business companies is not the central task of these offices, they have only limited resources for and knowledge about the MLM industry.

All in all, a broad range of countermeasures by organizations, industry associations, and governments has been introduced to ensure the legal and ethical behavior of companies and its distributors. However, a range of problems persists. In the next two sections, we will elaborate on how a new, extended conceptualization of MLM companies might help to better understand what causes these problems and how they might be overcome.

Understanding how MLMs Operate: A 'Prevailing' and an 'Extended' Model

The main purpose of this paper is to better understand why ethical and legal problems of MLMs persist (for some MLMs) despite current countermeasures. In our view, an important reason is that the prevailing conceptualization of how MLMs operate is insufficient for a proper understanding of the problems. Moreover, countermeasures that are based on this insufficient understanding may miss the mark. To make our point, we first need to explain both the prevailing and the extended models of MLMs.

The 'Prevailing Model' of MLMs

Although no off-the-shelf, agreed-upon model of how MLMs operate exists in literature or practice, most commentators (regulators, academics, representatives of watchdog organizations) seem to have several 'MLM' constituents and relations between them in mind when describing MLMs (Brodie et al. 2002, 2004; Herbig and Yelkurm 1997; Peterson and Wotruba 1996). The three recurrent constituents are: MLM headquarters, independent distributors, and 'non-members.' Between these three constituents, usually three relations are implied. Below, we will briefly discuss these constituents and their relations. The 'prevailing model' consisting of these constituents and relations is what we call the 'main organization' in Fig. 1.

Headquarters, as the first constituent of MLMs, is responsible for all key business decisions (products, markets, etc.) and for defining and establishing corporate policies, such as the conditions for becoming a distributor (e.g., no requirements except legal age of majority), the legal status of distributors as self-employed, and the commission system for selling and recruiting. The second constituent refers to the self-employed distributors, who work from home, market company products, and/or recruit, teach, and motivate others to do the same. Although not part of the organization (yet), (prospective) clients and prospective distributors are normally included in explanations of how MLMs operate, thereby forming the third constituent in our model. They are approached, usually face-to-face, by distributors for buying products and/or joining the company.

Between these three constituents, three relations are normally described. The first relation is the one between the MLM headquarters and the individual independent distributors (R1 in Fig. 1). It refers to the formal agreement a distributor has with headquarters. It also refers to rules and regulations set by headquarters, such as the distributor agreement and the handbook regulating the rights (such as commissions) and duties (such as compliance to Code of

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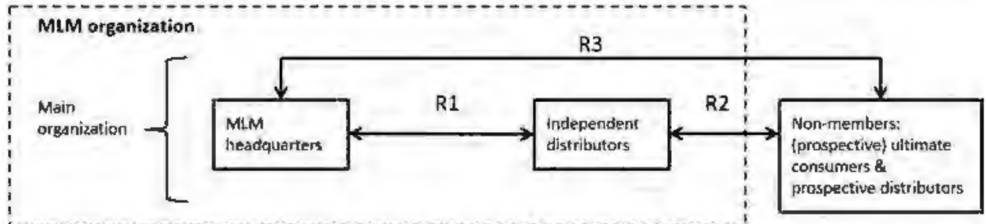

Fig. 1 Prevailing model of MLMs: the 'main organization' consisting of three constituents and their relations

Ethics) of a distributor. This includes under which conditions distributors are entitled to a specific form of compensation (e.g., commission, bonuses, or discounts on products) and the ways distributors are entitled to represent the company, sell products, and recruit others. In addition, handbooks provide distributors with specific information, such as product information, how to declare taxes, and how to work as a distributor. Codes of Conducts provide guidelines for the way distributors should approach prospective clients and recruits. These codes include, for example, rules against income and product misrepresentations.

The second relation (R2 in Fig. 1) describes the interaction between independent distributors and prospective distributors and clients. This relation refers to the way distributors approach and deal with clients and how they recruit other distributors. These practices are, in part, governed by the rules and regulations featuring in relation R1. That is, headquarters expects that distributors behave appropriately toward non-members (relation R2) (as indicated in the rules and handbooks for and the formal agreements with independent distributors—which are part of relation R1).

The third relation (R3 in Fig. 1) is the one between MLM headquarters and non-members. Headquarters regulates, for instance, the rights of prospective and actual clients as well as the rights of prospective and newly recruited distributors in relation with headquarters. Examples include the abovementioned buyback policies for products or cancelation policies, such as a 'cooling off period' for customers to return their purchases (WFDSA 2008, p. 8) and for new distributors the right 'to withdraw from his agreement without penalty and without giving any reason' (Seldia 2011, p. 25).

The prevailing model of MLMs allows us to understand how existing countermeasures are directed at the three relations of the main organization: first, rules such as the restriction of levels for which upline members can receive override commissions regulate the relation between headquarters and distributors (relation R1 in Fig. 1); second, Codes of Ethics, including guidelines for how to approach consumers, have been set up to ensure that distributors treat non-members in appropriate ways (relation R2); and third, rules such as buyback policies define headquarters' obligations toward end consumers (relation R3).

Based on the prevailing MLM model, it is difficult to explain why the broad range of existing countermeasures does not suffice to ensure ethical behavior. Here, Mintzberg's (1983) conceptualization of how different kinds of organizations need different kinds of coordination mechanisms may offer a way out. Whereas bureaucratic organizations can strongly rely on formalization to coordinate work, coordination in organizations 'where jobs are sensitive or remote … must rely on training, and especially on indoctrination' (Mintzberg 1983, p. 41). We argue that MLMs are organizations that primarily rely on coordination by training and indoctrination. This claim is based on Biggart (1989), who argues that MLMs are not idealtypical bureaucracies (as distributors are legally independent, central bureaucratic elements such as formal employment contracts, fixed working hours, a prescribed tenure system, and the possibility for managers to exercise authority based on rational-legal authority are missing). Moreover, the self-employed distributors work from 'remote' locations, i.e., private homes. Finally, as the literature referred to in Sect. 2 illustrates, jobs at MLMs can be categorized as ethically sensitive.

Given these coordination mechanisms of MLMs, one way of approaching the question why legal and ethical problems persist is by gaining a better understanding of training and 'indoctrination,' i.e., socialization (Schein 1990) at MLMs. Former distributors (Andrews 2001; Scheibeler 2004; Smith 2013; Sonnabend 1998) and academic research (see "The legal and ethical problems of MLMs and existing measures to deal with them" Section) have described that socialization plays a relevant and potentially problematic role at MLMs. One might even argue that the strong form of socialization observed in some organizations (Bromley 1998; Groß 2008; Pratt 2000a) can be understood as a form of clan control (Ouchi 1980), as MLMs employ 'a variety of social mechanisms … to produce a strong sense of community' (p. 136). Finally, based on the theory on the normalization of corruption (Ashforth and Anand 2003; Ashforth et al. 2008), it becomes clear that coordination by means of training and socialization can also lead to highly problematic organizational behavior. For instance, the idea of the 'social cocoon' (Greil and Rudy 1984, in Ashforth and Anand 2008; see also Jackall 1988) explains how new members

are socialized into showing corruptive behavior, which is comparable to what happens at some highly problematic MLMs.[1,4,10]

Although several authors analyze how socialization takes place at MLMs (see ''The legal and ethical problems of MLMs and existing measures to deal with them'' Section, 'Total institutions'; i.e., Biggart 1989; Bone 2006; Cahn 2006; Friedner 2014, 2015; Groß 2008; Krige 2012; Lan 2002; Pratt 2000a,b), we still know little about how socialization that leads to ethically problematic behavior and who is responsible for it. In the next section, we will explain that the responsibility for socialization lies with what we call the distributor network (DN). This DN is a specific MLM constituent. Extending the prevailing MLM model with this constituent, we argue, will help us to better understand (the persistence) of legal and ethical problems.

An Extended Model of MLMs

The main organization as described above (see Fig. 1) helps to understand coordination efforts by headquarters. However, training and socialization at MLMs are often carried out by independent high-level distributors. As Juth-Gavasso (1985) in her analysis on Amway points out, distributors' behavior is very strongly influenced by what she calls 'training organizations.' These training organizations are run by independent high-level distributors who organize regular meetings and provide motivational material (books, videos, income charts, etc.). The training organizations include distributors that number anywhere from several 100–1000 or even 10,000. The task of the training organizations is to teach (new) distributors the ropes of the business. In addition, and here we go beyond Juth-Gavasso (1985), distributors are socialized within the upline and downline system of MLMs. In MLMs, all distributors who recruit can use the educational program of training organizations and, at the same time, offer support and education to their downline themselves. Typical activities between upline and downline members are regular (daily) phone calls, informal meetings, and upline members accompanying their new downline to recruitment interviews or product sales (Andrews 2001; Scheibeler 2004; Smith 2013; Sonnabend 1998). Thus, training, motivation, education—or, to put it more generally: the socialization and indoctrination of distributors—is handled by independent training organizations as well as by upline members.

Our main extension of the 'prevailing' model of MLMs is to add the training organization and the upline and downline system (see Fig. 2). As both have the same function (i.e., socialization of members), we regard them as one constituent, which we call the 'distributor network' (DN).

At this point, it may be noted that distributors appear in two constituents of the extended model. For one, they appear as independent distributors selling company products and recruiting potential distributors. For another, they also appear as part of the DN. As such, distributors need to follow some training courses and are hence subject to a training organization, and they may play a role as trainer or even own a training organization themselves. Moreover, distributors have their own position in some upline or downline. We do not think that this is problematic for our model. What we see as different constituents include the same individual in different roles. So, the constituent 'independent distributor' includes some individual *as* distributor, i.e., as someone in the role of selling company products or recruiting other distributors. At the same time, the constituent 'DN' includes all individuals who also have a distributor role, but only in their role as part of the training organization (i.e., trainee or trainer) or in their role as 'managers.'

By including the DN in our extended model of MLMs, two additional relations become relevant (see Fig. 2). Relation R4 refers to the relationship between headquarters and the DN. Some headquarters, for instance, try to regulate the DNs by imposing guidelines about how distributors should be educated. Examples are guidelines for what should be taught at meetings, who should be allowed to speak, how much time should be devoted to product presentations, and how earnings should be presented by training organizations and upline members (see Groß 2008). Important to note, however, is that the DN typically is (legally) independent from headquarters.

Relation R5 refers to the relation between the DN and individual distributors, i.e., how distributors are influenced in how they act, think, and feel with respect to their business. As described above, this happens by means of organized activities such as large and small meetings, by motivational material provided by training organizations and uplines, by personal contact between upline and downline members, as well as by all kinds of spontaneous activities and forms of contact that take place when distributors meet each other in small, large, private, and more anonymous settings. This relation forges the ongoing socialization of independent distributors.

To complete the extended model, one might add the environment of MLMs (see also Fig. 2). Relevant parties in the environment for our purposes are governmental bodies, the law, and MLM associations. As we will discuss later, these parties (should) have an influence on how MLMs operate—however, we do not model these environmental parties as constituents in the operations of MLMs themselves, but rather as factors that provide a background for these operations.

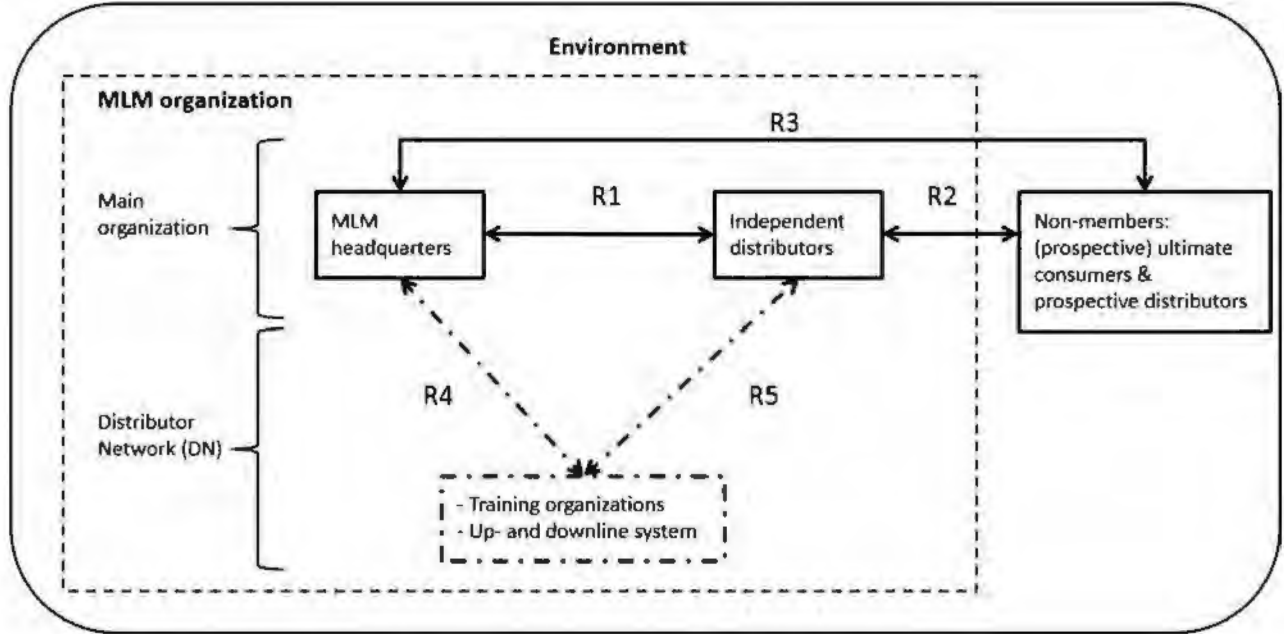

Fig. 2 Extended model of MLMs: main organization and distributor network

Why Legal and Ethical Problems Persist, Despite Exiting Countermeasures

In this section, we will use our extended model of MLMs to discuss why the legal and ethical problems persist, even though several countermeasures have been implemented to deal with these problems.

Illegal Pyramid Schemes

As discussed in ''The legal and ethical problems of MLMs and existing measures to deal with them'' Section, several measures have been introduced to ensure that MLMs do not operate as illegal pyramid schemes. Pyramid schemes are characterized by high (upfront) investments, inventory loading, and a business strategy focusing on recruitment (Juth-Gavasso 1985; Keep and Vander Nat 2014; Koehn 2001; Vander Nat and Keep 2002; Walsh 1999b). To solve the unsustainability produced by geometrical progression in pyramid schemes, some MLM companies restrict the amount of downline levels for which individual distributors receive override commissions. In contrast to some authors who regard this as a relevant countermeasure (Peterson and Albaum 2007; Sparks and Schenk 2006), we argue that this measure may not solve the problem as it does not really target the problem: restricting the amount of levels for which *individual* recruiters receive override commissions, does not limit or restrict the amount of levels of the *whole* company. It only restricts the number of downline levels for which each individual recruiter receives money; it does not prevent exponential progression on the company level.

Countermeasures directed at solving the problem of inventory loading, such as the 70% rule, the ten-customer rule or buyback policies, do not seem to prevent problems either. Distributors may still feel the pressure 'to purchase corporate products for their own consumption or to stockpile large amounts of inventory' (Koehn 2001, p. 155). The persistence of this problem is explained by rules not sufficiently being enforced and monitored by headquarters (Groß 2008; Keep and Vander Nat 2014; Taylor 2014).

Analyzing these measures against the background of our extended MLM model uncovers an additional underlying reason: the rules are all directed at the main organization. Existing countermeasures are part of the formal agreements between headquarters and distributors, i.e., they regulate—more or less successfully—relation R1 in Fig. 2. However, the way distributors behave is strongly influenced by the DN (relation R5). While headquarters might propagate a 70% rule, can boast a ten-customer rule, or officially represent the company as product-oriented (and not recruitment-oriented), within the network of independent distributors, a different message might be conveyed. The comparison of Amway and Mary Kay Germany (Groß 2008) illustrates this point. Although both companies emphasize the relevance of product sales in their official documents[24], the training organizations and upline members convey a different message. At local Mary Kay meetings, distributors applaud each other for recruiting as well as for product sales. At the local Amway meetings, only recruiting is honored by applause. Whereas at Mary Kay meetings recruitment is presented as an extra to one's

sales business, at Amway, recruiting is seen as the first and foremost way to build up one's business (see also Groß and Jung 2009). Whereas at Mary Kay, distributors are invited to ask enthusiastic Mary Kay clients whether they want to join the company as distributors (Groß 2008), at Amway, the training organization recommends distributors to try to recruit others. Only when it becomes apparent that someone cannot be recruited, are distributors recommended to try to sell products to this person [see documents of the training organization provided by Rampelotto and Schwarz (1999), Schwarz and Schwarz (1993, 2001, 2002)]. Such differences between Amway headquarters' rules and the lived practices promoted by the DN illustrate that regulating the main organization of MLMs may not be enough to prevent the legally and ethically problematic focus on recruiting. A DN might overrule the countermeasures taken by headquarters. The same holds for the amount of products (new) distributors buy and stockpile. Whereas official company documents do neither ask for inventory loading nor require high investments in motivational material, during meetings organized by the DN, both might be promoted (Groß 2008). To better prevent misbehavior, we argue that it is relevant to not only regulate headquarters' activities but also the DN and its relation with individual distributors.[16]

Misrepresenting the Business Opportunity

Although Industry Codes of Ethics (Seldia 2011, p. 11, 12, 14; WFDSA 2008, p. 11), in line with governmental regulations, demand that their member companies do not misrepresent income opportunities, empirical evidence mounts that distributors overstate the income possibilities of their company. As Koehn (2001, p. 160) points out, the 'internet is littered with letters from disillusioned souls who report that the MLM they joined did not abide by its own rules' (see also Ramirez 2016).[12,13,15] Industry watchdogs have criticized that only a few companies provide relevant and correct figures on income and/or market opportunities, often in a manner that is either incomplete or difficult to understand.[17] So, one may argue that existing regulations (and/or their enforcement) are just not good enough yet. The suggested rules or codes of ethics do not urge MLMs headquarters enough to be transparent, and deliver up-to-date, relevant, concrete, and easy-to-understand figures (for the FTC's aim to change this, see Ramirez 2016; see also Pareja 2008).

Based on our extended MLM model, we want to supplement this explanation for why rules fall short. Existing rules seek to regulate the relation between headquarters and distributors (R1 in Fig. 2). As research has illustrated, however, the circumstances under which distributors sell products and recruit others are heavily influenced by the DN, relation R5. Research (Friedner 2015; Groß 2008, 2010) and reports by former distributors (Andrews 2001; Scheibeler 2004) illustrate how the DN motivates distributors to sell and recruit. Training organizations and single upline members organize meetings and spread motivational material among distributors, showing success stories and a (seemingly) unlimited earning potential. In contrast, actual attrition rates, average earnings, and the costs of selling and recruiting are not discussed. A simple reason for that might be that headquarters does not make such figures available. Instead, distributors are motivated by stories of individuals who 'have made it.' If actual (average) income figures are provided by headquarters, they are sometimes replaced by income charts displaying *potential* earnings, such as five-figure incomes achieved part-time (see for example the case of Amway Germany, Rampelotto 1999; Schwarz and Schwarz 2001, 2002).[4] Thus, though headquarters may have set up rules against earning misrepresentations (and thus seek to regulate relation 1 in Fig. 2), DNs' educational and motivational activities (relation 5) do not seem to be well regulated yet—neither by headquarters, industry associations nor governments (see for FTC future ideas how to change this Ramirez 2016; see also Herbalife settlement[1]).

Harming Customers

Whereas national consumer protection laws[19] and Industry Codes of Ethics (DSE 2015, pp. 10–11; Seldia 2011, p. 8; WFDSA 2008, p. 7) regulate important aspects such as uncovered health claims, existing rules have not prevented MLMs from harming (external and internal) customers by providing misleading product information and (health) professionals exploiting their social status (Koehn 2001).[29]

We argue, again, that existing rules refer to the relation between headquarters and distributors (R1) to regulate distributors' relations toward clients and prospective distributors (R2). These two relations belong to the main organization. When analyzing existing criticism on the topic, however, it becomes clear that the DNs overrule existing measures. In companies that market nutritional supplements, for example, meetings are used to motivate distributors to make personal statements about how products cured their health problems.[25] The DN thus amplifies the risk of distributors to—willingly or unwillingly—misrepresent products. At meetings, organized by the DN, laymen selling knowledge-intensive products are 'naturalized' and reinforced by such socialization practices (cf. Ashforth and Anand 2003). Confessional stories about being cured by a nutritional supplement are applauded (Biggart 1989; Groß 2008)—also by managers as current cases illustrate.[14,16,25] In addition, the personal use of products is labeled as 'making consumers experts,'

suggesting that their own consumption-based experience can replace independent, professional training (Groß 2008).

Discussing the existing countermeasures based on our extended MLM model thus suggests that some DNs might ignore existing rules while using socialization methods that create unethical behavior. As it is MLMs' core message and profit formula that 'everyone can join,' MLMs use laymen to sell their products. This makes MLMs vulnerable to harming consumers (Koehn 2001). Although MLMs do provide training courses on their specific products, we argue that such training courses are insufficient for two reasons. First, weekly, non-obligatory in-house training courses do not compare to company-independent, certified professional education. Second, as long as headquarters is not explicitly held accountable for how DNs *actually* train (and motivate) distributors, the problems caused by laymen giving advice are difficult to solve. Restricting membership of MLMs to people with sufficient knowledge, however, would negatively affect the profit formula of MLMs. In addition, when health (or other) professionals act as distributors, they may be prone to misusing their social status for profit reasons. This is the second dimension of how customers are potentially harmed as discussed above. Here, we argue again that as long as DNs (are allowed to) ignore the problem of professionals taking advantage of their social status, countermeasures remain insufficient.

To summarize, existing rules against the misrepresentation of products regulate how distributors should behave toward customers (relation R2 in Fig. 2). They are not, however, enforced adequately nor do they tackle relevant sources that nurture misbehavior. These sources are: the recruitment of distributors without any preselection (relation R1), the teaching and socialization of distributors by the DN (relation R5), and the subsequent lack of control of the actual practices of the DN by headquarters (relation R4).

(Mis-)using Trust in Private Social Relations

As discussed in Sect. 2, it is a widespread practice of MLMs to ask new members to first contact their 'warm market' for selling and recruiting. This is ethically sensitive as explained earlier, including the risk of distributors misusing trust and restricting the autonomy of consumers (relation R2 in Fig. 2). Countermeasures such as inventory buyback rules and withdrawal periods (Seldia 2011, p. 25; WFDSA 2008, p. 8), however, regulate the relation between headquarters and non-members (relation R3 in Fig. 2). They do not tackle or regulate the source of ethical sensitivity, i.e., the use of private social relations for economic purposes.

Some industry Codes of Conduct seek to explicitly regulate how distributors approach non-members. The European Direct Selling Association Seldia, for example, asks members to respect individuals' privacy and 'not [to] abuse the trust of individual consumers' (Seldia 2011, p. 13; see also WFDSA 2008). The problem, however, is that some DNs explicitly teach their distributors the clear expectation that friends and family members should help (new) distributors with their business (see research Bloch 1996; Juth-Gavasso 1985; Friedner 2015), and former distributors (Butterfield 1985; Smith 2013). In some companies, distributors are even taught that those who are not willing to share their dream are no true friends and therefore should be dropped (Butterfield 1985; Groß 2008; Scheibeler 2004; Smith 2013; Sonnabend 1998). In these cases, the DN not only overrules existing Codes of Ethics but also nurtures ethically problematic behavior by suggesting abandoning friends for their 'lack of friendship and help.'

Total Institutions: Colonizing Every Aspect of Members' Lives

Some MLMs have been criticized for their particular and strong organizational cultures, their strong socialization of members, and how they present themselves as means for personal and societal salvation (Bromley 1998; Cahn 2006; Groß 2010; Krige 2012; Pratt and Rosa 2003).[21,22] From our point of view, the risk of MLMs acting as total institutions mainly lies in how the DN educates, socializes, and motivates (indoctrinates) distributors (relation R5 in Fig. 2).

To see how the DN contributes to this risk, it is relevant to understand that this DN can be seen as a form of (normative) control. MLM companies allow and incentivize existing distributors to (a) recruit new distributors and (b) teach and educate them. Whoever recruits new members into an MLM thus becomes a 'manager' who is responsible for the output and behavior of 'his' or 'her' recruits. By recruiting, 'normal' distributors become part of the DN that educates and trains others (relation R5). Whereas managers in most non-MLMs can motivate their employees by rights and duties regulated in an employment contract, MLM distributor-managers have no such means (see Biggart 1989). In general, they lack the rational-legal authority to make their recruits obey, as described by Weber (1980). It may be, then, that in this particular situation, MLM distributor-managers employ alternative forms of exercising power. These include strong product ideologies (Biggart 1989), strong organizational cultures, strong socialization, and all-encompassing promises (='total institutions'; see Bromley 1998; Groß 2008; Pratt 2000a). Distributor-managers might thus employ (not necessarily deliberately) the DN as a means to exercise control, potentially overruling Codes of Ethics set up by headquarters.

Summary of why Legal and Ethical Problems Persist, Despite Existing Countermeasures

To solve and mitigate the legal and ethical problems at the MLM industry, a broad range of countermeasures by organizations, industry associations, and governments have been introduced. The ongoing problems and scandals of the industry illustrate that these do not suffice yet (see Appendix for sources). This can be explained by existing countermeasures not being enforced well enough yet (Groß 2008; Keep and Vander Nat 2014; Taylor 2014). Based on our analysis of problems against the background of our extended MLM model, we add the role of the DN to this discussion. We argue that a central reason for why problems persist is the way the DN is allowed to operate. Table 2 provides an overview of how the DN contributes to the persistence of problems.

A first aspect is that DNs might overrule headquarters' rules. Although headquarters might provide rules, for example against earnings misrepresentations or rules to foster product orientation and to protect the privacy of consumers and distributors, the socialization by DNs might overrule these regulations. This means that setting up rules or regulations (by headquarters or other institutions) is futile as long as these rules either not affect or are allowed to be ignored by the DN.

A second aspect is that by their teaching and socialization, DNs might amplify problems inherent in the business model. The potential risk of an MLM being recruitment-focused is connected to distributors being incentivized and motivated to recruit. Likewise, the potential harm to customers is part of MLMs' strategy to (1) allow everyone to join while most distributors lack the relevant knowledge about the MLM product they recommend or (2) allowing (health or financial) professionals to join, who might misuse their social status. Also, the potential misuse of one's 'warm market' is built into the business model if new distributors are not provided with a customer base by the company. And, finally, the risk of exploiting individuals' material and spiritual needs to

Table 2 Overview reasons for the persistence of problems despite countermeasures

Problem category	Dimensions	Reasons why problems persist despite existing countermeasures	
		Distributor network (DN)	Headquarters (HQ)
1. Illegal pyramid schemes	Focus on recruitment instead of on product sales Substantial upfront fees Inventory loading	Overrules HQ rules, for example by recommending intensive spending on products and trainings while HQ asks for low upfront fees Amplifies the problem inherent to recruiting/MLM companies, for example by focusing on recruitment in teachings and trainings	Little control of DN enables HQ to dodge responsibility
2. Misrepresenting the business	Earnings misrepresentations Misrepresentation of selling and recruitment potential	Overrules HQ rules, for example by emphasizing income opportunities instead of presenting actual information Amplifies the problem, for example by emphasizing ease of success instead of providing a balanced presentation of costs, efforts and income opportunity	Reluctance to provide relevant information Little control of DN enables HQ to dodge responsibility
3. Harming customers	Providing misleading product information to (internal and external) consumers Product sales by laymen Exploiting the professional–client relationship	Overrules HQ rules, for example by spreading and teaching illegal health claims Amplifies problem inherent to business model, i.e., lacking selection of distributors by HQ, for example by 'naturalizing' sales by laymen, the exploitation of professional–client relationships, and unethical selling practices	Little control of DN enables HQ to dodge responsibility
4. (Mis-)using trust in private social relations	Instrumentalization of private social relations	Overrules HQ rules, for example by teaching how to best make use of private relationships Amplifies problem in business model, i.e., the use of warm market, for example by teaching that distributors should drop 'unsupportive' friends and family members	Little control of DN enables to dodge responsibility
5. Total institutions	Socialization along company beliefs Intrumentalization of spiritual needs for economic purposes	Overrules HQ rules (if existent) and amplifies problem inherent in lacking formal authority, for example by elevating the recruitment of others and the sale of consumer products to a cure-all for problems of modern society	Little control of DN enables HQ to dodge responsibility

motivate one's downline is fueled by recruiters lacking other means to make their downline obey. Whereas headquarters could use the training courses of their distributors to mitigate the described problems, for example by teaching and enforcing already existing Codes of Ethics, the above-quoted empirical evidence suggests that DNs' teaching and socialization techniques might reinforce unethical behavior. In the case of problematic MLM behavior, DNs' processes of socialization can thus, in fact, be regarded as an instantiation of the practices normalizing corruption (Ashforth and Anand 2003).

A third aspect is that by headquarters portraying and treating DNs as independent entities, headquarters are better able to sidestep criticism. As Juth-Gavasso (1985) already suggested in her analysis on Amway, the legal independence of distributors, uplines, and training organizations can be used as an excuse for headquarters to tolerate and dodge responsibility for practices that are illegal and unethical but stimulate product sales and recruitment (for current cases see LifePlus Germany and Herbalife India[11]). As long as headquarters does not (formally) exercise sufficient control over the actual behavior and business practices of the DN, headquarters is better able to put the blame for misbehavior on the independent distributors, manager-distributors, and training organizations. This includes dodging responsibility and accountability for the non-compliance with rules headquarters has set up itself.

Reflecting on Additional Countermeasures

Dealing with the persistent legal and ethical problems is a central issue for consumers, (prospective) distributors, MLMs, and regulators alike. In the previous sections, we argued that one reason for the persisting problems is that the implemented countermeasures fail to take the DN into account. In this section, we will briefly consider other countermeasures than those that have already been implemented. That is, we evaluate some alternative proposals (which have not been implemented yet) and we propose some countermeasures ourselves. Our main suggestion for evaluating these countermeasures is that whatever set of measures is chosen, some of them should be explicitly directed at the role of DNs in how MLMs (are allowed to) operate.

A first set of suggested additional measures concerns specifying and better enforcing existing rules and regulations. Keep and Vander Nat (2014) and Bosley and McKeage (2015) suggest, for example, that MLMs should be asked to provide more verifiable data on sales to ultimate consumers (see also Pareja 2008). This would make it considerably easier for regulators to distinguish a legitimate MLM system from a pyramid scheme (Bosley and McKeage 2015; Pareja 2008). In addition, income disclosures and 'disclosures of the probability of success' should become generally available to increase the transparency of the industry (Ramirez 2016).[26] Based on our analysis of problems, we fully agree with these suggestions. We think that MLMs should be obliged by governments to provide key performance figures, such as income opportunities, income likelihood, attrition rate, and average earnings. Based on our extended MLM model, we think it is necessary to complement such regulations with an additional measure: holding DNs accountable for (a) communicating these figures and (b) prohibiting the use of any other, 'alternative' figures. Groß (2008) observed, for example, that whereas Amway's German headquarters made no exaggerated income claims, the associated, independent European training organization Max Schwarz did. Thus, based on our model, asking headquarters to provide more transparency is very relevant. It will, however, be more effective, when, in addition, DNs are held accountable for exclusively using these official figures (see the FTC's settlement with Herbalife[1] and its view on transparency, Ramirez 2016).

A second set of recommendations is directed at improving consumer education. For the US context, Bosley and McKeage (2015) suggest increasing consumer literacy, for example by increasing consumer education in secondary schools, in particular financial literacy. In addition, for the particular case of illegal pyramid schemes, the authors suggest providing fraud detection training to state-level investigators. While we agree with the need for better consumer education, we still regard a better regulation of the DN as a relevant way of preventing problems to occur.

A third set of suggestions focuses on changing how MLMs are actually allowed to operate, i.e., changing the very business model. FitzPatrick (n.d.), for example, suggests prohibiting recruitment by existing distributors[6], which would solve the pyramid issue as well as take away distributors' interest in misrepresenting the business opportunity to others. Hyman (2009) suggests to combine a reduction of distributor levels (Peterson and Albaum 2007; Sparks and Schenk 2006) with a more equitable distribution of income between upline and downline levels (Hyman 2007).[27] Such an approach would make MLMs automatically behave more ethically, as exaggerated income promises might be deflated and more people might earn a more appropriate share of income. Hyman (2007, 2009) suggests ensuring that MLMs communicate honestly about what MLMs actually are, i.e., buying-clubs instead of 'get-rich-quickly' schemes. In addition, internal consumption should be (better) regulated, i.e., regulatory agencies should define the share of products that needs to be sold to ultimate customers—such as the FTC did for

Herbalife (see settlement).[1] This way, it would be possible to distinguish MLMs that are legal retail companies from recruiting-oriented pyramid schemes (Pareja 2008; Tokaji-Nagy 2016).[6]

Based on our analysis of problems, we think that all of the above measures are highly relevant. However, we would argue that these measures alone may either be unfeasible or by themselves prove insufficient. Indeed, we would argue to complement such measures with approaches that explicitly regulate how DNs operate.

Prohibiting recruitment may, for instance, simply not be a politically feasible option at the moment (Tokaji-Nagy 2016).[7] If one cannot abolish (pseudo-)pyramid schemes like MLMs and if current legislation is unable to reduce the problems caused by it, an alternative approach might include measures explicitly dealing with how DNs are allowed to operate.

Also asking MLMs to communicate honestly about their business proposition (Hyman 2007, 2009) will not solve all problems. As long as the DNs operate independently, they can still play their part in indoctrination and socialization of distributors, causing the ethical problems as we have described. An independent DN may still ‘overrule’ headquarters’ honesty, for example by inflated promises about income, product quality, and working conditions (see FTC’s view on this topic, Ramirez 2016).

In addition, if the income of high level distributors were reduced by restricting the number of layers (Hyman 2007; Peterson and Albaum 2007; Sparks and Schenk 2006) in combination with redistributing income between upline and downline levels more equally (Hyman 2007), it might even be expected that the DN would operate in a more aggressive way to overcome this loss. We also want to point out that the costs distributors make partially derive from DNs as they charge costs for training courses, seminars, rallies, and motivational material. As long as DNs operate independently from headquarters, costs of running an MLM business may still exceed most distributors’ income—even after redistributing income more equally between uplines and downlines.

From our perspective, then, as long as independent training organizations earn money from the turnover (internal or external) of other distributors, they may remain incentivized to socialize distributors to hard sell, misrepresent the business opportunity, and attract customers with problematic product claims.[5] Even if distributors were only recruited via headquarters, the risk of ‘educating’ distributors in ethically problematic practices would remain as long as those who provide this ‘education’ earn money from doing so. One way of dealing with this is to ensure that training and education are completely organized by headquarters (see Herbalife settlement for obligatory training courses[1]), which in turn is held accountable for its practices—as already stated in the industry’s codes of ethics (Ramirez 2016). Alternatively, DNs should be explicitly held accountable for what they do.

To summarize, given the influence of the DN on (mis-)behavior in the MLM industry, we think that it is central to oblige headquarters to provide correct, understandable, and appropriate data (for exemplary presentations by Nu Skin Europe and Herbalife in Europe[30]) and to better educate consumers about the MLM industry. Aside from these measures, we regard it as important to regulate the relations between the main organization and the DN (relations R4 and R5). Here, we suggest holding headquarters (more) accountable for the actual practices of their DN as the current situation does not urge headquarters enough to do something about misbehavior (see how the FTC acknowledges and plans to tackle this problem, Ramirez 2016[28]). Moreover, headquarters could reduce the discretion of DNs by defining the content of training courses, offering training courses themselves (see for example the education initiative by Amway’s headquarters[31]), and influencing the nature of the company values that are propagated during meetings (see for example how Tupperware exercises far stronger control over its training organizations than Amway; Groß 2008). In fact, the more headquarters is formally responsible for DNs’ activities (and hence, the less independent the DN), the more it can be held responsible for misbehavior. Asking MLM headquarters to take such formal and legal responsibility should become part of governmental regulation of MLMs (see Herbalife settlement[1] and Ramirez 2016). Such regulations could entail making it obligatory for MLMs to educate their own distributors or to organize their own motivational meetings (or to prohibit outsourcing them). In addition, we suggest thinking about rules for holding training organizations and uplines accountable for what is propagated during training courses, meetings, and in educational material. Here, rules and legislation could be strengthened on industry or national governmental level.

So, what we propose here is to hold DNs responsible and accountable for their behavior. This can be achieved by (a) urging headquarters to exercise more control; (b) by making current activities of the DN the explicit (legal) responsibility of headquarters; and/or (c) by making sure that regulations are also directed at parts of the DN.

Although we regard existing countermeasures, measures suggested by other authors, and measures suggested by us as relevant, we want to end this section by saying that we doubt that all problems can really be solved. The reason is that many of them seem to be part of the very business model of MLMs (see also Hyman 2007, 2009; Koehn 2001, for a similar observation): as long as recruitment is part of the business model, the danger of illegal pyramid schemes lures. In addition, if one is trapped into such a scheme, the

only way to attract others may be to misrepresent the business. As long as the business model revolves around attracting basically anyone as distributor or as member of a buying club, the danger of distributors harming customers by keeping them in the dark is real. As long as the business model is built around independent distributors without a client base provided by the company, the danger of misusing trust in private social relations exists, even if income promises are deflated. Finally, as long as MLM distributor-managers lack any legal–rational authority over 'their' downline members or 'buying clubs,' the risk that distributor-managers use and misuse their downlines' economic, emotional, and spiritual needs to motivate and guide them, is hard to prevent.

In conclusion, as long as MLMs are allowed to operate as they do, their business model is prone to causing legal and ethical problems. Thus, we suggest that it is relevant to combine a broad range of countermeasures, including measures directed at regulating the DNs.

Conclusion

With its impressive growth throughout the last decades (WFDSA 2016), the MLM industry has proven an important player in the distribution of goods and services and a popular retail channel. The focus of this paper, however, was on the problematic side of the industry as we set out to (a) explicate the role of the DN in the persistence of legal and ethical problems and (b) discuss potential, but limited, measures to deal with these problems.

To reach this goal, we provided an extended MLM model in ''Understanding how MLMs operate: a 'prevailing' and an 'extended' model'' Section. To present this extended model, we first explicated the implicit 'prevailing MLM model,' consisting of headquarters, independent distributors, and (prospective) clients and distributors. Next, we extended this prevailing model with an extra constituent: the 'distributor network' (DN). While we are not the first authors to write about the legal and ethical problems of MLMs nor the first to discuss how distributors are socialized, our analysis extends existing research in the following ways. First, in order to provide an appropriate starting point for our analysis, in ''The legal and ethical problems of MLMs and existing measures to deal with them'' Section we provide an overview, including the legal and ethical problems of MLMs and existing countermeasures. Second, although existing research analyzes how upline members recruit and socialize 'their' downline (Biggart 1989; Pratt 2000a, b), we also explicate how these practices are linked to problematic behavior displayed by some MLMs. Third, whereas Juth-Gavasso (1985) pointed out the relevance of Amway's training organizations for legally problematic behavior, we extended her ideas by (a) including the upline and downline system into the DN; (b) using our extended model to analyze not only legal but also (other) ethical problems; and (c) going beyond a single company to reflect on the specific constituents of MLMs. Fourth, explicating the MLM constituents and the relations between them allowed us to provide a better understanding of why problems persist and existing countermeasures do not suffice. Finally, using our extended model, we discussed potential additional countermeasures in ''Reflecting on additional countermeasures'' Section.

The MLM model presented in our paper thus provides a background for diagnosing current legal and ethical problems of MLMs, evaluating the effect of current countermeasures, and designing new measures to mitigate legal and ethical problems. However, the actual use of our model requires further research. In particular, a more detailed company and country-specific analysis of how education, training, and socialization take place (see for example Groß 2008; Juth-Gavasso 1985; Lan 2002; Pratt 2000a, b) might provide deeper insights into the nature of the problematic DN-micro-practices and how they may be prevented. It is, for example, highly relevant to research the industry's 'best practices.' How do MLM companies who work in a morally sound way deal with and regulate their DN? Which measures are taken by those headquarters to successfully mitigate the above described risks? Which organizational 'best practices' exist that might be introduced on a larger scale? What is more, as legislation and MLM practices differ from country to country, further research into both countermeasures, and country-specific legal and ethical issues is needed.

Research into the role of DNs as a source of unethical behavior in MLMs may also benefit from (and be relevant for) research into the normalization of corruption (Ashforth and Anand 2003; Ashforth et al. 2008; Nelson 2016). This might prove to be worthwhile in order to understand the role of DNs in terms of the processes involved in normalizing corruption (e.g., institutionalization, rationalization and socialization, Ashforth and Anand 2003). At the same time, analyzing highly problematic MLMs might also provide new insights into how the normalization of corruption takes place, while studying unproblematic MLM companies might help understanding what needs to be done to prevent such behavior.

In addition, whereas our article focuses on the problematic aspects of the MLM industry, a far broader underlying topic of our analysis is how organizations are—deliberately or not—designed to avoid, ignore, or disclaim accountability. As research on the interplay of formal and informal organizational systems has shown (Smith-Crowe et al. 2015), employees can be directed to show ethical behavior by formal systems (i.e., ethics programs), whereas

informal systems, such as unwritten norms and conventions, may foster fraudulent behavior. Although the independence of DNs in MLMs is a very particular case, it illustrates and might further contribute to the discussion on how organizations can be designed to lower the risk of formal programs that are contrary to informal norms (Smith-Crowe et al. 2015) or decoupled from actual practices (Clegg and Gordon 2012; Jackall 1988; MacLean et al. 2015).

Moreover, it can be argued that a better understanding of the way 'good' and 'bad' practice MLMs operate is relevant, because MLMs are part of the growing non-traditional forms of employment in Western countries, such as freelancing, subcontracting, and franchising (Kalleberg 2009). These forms share central characteristics, including precarious working conditions for the self-employed, self-employed working from a distance, employers being exempted from social security contributions, and remuneration being bound to financial performance criteria. Thus, insights provided in this article could cross-fertilize the understanding of similar forms of employment. In particular, it is interesting to ask how the outsourcing of central business activities (in our case: selling company products and hiring new 'employees') might be connected with the 'outsourcing' of headquarters' responsibility for (un-)ethical behavior.

Compliance with Ethical Standards

Conflict of interest The authors declare that they have no conflict of interest.

Ethical Approval This article does not contain any studies with human participants or animals performed by any of the authors.

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Appendix

See Table 3.

Table 3 Additional (other than academic) sources on MLMs

Ref	Topic	Source	Date of access
1	Reports on FTC investigation of Herbalife	Critical information about Herbalife: http://www.factsaboutherbalife.com	14 July 2015
		Herbalife investigation opened:	16 July 2016
		http://www.theverge.com/2014/3/18/5521402/secret-pyramid-files-what-does-the-ftc-want-from-herbalife	
		Reaction Herbalife: http://br.advfn.com/noticias/PRNUS/2014/artigo/61426569?adw=1126416	
		FTC—Herbalife settlement:	
		https://www.ftc.gov/system/files/documents/cases/160715herbalife-stip.pdf	
		FTC website with additional information:	
		https://www.ftc.gov/news-events/press-releases/2016/07/herbalife-will-restructure-its-multi-level-marketing-operations	
2	MLM associations' complaint procedures	Worldwide:	16 August 2015
		www.dsa.org/code-of-ethics/filing-a-code-complaint	
		Germany:	
		http://www.direktvertrieb.de/Schlichtungsverfahren.441.0.html	
		The Netherlands:	
		www.directeverkoop.nl/consument.php	
3	Company codes of ethics of MLM	Herbalife:	16 August 2015
		http://ir.herbalife.com/documentdisplay.cfm?DocumentID=8105	
		Mary Kay Cosmetics:	
		http://www.marykay.com/en-US/Pages/DSA-Code-Of-Ethics.aspx	
		Nu Skin:	
		https://www.nuskin.com/global/images/pdf/Policies_Proced_US.pdf	
4	Official press release on legal investigations	Herbalife (see above)	19 October 2015
		Stream/Ignite:	
		http://www.ca5.uscourts.gov/opinions%5Cpub%5C14/14-20128-CV2.pdf?utm_source=Trump%2C+MLM+and+Pyramid+Schemes%2C+Year-End+Report&utm_campaign=PSA+December+2016+Update&utm_medium=email	4 December 2016
		Vemma:	
		https://www.ftc.gov/news-events/press-releases/2015/08/ftc-acts-halt-vemma-alleged-pyramid-scheme	

Table 3 continued

Ref	Topic	Source	Date of access
5	Consumer advocates reporting on ethical/legal problems of MLMs by watchdog organizations	http://www.mlm-thetruth.com/ http://pyramidschemealert.org http://www.mlmwatch.org http://www.sequenceinc.com/fraudfiles/category/pyramid-schemes-mlm http://mlmpetition.com/	14 July 2015 3 March 2017
6	Consumer advocate suggesting to forbid recruiting	http://campaign.r20.constantcontact.com/render?ca=16c71fc7-f96f-4c2b-9d04-0e14628990be&c=fb5f6b80-36fc-11e3-83c6-d4ae528eb27b&ch=fc329a00-36fc-11e3-84c2-d4ae528eb27b http://seekingalpha.com/article/3980851-spanish-prisoner-herbalife-gets-money-ftc-can	18 June 2016
7	Critical review of Bill H.R. 5230 as legalizing illegal pyramid schemes; illustrates strong MLM lobby	http://seekingalpha.com/article/3976475-disgusting-shameful-bill-h-r-5230-legalize-current-pyramid-schemes https://www.truthinadvertising.org/pyramid/	18 June 2016
8	Media reports on MLMs/ MLMs as pyramid schemes	http://seekingalpha.com/article/3362825-herbalife-mlms-and-the-ftc-some-questions-and-a-challenge-for-market-analysts-and-the-financial-press http://www.bloomberg.com/news/articles/2015-02-27/an-insider-explains-why-the-ftc-can-t-put-an-end-to-pyramid-schemes	5 August 2015
9	Governmental buyback policies	Germany: www.gesetze-im-internet.de/bgb/__355.html US: http://www.mlmlaw.com/law-library/guides-reference/multilevel-marketing-primer/#7	16 August 2015
10	Media releases illustrating persistence of pyramid scheme practices	Herbalife: http://seekingalpha.com/article/3362825-herbalife-mlms-and-the-ftc-some-questions-and-a-challenge-for-market-analysts-and-the-financial-press http://www.marketfolly.com/2012/05/transcript-of-david-einhorns-questions.html Vemma (official FTC press release): https://www.ftc.gov/news-events/press-releases/2015/08/ftc-acts-halt-vemma-alleged-pyramid-scheme	7 January 2016
11	Critical reviews on headquarters' lack of responsibility for DN misbehavior	LifePlus Germany: https://www.youtube.com/watch?v=PA3502FiWLk Herbalife India: http://www.cnbc.com/2013/10/17/claims-of-herbalife-distributors-in-india-raise-questions.html	21 November 2014
12	Consumer advocates reporting on misrepresentation of business opportunities	http://www.mlmwatch.org/01General/misrepresentations.html http://www.jenman.com.au/Downloads/MythofMLMIncome.pdf http://mlm-thetruth.com/research/reports/summary-key-conclusions/	7 January 2016
13	Consumer advocates reporting on MLM misrepresentations	http://www.mlm-thetruth.com http://pyramidschemealert.org http://www.mlmwatch.org/ http://www.mlmobserver.com/ http://www.sequenceinc.com/fraudfiles/category/pyramid-schemes-mlm http://mlm-thetruth.com/research/reports/summary-key-conclusions/ http://mlmpetition.com/	7 January 2016 12 December 2016 3 March 2017
14	Company examples of motivational 'success stories'	Herbalife: https://www.youtube.com/watch?v=WanbFVQyEq8 Lifeplus: https://www.youtube.com/watch?v=OQQ4CDtvKzY Mary Kay: http://www.marykay.com/en-US/beabeautyconsultant/Pages/success-stories-featured-profiles.aspx	19 May 2016
15	Company material (Vemma) illustrating how income opportunities are (mis)represented	(1) Promotional video: https://www.youtube.com/watch?v=3pd0cKQEtSg (2) US income disclosure of Vemma 2013: http://vemmanews.com/2014/03/05/vemma-2013-income-disclosure/ (3) A critical interpretation of the income disclosure: http://amlmskeptic.blogspot.nl/2014/07/due-diligence-how-to-read-income.htm	15 July 2015

Table 3 continued

Ref	Topic	Source	Date of access
16	Media release illustrating current company example (Herbalife) for how official rules and actual practices can be decoupled	http://seekingalpha.com/article/3740536-herbalife-is-moving-underground-with-their-business-opportunity-pitch	3 January 2016
17	Consumer watchdogs critical reviews of actual income & official income disclosures MLM	Critical reviews of actual income: http://pyramidschemealert.org http://www.mlmobserver.com/ http://www.mlm-thetruth.com/ http://www.mlmwatch.org/ http://www.sequenceinc.com/fraudfiles/category/pyramid-schemes-mlm/ http://www.transgallaxys.com/~beo/umsatz/umsatz_mlm.htm http://seekingalpha.com/article/3966363-herbalife-distributor-earnings-disclosure-statements?li_source=LI&li_medium=liftigniter-widget http://mlmpetition.com/ Income disclosures MLM companies: http://pyramidschemealert.org/income-disclosures-of-herbalife-nu-skin-and-amway-2012/ http://www.sequenceinc.com/fraudfiles/2012/12/multi-level-marketing-income-disclosures/	1 July 2015 17 March 2017
18	Media reports on illegal product claims	http://abcnews.go.com/Blotter/caught-tape-herbalife-cures-brain-tumor/story?id=23441488&singlePage=true	2 May 2015
19	Governmental legislation on nutritional claims	US: http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=101.14 Europe: http://ec.europa.eu/food/safety/labelling_nutrition/claims/index_en.htm http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:149:0022:0039:EN:PDF	9 August 2015 26 November 2015
20	Media reports on MLM headquarters dodging illegal product claims	US: http://abcnews.go.com/Blotter/caught-tape-herbalife-cures-brain-tumor/story?id=23441488&singlePage=true Germany: http://www.br.de/fernsehen/bayerisches-fernsehen/sendungen/kontrovers/stellungnahme-lifeplus-europe-ltd-102.html	2 May 2015
21	Watchdog groups characterizing MLMs as (quasi-religious) cults	http://www.falseprofits.com/files/1a752febbefe73223e22a28e5e5e5106-35.html http://amlmskeptic.blogspot.nl/search/label/MLMBasics https://www.youtube.com/watch?v=CApMzIX46kw https://freedomofmind.com/beware-the-main-street-bubble-of-multi-level-marketing-groups-without-u-s-government-protection/ https://sometimesmagical.wordpress.com/2014/04/12/cult-spotting-101-breaking-down-multi-level-marketing-schemes-guest-post/	3 March 2017
22	European church and state run consumer protection groups providing advice on MLMs that are perceived as (quasi-religious) cults	http://www.bundesstelle-sektenfragen.at/ http://www.confessio.de/cms/website.php?id=/religionheute/strukturvertriebe/ideologie_im_strukturvertrieb.html http://www.weltanschauung.elk-wue.de/fileadmin/mediapool/einrichtungen/E_weltanschauungsbeauftragte/DoksO-T/Struktur.pdf http://www.srf.ch/konsum/themen/geld/forever-living-jetzt-spricht-die-sektenexpertin http://www.infosekta.ch/media/uploads/2015_Pressemitteilung_zum_Jahresbericht2014_2014_16April2015.pdf	16 April 2015
23	Independent training organizations websites	Dexter Yager (Amway US): http://www.businessforhome.org/2011/08/dexter-yager-amway-review-2011/ Schwarz-Diamond-Connection (Amway EU): http://www.schwarz-organisation.eu/en/home-0	15 July 2015
24	Promotional company material showing the importance of selling products	Amway video 'Start a Business': http://www.amway.com/start-a-business Mary Kay video 'New Beauty Consultant': http://www.marykay.com/en-US/BeABeautyConsultant/Pages/Get-Started-Starter.aspx.	5 May 2015
25	Distributor health claims and problematic product claims	'Truth in advertising' database, including over 1000 problematic health claims made by 60 MLMs that sell nutritional supplements and are member of the DSA (Direct Selling Association): https://www.truthinadvertising.org/mlm-health-claims-database/ For Herbalife see also: http://www.factsaboutherbalife.com/harmful-promises/	18 August 2015 5 May 2016

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Table 3 continued

Ref	Topic	Source	Date of access
26	Consumer advocates' suggestions for improving MLM industry	Obligatory income disclosures: http://seekingalpha.com/article/3966363-herbalife-distributor-earnings-disclosure-statements?li_source=LI&li_medium=liftigniter-widget Better enforcement of existing rules and regulations: http://seekingalpha.com/article/3816976-herbalife-goodbye http://seekingalpha.com/article/3815316-regulators-financial-partners-multilevel-marketing-house-cards http://seekingalpha.com/article/4006010-celebrating-multilevel-marketing-model-2-fears-pr-fix	20 June 2016 13 September 2016
27	Suggestion to improve distribution of income	More equitable distribution of income between up- and downline levels: http://mlm-thetruth.com/dsa-vs-consumers/	20 June 2016
28	Letter of FTC Chairwoman Ramirez to DSA, January 19, 2017	https://www.ftc.gov/system/files/documents/public_statements/1068663/response_to_dsa_letter_ramirez.pdf	20 February 2017
29	Watchdog organizations problematizing health professionals as MLM distributors	https://www.ncahf.org/articles/j-n/mlm.html http://www.ncahf.org/pp/mlm.html	3 March 2017
30	Examples transparent and understandable income disclosures	NuSkin for all Europe, Middle East, & Africa Countries (2015) see here: https://www.nuskin.com/content/dam/eu-library/CompPlanExtended/DCS/distributor_compensation_summary-all-EMEA.pdf Herbalife for some of its European countries, see for example The Netherlands: https://edge.myherbalife.com/vmba/media/CC21DCE1-241A-4383-B286-1D9B94D16A69/Web/General/Original/SAGC_Netherlands.pdf Germany: https://edge.myherbalife.com/vmba/media/F1AA67FB-02D9-42B7-9388-FE8ADF87A4C9/Web/General/Original/AngabenzudendurchschnittlichenBruttozahlungenfuerHERBALIFEMitgliederinDeutschland.pdf UK: https://edge.myherbalife.com/vmba/media/F3915EF0-F5F2-4D2A-8609-0DED9D4517B7/Web/General/Original/SAGC_UK.pdf Italy: http://edge.myherbalife.com/vmba/media/64DE5D8B-7D33-4E3C-BA1D-6EF84ED8E99D/Web/General/Original/Italy_SAGC_2014_050415_translatedREV.pdf	3 March 2017
31	Education by headquarters	Amway's extended 'education' platform: http://www.amway.com/about-amway/AmwayEducation	6 March 2017
32	Direct Selling Associations providing overview of industry merits	World Federation of Direct Selling Associations: http://wfdsa.org/about-direct-selling/ Seldia http://seldia.eu/index.php?option=com_content&view=article&id=7&Itemid=139 German Direct Selling Association: Advantages for corporations: http://www.direktvertrieb.de/Vorteile-fuer-Unternehmen.74.0.html Advantages for (future) distributors: http://www.direktvertrieb.de/Argumente.106.0.html Advantages for customers: http://www.direktvertrieb.de/Vorteile.85.0.html	6 March 2017

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This is Exhibit " 8 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

FEDERAL TRADE COMMISSION
Project No. R511993

COMMENT
of
PRIMERICA FINANCIAL SERVICES, INC.
on the
REVISED NOTICE OF PROPOSED RULEMAKING
on the
BUSINESS OPPORTUNITY RULE
R511993

FILED MAY 27, 2008

Peter Schneider, Esq.
Alexis Ginn, Esq.
Suzanne Loomis, Esq.
Primerica Financial Services, Inc.
3120 Breckinridge Boulevard
Duluth, GA 30099
(770) 381-1000

Timothy J. Muris, Esq.
J. Howard Beales, III, Consultant
O'Melveny & Myers, LLP
1625 Eye Street, N.W.
Washington, DC 20006
(202) 383-5300

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I. INTRODUCTION

Primerica Financial Services, Inc. ("Primerica") submits this comment on the Commission's Revised Notice of Proposed Rulemaking ("NPRM"). First, we congratulate the Commission for its decision to exclude multi-level marketing opportunities from the proposed Rule. As staff's analysis of the very large number of comments received in response to the original Proposed Business Opportunity Rule makes clear, the decision to exclude multi-level marketing from the Revised Proposed Business Opportunity Rule ("RPBOR") is well-grounded. The comments make an overwhelming case that the costs of covering multi-level marketing arrangements far exceed any possible benefit. The small number of comments supporting application of the rule to multi-level marketers simply did not provide persuasive arguments or evidence to the contrary. Indeed, the record lacks any real evidence of a need for such a rule in the multi-level marketing context, and, as the revised NPRM recognizes, the Commission has an effective tool to prosecute any instance of fraud that may occur under Section 5 of the Federal Trade Commission ("FTC") Act. The lack of any need for a new rule, particularly when weighed against the extreme cost to the vast number of individuals whose livelihoods depend on multi-level marketing opportunities, amply justifies, and indeed compels, the Commission's decision to modify its proposal to exclude multi-level marketing, thereby better aligning benefits and costs.

Second, Primerica suggests three modifications to the RPBOR, to better assure that the regulatory language actually achieves the clear intent of the Revised Notice that the Rule exclude multi-level marketing opportunities like those offered by Primerica and by many members of the

Direct Selling Association. Primerica believes that each of these changes retains the Proposed Rule's efficacy against the types of arrangements intended to be covered by the RPBOR, while making it clear that multi-level marketing opportunities are not covered by the Proposed Rule.

It is important for the Rule's text be clear in this regard, because a variety of actors within both the federal and state governments will have the opportunity to interpret the Rule once it becomes final. Federal courts play an obvious role in the interpretation and application of federal laws, including the Commission's regulations. Moreover, because the Commission's regulations are frequently relevant under state unfair and deceptive trade practices statutes, state courts and state regulatory agencies also may have the opportunity to interpret and apply the final rule. Although the message in the Revised Notice is loud and clear that the Commission does not intend to cover multi-level marketing opportunities, the text of the RPBOR itself leaves some room for argument to the contrary. The Commission specifically requested comment on this issue (*see* Revised Notice, 73 Federal Register 16110 at 16133 (March 26, 2008) (requesting comment on the definition of assistance: "Will it result in the inclusion of multi-level marketing relationships that would otherwise not be covered?")).

Primerica believes that several small adjustments to the RPBOR will make it clear that multi-level opportunities are not covered by the Rule without interfering with the applicability of the Rule to the types of schemes that the RPBOR seeks to cover, such as work-at-home schemes, vending machine schemes, and the like.

II. PROPOSED REVISIONS TO THE RPBOR'S DEFINITIONS

Since Primerica's suggested revisions seek to clarify the coverage of the RPBOR, all of its proposals are directed to the definitions contained in section 437.1 of the Rule. Although

each revision is discussed in the text of this Comment, for convenience, all three proposed revisions (including three separate alternatives for the first proposed revision) are contained in the Appendix to this Comment.

A. Eliminating or Modifying "Customers"

One portion of the RPBOR that may inadvertently sweep in the multi-level marketing opportunities that are intended to be excluded is the inclusion of "customers" in sections 437.1(c)(3)(ii) and 437.1(*l*). Section 437.1(c)(3)(ii) defines a covered "business opportunity" to be one in which the business opportunity provider (or "designated person") represents that it will "[p]rovide outlets, accounts, or customers ... for the purchaser's goods or services." Section 437.1(*l*) defines the phrase "provide outlets, accounts, or customers" in the following way:

> furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.

The problem is created by the very expansive language in section 437.1(*l*) that includes "otherwise assisting the prospective purchaser in obtaining his or her own ... customers." This language could be argued to encompass any type of training or advice about how to succeed in a new business venture, such as how to identify potential customers, how to make effective presentations to them, and the like. As such, the broad reach of this language threatens to sweep in a number of types of relationships that the Revised Notice stated the RPBOR did not intend to cover, such as educational offerings, traditional distribution arrangements, and multi-level marketing opportunities. Indeed, although Primerica does not provide lists of customers to its agents and makes it clear that agents are responsible for developing their own customers, it does

provide advice to agents about how to accomplish this task. Based on our knowledge of the businesses of other members of the Direct Selling Association (DSA), we believe that most DSA member firms provide similar general advice or training to their sales force members. In addition, any advertising done by a multi-level marketing company for the purpose of promoting that company's products or services could be argued to represent "assistance" to a salesperson affiliated with that company in developing customers. None of these examples was the sort of promises of assistance that motivated the Business Opportunity Rule in the first place, and none of them can be used as characteristics to identify the types of schemes the Rule is intended to cover. Nevertheless, the broad language of § 437.1(*l*) arguably includes all of these types of activities and therefore threatens to make the scope of the Rule far broader than was intended or is necessary.

As noted above, the Commission had overwhelming reasons to exclude multi-level marketing, educational opportunities, and traditional distribution arrangements from the Business Opportunity Rule. As the Commission correctly concluded, the benefits of including these types of relationships are minimal or nonexistent, and the costs to the persons affected and the American economy would be tremendous. The magnitude of the impact of this issue, however, counsels in favor of making sure that the final Business Opportunity Rule is completely clear on the exclusion of these types of business relationships, so it does not provide uncertainty or a vehicle for mischief.

The Commission recognized this potential issue in the Revised Notice, specifically requesting comment on it as follows:

> 2. The definition of "providing locations, outlets, accounts, or customers" includes "otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers." Does this language

> adequately cover all of the business opportunity arrangements that should be within the scope of the rule? Why or why not? Will the inclusion of "otherwise assisting" in the definition cause traditional product distribution arrangements, educational institutions, or how-to books to be subject to the proposed Rule? *Will it result in the inclusion of multi-level marketing relationships that would otherwise not be covered? Why or why not? How could the language be refined to achieve the proper scope?*

Revised Notice, 73 Federal Register 16110 at 16133 (March 26, 2008) (emphasis added).

Primerica proposes three alternatives for resolving this problem: (1) simply eliminate the word "customers" from the two sections, (2) add a new phrase to the end of § 437.1(*l*) to make it clear that advertising or generalized training or advice on customer and business development is not included within the definition of "providing ... customers," or (3) limit the "customers" provision to the work at home opportunities in which it is most likely to have some utility. We discuss each alternative in turn below.[1]

Option 1: Eliminate "Customers."

The easiest way to resolve this issue (i.e., the way that involves the least change to the language of the RPBOR) would be to delete the word "customers" from § 437.1(c)(3)(ii) and § 437.1(*l*). Doing so would solve the problem of inadvertently covering multi-level marketing opportunities, educational institutions, how-to books, and traditional distribution arrangements, all of which could include general advice or training about how to find or develop customers in the context of building a business.

The Business Opportunity Rule still would effectively cover the types of schemes that the Rule intends to cover, however, through the continued presence of the words "outlets" and "accounts" in §§ 437.1(c)(3)(ii) and (*l*). For example, a work-at-home scheme that promised to

[1] We have not proposed eliminating the "otherwise assisting" language from § 437.1(*l*) because we believed that the Commission wanted an expansive "catch-all" to help prevent business opportunities from being structured in a way that would evade coverage under the Rule.

provide participants with a channel through which to sell products fabricated by the participant at home would be covered because it would be providing one or more “outlets” or “accounts” to the participant. “Outlets” and “accounts” connote existing or ongoing relationships that the business opportunity participant is promised access to, and the more general term “customers” does not connote these relationships. The Rule would therefore sweep in what it intends to cover (schemes that promise a ready, pre-defined market for the participant’s products or services) and would exclude what the Revised Notice sought to exclude – situations in which general advice on how to find and develop customers is offered by multi-level marketing opportunities, educational institutions, and how-to books, or situations in which advertising to the general public occurs. Primerica believes this is the clearest, most effective way to ensure that the final Rule serves its intended purposes without the threat of collateral damage to other types of business relationships.

Option 2: State That General Training and Advice is Not “Providing Customers.”

An alternate proposal for dealing with the problem of the broad inclusion of “otherwise assisting” a person in “obtaining his or her own ... customers” would be to add a statement to § 437.1(*l*) that makes it clear that this “catch-all” phrase is not intended to cover advertising and generalized training in customer and business development. Under this proposal, § 437.1 would be modified to read as follows:

> (l) *Providing locations, outlets, accounts, or customers* means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers, provided that advertising and general advice

about business development or training shall not be "providing locations, outlets, accounts, or customers."

(The underlined portion is the proposed addition to the language.)

Primerica believes this change would be sufficient to alleviate the problem of the overbreadth of the RPBOR as it currently stands, but there are potential pitfalls from this approach that the Commission should consider. Having a general phrase that "otherwise assisting" someone in "obtaining his or her own ... customers" and then an exclusion for advertising, "general advice," and training raises the question of what "otherwise assisting" is intended to cover that is not excluded by the proviso. It might also be difficult in certain marginal cases to draw a line between "general advice" or "training" and some other sort of "assistance" that would result in coverage of a business opportunity by the Rule. We believe that these interpretive difficulties may create problems in some enforcement situations for the Commission, but the Commission could retain the word "customers" in the Rule, if it believed that the flexibility created by doing so would make the final Rule more useful. In weighing the benefit of retaining "customers" against the interpretive problems created by the necessity of excluding generalized advertising and training, Primerica believes that eliminating customers is the better alternative. This alternative, however, would prevent interpretations of the Rule that would apply it to a vast universe of arrangements it is not intended to reach, if the Commission ultimately decides that having "customers" in addition to "outlets" and "accounts" in the Rule is critical to the Rule's effectiveness.

Option 3: Limit "Providing Customers" to Work-At-Home Business Opportunities.

A third way to avoid the difficulties that including "providing customers" potentially creates is to narrow the provision to apply only in the cases where it might be most useful,

namely, in work-at-home opportunities. In traditional business opportunity cases, there is no indication that the "outlets, locations, or accounts" approach of the existing rule has created enforcement difficulties or opportunities for evasion. That language, however, may be more limiting as applied to work-at-home schemes, in which the distinction between an "account" and a "customer" could be difficult.

To narrow the coverage of business opportunity sellers who assist by "providing customers," the Commission could eliminate "customers" from § 437.1(c)(3)(ii), and modify § 437.1(c)(3)(iii) to read as follows:

> (iii) Buy back or provide customers for any or all of the goods or services (other than selling) that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(The underlined portion is the proposed addition to the language.)

The parenthetical (other than selling) is necessary because "services" could be read to include the service of selling, which would recreate the same problems as the current definition. The broad definition in § 437.1(l) could remain unchanged, because the "customers" component would apply only to business opportunities in which the customer is making the product or providing the service. Although the issues of general training and advertising as "assistance" would remain, it is not clear that they are relevant to the work-at-home business opportunity.

B. Clarifying "Designated Persons"

To further ensure that the final Rule will not include multi-level marketing opportunities, Primerica's second proposed revision seeks to clarify what constitutes a "designated person" under § 437.1(d). The concept of a "designated person" is an important one in the RPBOR, because the offer of "assistance" that can cause a relationship to be classified as a "business

opportunity" can be made by either the "seller" of the business opportunity or a "designated person." *See* Proposed § 437.1(c)(3). The definition of "designated person," however, is overbroad in a way that again threatens to cover many multi-level marketing opportunities under the Rule.

"Designated person" is defined as "any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business." This definition potentially creates problems because of the relationships among participants in a multi-level marketing business. For example, as discussed in Primerica's original comment, Primerica agents have "uplines" (that is, persons above them in the sales hierarchy) and "downlines" (persons below them). Primerica expects uplines to provide support and assistance to their downline agents. This is especially true for Primerica's Regional Vice Presidents, who are required to maintain offices for the use of their downline agents. Regional Vice Presidents and Offices of Supervisory Jurisdiction within the Primerica sales force are also required to exercise compliance oversight functions with respect to downline agents, because such compliance monitoring is required by the regulatory environment in which Primerica operates.

Thus, in a sense, a new Primerica agent is recommended or required to use "services" provided by his or her upline Regional Vice President, such as the use of office space, supplies, and computers; general advice about how to succeed in the business; and the regulatory compliance supervision mentioned above. The new Primerica agent does not pay for any of these "services" – Primerica pays additional commissions to the upline agents to compensate them for assisting and supervising their downline agents. But, nevertheless, because there are

benefits flowing from the upline agent to the downline agent, the upline could be argued to be a "designated person" under the RPBOR.

This phenomenon is not unique to Primerica. Most multi-level marketing companies ask upline sales representatives to assist and advise downline agents in some way, and reward the upline agents for doing so by paying them some form of commissions on sales of products or services made by their downline agents. Thus, because many forms of assistance listed in § 437.1(c)(3) of the RPBOR could be given by upline agents to their downline recruits in a variety of multi-level marketing companies, a definition of "designated person" that would include upline agents has the potential to expand vastly the coverage of the Rule beyond what the Revised Notice intends.

Fortunately, there is an easy and logical way to resolve this problem. The definition of "designated person" should be modified to include a requirement that the purchaser of a business opportunity make some sort of payment to the "designated person" for the services that the business opportunity seller "suggests, recommends, or requires" that the purchaser use. This will exclude most or all multi-level marketing companies, since most of them (like Primerica) prohibit upline agents from imposing fees on their downlines. The definition, even with a payment component added, will still capture schemes in which a business opportunity seller is cooperating with some other party to sell an opportunity based on a promise of business assistance as discussed in § 437.1(c)(3) of the RPBOR, like an account list or a lead generating service. Invariably the "designated person" is paid for such a service by the business opportunity purchaser. Indeed, the "designated person" provision is only necessary because of the possibility that payments go to the designated person, not directly to the business opportunity seller. If there is no payment, then there is no risk or harm to the business opportunity purchaser relating to the

suggested or required use of the designated person's services, and hence no reason to use the designated person's assistance as a triggering event for a relationship to be covered by the Rule.

In order to exclude upline agents in multi-level marketing opportunities from being "designated persons," Primerica proposes the following change to § 437.1(d):

> (d) Designated person means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business <u>and to whom the purchaser makes payment for such goods or services</u>.

(The underlined portion is the proposed addition to the language.)

C. Clarifying "Equipment"

One final aspect of the language of the RPBOR also has the potential to be interpreted to include multi-level companies under the Rule's coverage, despite the contrary intent expressed in the Revised Notice. Section 437.1(c)(3)(i) defines one form of assistance to be "[p]rovid[ing] locations for the use or operation of equipment, displays, vending machines, or similar devices, on premises neither owned nor leased by the purchaser." As in the existing Business Opportunity Rule, this language seeks to cover vending machine, display rack, pay telephone, and similar schemes in which a purchaser buys the equipment based on the seller's promise to provide physical locations for its operation – hence the language that the locations are those "neither owned nor leased by the purchaser."

Again, however, this language, as it currently stands, could be interpreted to include upline agents in multi-level marketing companies. As noted above, Primerica Regional Vice Presidents maintain office space for themselves and their downline agents, and that office space can be (and is) used by the downline agents for meeting with clients, maintaining records, attending training sessions, and the like. It is common for the office to include computers owned

by the Regional Vice President for the downline agents to use in doing their work and communicating with the Primerica home office. There may also be a satellite TV system, again owned by the Regional Vice President, used for downline agents to view broadcasts from the Primerica home office.

We believe that similar situations may exist in connection with other multi-level marketing companies, including some members of the Direct Selling Association. Any time an upline agent maintains an office and allows his or her downline agents to use a computer in that office, a situation exists in which the downline agent arguably could be providing a "location" in which to use "equipment" (i.e., the computer or other items within the office), by the upline, who arguably would be a "designated person," because he or she provides advice and support to the downline agent.

We do not believe the Commission intended such activity to trigger coverage under the Rule. Rather, this portion of the Rule seems to be directed toward schemes in which a purchaser buys or leases vending machines, telephones, or other similar devices and the locations for the retail operation of those pieces of "equipment" are provided by the seller or a "designated person." Therefore, in order to allow the Rule to cover such arrangements, while excluding a multi-level marketing sales representative's use of his or her upline's office computer, Primerica proposes that § 437.1(c)(3)(i) be clarified to specify that the "equipment, displays, vending machines, or similar devices" be owned, leased, or controlled by the purchaser. The section, including this suggested revision, would read as follows:

> (i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices <u>owned, leased, or controlled by the purchaser</u>, on premises neither owned nor leased by the purchaser; or

(The underlined portion is the proposed addition to the language.)

III. CONCLUSION

Primerica appreciates the time and effort spent by the Commission and its staff in analyzing the host of issues raised by the numerous comments submitted in response to the original Proposed Rule. That number of comments resulted both from the very broad scope of the original Proposed Rule and the severe economic consequences of covering legitimate business relationships. Now that the Revised Notice has limited the Rule's application to the kind of business opportunity schemes where fraud is a demonstrated problem, the remaining task is to ensure that the Rule's language reaches no further than intended, and avoids sweeping in the large segments of the American economy that were threatened by the original Proposed Rule. Primerica believes that the three modifications to the Rule's language contained in this Comment will eliminate the possibility that the Rule ever could be interpreted to cover multi-level marketing opportunities, educational institutions, how-to books, and traditional distribution arrangements without impeding the utility of the Rule as a weapon for the Commission to use against fraud perpetrated in connection with business opportunity schemes. We thank the Commission and its staff in advance for its consideration of these proposed revisions.

At this point in the proceedings, Primerica does not believe that either a hearing or a workshop is necessary. The record is clear, and written comment on the revised proposal should suffice to address any remaining issues, such as the ones we have raised. If the Commission determines to hold either a hearing or workshop, however, Primerica would be interested in participating.

APPENDIX

I. Option 1 -- Removing "customers"

(c) *Business opportunity* means:
(1) A commercial arrangement in which the seller solicits a prospective purchaser to enter into a new business; and
(2) The prospective purchaser makes a required payment; and
(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices owned, leased, or controlled by the purchaser, on premises neither owned nor leased by the purchaser; or

(ii) Provide outlets or accounts, ~~or customers,~~ including, but not limited to, Internet outlets or~~,~~ accounts, ~~or customers,~~ for the purchaser's goods or services; or

(iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business and to whom the purchaser makes payment for such goods or services.

(l) *Providing locations, outlets, or accounts* ~~or customers~~ means furnishing the prospective purchaser with existing or potential locations, outlets, or accounts~~, or customers~~; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, or accounts~~, or customers~~.

II. Option 2 -- Retaining "customers"

(c) *Business opportunity* means:
(1) A commercial arrangement in which the seller solicits a prospective purchaser to enter into a new business; and
(2) The prospective purchaser makes a required payment; and
(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices owned, leased, or controlled by the purchaser, on premises neither owned nor leased by the purchaser; or

(ii) Provide outlets, accounts, or customers, including, but not limited to, Internet outlets, accounts, or customers, for the purchaser's goods or services; or

(iii) Buy back any or all of the goods or services that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business and to whom the purchaser makes payment for such goods or services.

(l) *Providing locations, outlets, accounts, or customers* means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers, provided that advertising and general advice about business development or training shall not be "providing locations, outlets, accounts or customers."

III. Option 3 -- Moving "customers"

(c) *Business opportunity* means:
(1) A commercial arrangement in which the seller solicits a prospective purchaser to enter into a new business; and
(2) The prospective purchaser makes a required payment; and
(3) The seller, expressly or by implication, orally or in writing, represents that the seller or one or more designated persons will:

(i) Provide locations for the use or operation of equipment, displays, vending machines, or similar devices owned, leased, or controlled by the purchaser, on premises neither owned nor leased by the purchaser; or

(ii) Provide outlets or accounts, ~~or customers,~~ including, but not limited to, Internet outlets or~~,~~ accounts, ~~or customers,~~ for the purchaser's goods or services; or

(iii) Buy back or provide customers for any or all of the goods or services (other than selling) that the purchaser makes, produces, fabricates, grows, breeds, modifies, or provides, including but not limited to providing payment for such services as, for example, stuffing envelopes from the purchaser's home.

(d) *Designated person* means any person, other than the seller, whose goods or services the seller suggests, recommends, or requires that the purchaser use in establishing or operating a new business and to whom the purchaser makes payment for such goods or services.

(l) *Providing locations, outlets, accounts* or customers means furnishing the prospective purchaser with existing or potential locations, outlets, accounts, or customers; requiring, recommending, or suggesting one or more locators or lead generating companies; providing a list of locator or lead generating companies; collecting a fee on behalf of one or more locators or lead generating companies; offering to furnish a list of locations; or otherwise assisting the prospective purchaser in obtaining his or her own locations, outlets, accounts, or customers.

This is Exhibit " 9 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

FOR PUBLICATION

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

BURNLOUNGE, INC., a Corporation; JUAN ALEXANDER ARNOLD, an individual,
Defendants-Appellants,

and

JOHN TAYLOR, an individual; ROB DEBOER, an individual,
Defendants.

No. 12-55926

D.C. No.
2:07-cv-03654-GW-FMO

FEDERAL TRADE COMMISSION,
Plaintiff-Appellee,

v.

BURNLOUNGE, INC., a Corporation; JUAN ALEXANDER ARNOLD, an individual, ROB DEBOER, an individual,
Defendants,

No. 12-56197

D.C. No.
2:07-cv-03654-GW-FMO

and

JOHN TAYLOR, an individual,
Defendant-Appellant.

FEDERAL TRADE COMMISSION,
Plaintiff-Appellant,

v.

ROB DEBOER, an individual,
Defendant-Appellee,

and

JOHN TAYLOR, an individual,
Defendant,

BURNLOUNGE, INC., a Corporation; JUAN ALEXANDER ARNOLD, an individual,
Defendants.

No. 12-56228

D.C. No. 2:07-cv-03654-GW-FMO

OPINION

Appeal from the United States District Court
for the Central District of California
George H. Wu, District Judge, Presiding

Argued and Submitted
December 6, 2013—Pasadena, California

Filed June 2, 2014

Before: Harry Pregerson, Marsha S. Berzon, and Morgan Christen, Circuit Judges.

Opinion by Judge Christen

SUMMARY[*]

Federal Trade Commission

The panel affirmed the district court's order granting a permanent injunction against BurnLounge, Inc.'s continued operation based on the court's holding that BurnLounge's multi-level marketing business was an illegal pyramid scheme in violation of § 5(a) of the Federal Trade Commission Act.

BurnLounge operated a multi-level marketing business that offered participants the ability to become "Independent Retailers" of music and other merchandise. Independent Retailers could earn points redeemable for music or merchandise, or they could pay an additional fee to become "Moguls" and earn cash rewards.

The panel held that BurnLounge's scheme satisfied both prongs of the *Webster v. Omnitron International, Inc.*, 79 F.3d 776 (9th Cir. 1996), pyramid scheme test because Moguls paid for the right to sell products, the rewards BurnLounge paid were primarily for recruitment, and Moguls were clearly motivated by the opportunity to earn cash

[*] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

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rewards from recruitment. The panel also held that the district court did not abuse its discretion in admitting the Federal Trade Commission's expert testimony because the testimony was relevant and reliable.

COUNSEL

Lawrence B. Steinberg (argued) and Efrat M. Cogan, Buchalter Nemer, P.C., Los Angeles, California, for Defendants-Appellants BurnLounge, Inc. and Juan Alexander Arnold.

W. James Jonas III, W. James Jonas III, P.C., San Antonio, Texas, for Defendant-Appellant John Taylor.

No appearance for Defendant/Cross-Appellee Rob DeBoer.

Burke W. Kappler (argued), Attorney; John F. Daly, Deputy General Counsel for Litigation; and David C. Shonka, Acting General Counsel, Federal Trade Commission, Washington, D.C.; Chris M. Couillou and Dama J. Brown, Federal Trade Commission, Atlanta, Georgia, for Plaintiff-Appellee/Cross-Appellant Federal Trade Commission.

M. Jeffrey Hanscom and Joseph Mariano, Direct Selling Association, Washington, D.C.; Deborah T. Ashford, Philip C. Larson, and Catherine E. Stetson, Hogan Lovells US LLP, Washington, D.C., for Amicus Curiae Direct Selling Association.

OPINION

CHRISTEN, Circuit Judge:

BurnLounge, Inc. operated a multi-level marketing business that offered participants the ability to become "Independent Retailers" of music and other merchandise. Independent Retailers could earn points redeemable for music or merchandise, or they could pay an additional fee to become "Moguls" and earn cash rewards. The Federal Trade Commission filed suit against BurnLounge alleging violation of § 5(a) of the Federal Trade Commission Act (FTCA). Section 5(a) states: "unfair or deceptive acts or practices in or affecting commerce, are hereby declared unlawful." 15 U.S.C. § 45(a)(1). The operation of a pyramid scheme constitutes an unfair or deceptive act or practice in or affecting commerce for the purposes of § 5(a). *See In re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106, 1178, 1181 (1975).

BurnLounge, Juan Alexander Arnold (CEO and creator of BurnLounge), and John Taylor (participant in the BurnLounge scheme) appeal the district court's order granting a permanent injunction against BurnLounge's continued operation based on the court's finding that BurnLounge was an illegal pyramid scheme. BurnLounge and Arnold also appeal the district court's denial of their motion to exclude the testimony of Dr. Peter Vander Nat, the FTC's expert. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We agree with the district court that BurnLounge was an illegal pyramid scheme in violation of the FTCA because BurnLounge's focus was recruitment, and because the rewards it paid in the form of cash bonuses were tied to recruitment rather than the sale of merchandise. We

also hold that the district court did not abuse its discretion by admitting Vander Nat's testimony because his testimony was relevant and reliable. Accordingly, we affirm on these issues. We discuss the district court's consumer harm calculation and the FTC's cross-appeal in a separate memorandum disposition.

I. BACKGROUND

BurnLounge operated from 2005 to 2007 and sold music, music-related merchandise, and packages of music-related merchandise. Customers could participate in BurnLounge in three ways: they could buy music and merchandise; they could buy a package to become an Independent Retailer with the ability to earn credits redeemable for music and merchandise; or they could buy a package and pay an additional fee to become a Mogul with the ability to earn credits redeemable for cash. In 2007, the FTC commenced this action and the parties stipulated to a preliminary injunction that prohibited BurnLounge from continuing to operate its Mogul program. After a bench trial, the district court concluded that BurnLounge and the individual defendants had violated FTCA § 5(a), issued a permanent injunction, and imposed monetary awards against the defendants.

A. BurnLounge's Business

1. The basics of BurnLounge

The evidence at trial showed that BurnLounge's business had two primary aspects—its Retailer program and its Mogul program. Individuals could become Independent Retailers of online music by purchasing one of BurnLounge's three

packages: Basic ($29.95 per year); Exclusive ($129.95 per year plus $8 per month); or VIP ($429.95 per year plus $8 per month). Each package provided the Retailers with access to a ready made and customizable web page, called a "BurnPage."[1] A BurnPage was the vehicle through which Retailers sold music, music-related merchandise, or packages of music-related merchandise to customers in return for "BurnRewards." More expensive packages included more merchandise for personal use by the Retailer.[2] Individuals who participated as Retailers could redeem BurnRewards for music or merchandise.

Retailers could pay an additional monthly fee of $6.95 to become Moguls. Once qualified, Moguls could redeem BurnRewards for cash rather than music or merchandise.[3] The Mogul program was the only aspect of BurnLounge that the district court found to be a pyramid; accordingly, this opinion focuses on the Mogul program.

[1] These web pages were technically called "BurnLounges," but the district court called them "BurnPages" to avoid confusion. We follow that convention.

[2] For example, the Basic package included a sample copy of BurnLounge Magazine and an annual subscription to BurnLounge's online publication; the Exclusive package added a monthly DVD and other merchandise; and the VIP package added an event pass and the BurnLounge University DVD set.

[3] In addition to buying a package and paying the monthly Mogul fee, to become qualified to redeem BurnRewards for cash a Mogul had to: (1) sell two Exclusive or VIP product packages; (2) sell two music albums to non-Moguls; and (3) on a continuing basis, have sold at least two albums to non-Moguls in the previous month.

2. BurnLounge bonuses

BurnLounge offered Moguls the opportunity to earn three types of BurnRewards bonuses that could be redeemed for cash. Each type of bonus had a separate set of requirements that had to be met before Moguls were eligible to receive the bonus.

a. Concentric Retail Bonuses

Moguls received "Concentric Retail Bonuses" for music, merchandise, and package sales made through their own BurnPage and through the BurnPages of their downline recruits. Downline recruits included participants recruited by Moguls and those recruited by earlier recruits. This sequence created a hierarchy, with those whom a Mogul directly recruited in the first "Ring" of the hierarchy, those whom the recruits recruited in the second Ring of the hierarchy, and so on, for up to six Rings. To qualify for a Concentric Retail Bonus for sales made by recruits in each Ring of the hierarchy, a Mogul had to sell at least the number of packages corresponding to that Ring number. For example, to qualify for Concentric Retail Bonuses for sales made by recruits in the fourth Ring, a Mougl had to sell at least four packages. The Mogul also had to have made a certain number of music album sales in the previous month, and the Mogul's hierarchy must have made a certain number of album sales in the previous month.

b. Product Package Bonuses

Moguls received "Product Package Bonuses" for selling product packages. Moguls received these bonuses in increasing amounts for the sale of Basic, Exclusive, and VIP

packages ($10, $20, and $50 respectively). To qualify for this bonus, Moguls must have sold at least two music albums to non-Moguls in the previous month and have a positive BurnRewards account.[4]

c. Mogul Team Bonuses

Moguls earned "Mogul Team Bonuses" by accruing "Mogul Team Points." Mogul Team Points were accrued by selling premium packages (Exclusive or VIP). Once a Mogul accrued enough Mogul Team Points, the points were automatically converted into a Mogul Team Bonus paid in BurnRewards, which could be converted to cash. The amount of cash earned for each Mogul Team Bonus depended on the type of package the Moguls originally purchased and the amount of music the Moguls sold. A VIP Mogul, who paid the $429.95 yearly fee, could earn a $50 bonus with no additional music sales. An Executive Mogul, who paid the $129.95 yearly fee, could earn a $25 bonus, or a $50 bonus if that Mogul also sold $500 worth of music. A Basic Mogul, who paid the $29.95 yearly fee, was not eligible for a Mogul Team Bonus unless that Mogul sold $500 worth of music (for a $25 bonus) or $1,000 worth of music (for a $50 bonus).[5]

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[4] All Retailers and Moguls had BurnRewards accounts, which were like bank accounts for the BurnRewards they earned or purchased with a credit card.

[5] BurnLounge argues on appeal that the district court did not take into account the fact that, in 2006, it made a major policy change to the sales requirements for receiving bonuses. BurnLounge failed to raise this issue until its Rule 59 motion. The district court rejected it because BurnLounge could have raised the issue at trial. Even though this issue was not fully litigated in the district court, we have considered it and conclude that it does not change our analysis.

B. District Court Proceedings

After a bench trial, the district court issued a statement of decision. It provides a comprehensive review of BurnLounge's merchandise, bonus system, and advertising materials. The district court described BurnLounge's bonus system as "a labyrinth of obfuscation." It found there was a 93.84% failure rate for all Moguls, meaning 93.84% of Moguls never recouped their investment. The district court also found that BurnLounge's marketing focus was on recruiting new participants through the sale of packages. The district court ruled that BurnLounge's expert, David Nolte, provided estimated values of the merchandise in the BurnLounge packages that were not credible or supported by the evidence. It found that BurnLounge's products had some value, but concluded that the evidence did not support a finding that the products were worth what was charged for them.

The district court found that because purchasing a package was required for participation as a Retailer or Mogul, and because Moguls earned cash for selling packages, "[Moguls] by default received compensation for recruiting others into the program." The district court concluded that "a majority of the BurnLounge business (consisting of the Mogul program and related elements) was a pyramid scheme."

II. STANDARD OF REVIEW

We review a district court's findings of fact after a bench trial for clear error. *See* Fed. R. Civ. P. 52(a)(6); *Allen v. Iranon*, 283 F.3d 1070, 1076 (9th Cir. 2002). Under this deferential standard "we will accept the [district] court's

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findings of fact unless we are left with the definite and firm conviction that a mistake has been committed." *Allen*, 283 F.3d at 1076. We review the district court's conclusions of law de novo. *FTC v. Garvey*, 383 F.3d 891, 900 (9th Cir. 2004). We review the district court's decision to admit expert testimony for abuse of discretion. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 143 (1997).

III. DISCUSSION

In *Webster v. Omnitrition International, Inc.*, our court approved the FTC's test for determining whether a multi-level marketing (MLM) business is a pyramid scheme: a pyramid scheme is "characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product *and* (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users." 79 F.3d 776, 781 (9th Cir. 1996) (quoting *Koscot*, 86 F.T.C. at 1180). Not all MLM businesses are illegal pyramid schemes. To determine whether a MLM business is a pyramid, a court must look at how the MLM business operates in practice. *See id.* at 783–84; *see also United States v. Gold Unlimited, Inc.*, 177 F.3d 472, 479–82 (6th Cir. 1999); *In re Amway Corp.*, 93 F.T.C. 618, 716 (1979).

A. Prong 1: Participants in the BurnLounge business paid money in return for the right to sell a product.

Moguls were required to purchase a package (Basic, Exclusive, or VIP) in order to access a BurnPage. BurnPages provided Moguls with the ability to sell music, merchandise, and packages. The sale of packages thus conveyed "the right

to sell a product," which satisfies the first prong of *Omnitrition*. 79 F.3d at 781 (citation omitted).

B. Prong 2: BurnLounge participants paid money in return for the right to receive rewards for recruiting other participants into the program, which were unrelated to the sale of the product to ultimate users.

Satisfaction of the second prong of the *Omnitrition* test is "the *sine qua non* of a pyramid scheme" and is characterized by "recruitment with rewards unrelated to product sales." *Id.* at 781. In *Omnitrition*, this court found that a MLM business was a pyramid scheme because "[t]he mere structure of the scheme suggests that Omnitrition's focus was in promoting *the program* rather than selling *the products*." *Id.* at 782 (emphases in original). The FTC has explained that in a pyramid, "participants purchase the right to earn profits by recruiting other participants, who themselves are interested in recruitment fees rather than the sale of products." *Amway*, 93 F.T.C. at 716–17.

Here, the FTC presented ample evidence to support the district court's finding that BurnLounge was an illegal pyramid scheme. It did so by showing that: (1) Moguls were required to recruit new members in order to become eligible for all three types of cash bonuses and (2) Moguls were motivated by the opportunity to earn cash rewards, as shown by data illustrating the sharp difference in package purchasing patterns of Moguls and non-Moguls, and by the fact that BurnLounge's sales plummeted after the Mogul program was enjoined.

We agree with the district court that the FTC provided sufficient evidence to prove that BurnLounge's focus was

recruitment and that the rewards it paid, in the form of cash bonuses, were primarily for recruitment rather than for sales of merchandise. Recruiting was built into the compensation structure in that recruiting led to eligibility for cash rewards, and more recruiting led to higher rewards. For example, Moguls could not convert their rewards to cash until they became qualified Moguls, and Moguls had to sell two premium packages to become qualified. Selling packages was a way of recruiting new Moguls—in fact, it was the only form of recruitment—because purchasing a package was necessary to become a Mogul and earn cash rewards. Also, 96.8% of the participants who bought packages became Moguls, which is strong evidence that package purchases were motivated by the opportunity to earn cash.

Moguls were required to sell packages to receive Concentric Retail Bonuses at each level of their downline hierarchy. Product Package Bonuses were cash rewards received for selling packages to new members. Moguls received more lucrative bonuses if they sold premium packages. Moguls were also eligible to receive Mogul Team Points, with the goal of receiving Mogul Team Bonuses, by selling packages to new participants. The district court found that Mogul Team Bonuses were "[t]he most lucrative." This finding is supported by the record: in 2006, BurnLounge paid a total of $2,726,965.50 in Concentric Retail Bonuses and four times that amount, nearly $8,480,975.00, in Mogul Team Bonuses. Concentric Retail Bonuses were paid for the sale of music and packages (though the bonus was based on only a percentage of the first $29.95 of each package). In contrast, Mogul Team Points accrued only for the sale of packages, so they primarily rewarded recruiting new participants. The fact that BurnLounge paid approximately four times more in Mogul Team Bonuses than Concentric Retail Bonuses

supports the district court's finding that Moguls had a strong incentive to recruit new participants. This incentive was the danger our court warned of in *Omnitrition*, where we stated, "The promise of lucrative rewards for recruiting others tends to induce participants to focus on the recruitment side of the business at the expense of their retail marketing efforts, making it unlikely that meaningful opportunities for retail sales will occur." *Omnitrition*, 79 F.3d at 782 (citing *Koscot*, 86 F.T.C. at 1181).

That BurnLounge motivated Moguls through cash rewards earned by recruiting other participants is exemplified by the sharp difference between Moguls' and non-Moguls' package purchase patterns. BurnLounge's own data showed that 67% of Moguls bought VIP packages, 28.8% bought Exclusive packages, and just 4.2% bought Basic packages. In contrast, 17.3% of non-Moguls bought VIP packages, 17.2% bought Exclusive packages, and 65.5% bought Basic packages. If package purchases were driven by the value of the merchandise included in the packages rather than by the opportunity to earn cash rewards, one would expect to see comparable numbers of Moguls and non-Moguls buying the same packages. Further, 96.6% of non-Moguls (56,017 people) did not purchase any of the packages at any time—they just bought music and other merchandise.

The district court's finding that BurnLounge paid rewards for recruitment unrelated to product sales is also supported by the effect the preliminary injunction had on BurnLounge's revenues. After the parties entered into a stipulated preliminary injunction in July 2007 that stopped BurnLounge from offering the ability to earn cash rewards, BurnLounge's revenues plummeted. BurnLounge still offered packages, but its revenues decreased from $476,516 in June 2007 to

$10,880 in August 2007. The dramatic decline in revenue after the ability to earn cash rewards was eliminated provides further evidence that the sale of BurnLounge packages was primarily directed at participants who were interested in the Mogul program, where it was possible to earn cash rewards.

Recruiting and rewards for recruitment were integral to BurnLounge's business structure, and there was ample evidence that Moguls were meant to be, and were, primarily motivated by the opportunity to earn cash rewards for recruitment. As in *Omnitrition*, the evidence in this case shows that BurnLounge's "focus was in promoting *the program* rather than selling *the products*." *Omnitrition*, 79 F.3d at 782 (emphases in original). The district court did not err by holding that BurnLounge was an illegal pyramid scheme.

1. The *Omnitrition* test does not require that the rewards be completely unrelated to the sale of products.

BurnLounge argues that the second prong of the *Omnitrition* test "requires that the rewards be completely unrelated to sales of bona fide products." The second prong of the pyramid test requires the FTC to show that the scheme provides "the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users." *Id.* at 781 (citation omitted). This test does not require that rewards be *completely* unrelated to product sales, and BurnLounge provides no support for its argument that the test should be interpreted this way.

First, reading "completely" into the test would be inconsistent with the outcome in *Omnitrition*. *See id.* at 782 (holding Omnitrition was likely a pyramid scheme because of its recruitment focus, notwithstanding the fact that Omnitrition made some retail sales).

Second, courts applying the *Koscot*/*Omnitrition* test have consistently found MLM businesses to be illegal pyramids where their focus was on recruitment and where rewards were paid in exchange for recruiting others, rather than simply selling products. *See Gold Unlimited*, 177 F.3d at 476, 481 (affirming conviction based on finding that participants bought gold and received cash payments for recruiting others to both buy gold and recruit others to do so, because rewards were paid for recruitment rather than product sales); *Stull v. YTB Int'l, Inc.*, No. 10-600-GPM, 2011 WL 4476419, at *4–5 (S.D. Ill. Sept. 26, 2011) (denying motion to dismiss where plaintiffs adequately alleged that pyramid existed by showing focus on recruitment and payment of rewards in return for product sales, because buying the product was synonymous with being recruited into the scheme); *FTC v. Equinox Int'l Corp.*, VC-S-990969HBR(RLH), 1999 WL 1425373, at *6 (D. Nev. Sept. 14, 1999) (ordering preliminary injunction after finding Equinox was likely a pyramid because "rewards are received by purchasing product and recruiting others to do the same"); *In re Holiday Magic, Inc.*, 84 F.T.C. 748, 1028–30 (1974) (finding a pyramid where rewards were paid to participants when they recruited others, and recruits also had to purchase product); *Peterson v. Sunrider Corp.*, 48 P.3d 918, 930 (Utah 2002) ("Even where a marketing plan formally bases commissions on sales, the plan may still be found illegal if, in practice, profits come primarily from recruitment.") (applying federal law to interpret Utah's Pyramid Scheme Act); *cf. Amway*, 93 F.T.C. at 715–17

(finding *no* pyramid where rewards were paid for product sales and not for the mere act of recruiting others).

Third, in *Koscot*, participants joined the scheme by buying inventory, and participants earned rewards by recruiting others to join the scheme, i.e., by getting recruits to buy inventory. *Koscot*, 86 F.T.C. at 1178–79. BurnLounge participants joined the scheme by buying packages, which included a BurnPage and merchandise. Participants earned rewards by recruiting others to join the scheme, i.e., by recruiting new participants to buy packages. In each of these scenarios, the participants sold something (inventory or packages), but the rewards the participants received in return were largely for recruitment, not for product sales.

In contrast, in *Amway* the FTC found that a MLM business was not an illegal pyramid scheme. *Amway*, 93 F.T.C. at 716–17. Though Amway created incentives for recruitment by requiring participants to purchase inventory from their recruiters, it had rules it effectively enforced that discouraged recruiters from "pushing unrealistically large amounts of inventory onto" recruits. *Id.* at 716. BurnLounge argues that "[t]he only difference between *Amway* and BurnLounge is that BurnLounge *did not require* inventory purchases." This argument is unpersuasive because BurnLounge required Moguls to purchase a product package to get the chance to earn cash rewards, provided cash rewards for the sale of packages by a Mogul's recruits, and had *no* rules promoting retail sales over recruitment.

The second prong of the *Omnitrition* test does not require that rewards for recruiting be "completely" unrelated to the sale of products. If it did, any illegal MLM business could save itself from liability by engaging in *some* retail sales.

Such an outcome would be clearly contrary to our case law: a pyramid scheme "cannot save itself simply by pointing to the fact that it makes some retail sales." *Omnitrition*, 79 F.3d at 782.

The rewards BurnLounge paid were primarily for recruitment, not for the sale of products. Because the outcome in this case is clear under the *Omnitrition* test, we do not need to decide the degree to which rewards would need to be unrelated to product sales in a case presenting a closer question.

2. The meaning of "ultimate users."

BurnLounge also argues "that the existence of internal consumption (in this case a Mogul's purchase of a product package for use, not resale) does not constitute proof of a pyramid." Likewise, the Amicus and Appellant Taylor argue that if internal sales do not count as sales of products to ultimate users for the purpose of calculating rewards, then many legitimate MLMs will be incorrectly characterized as pyramids. These arguments also arise from the second prong of the *Omnitrition* test: "the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users." *Id.* at 781 (citation omitted).

BurnLounge claims that when recruits bought packages, they were "ultimate users" and it argues that since these sales were to "ultimate users," any rewards paid on these sales were related to the sales of products to ultimate users. The FTC counters that "internal sales to other Moguls cannot be sales to ultimate users consistent with *Koscot*." Neither of these arguments are supported by the case law.

In *Koscot*, the FTC found a cosmetics MLM business was a pyramid scheme because it focused on recruiting new participants, rather than encouraging retail sales to consumers, and new participants had to buy large amounts of inventory, ostensibly for resale. 86 F.T.C. at 1179. When participants in *Koscot* bought inventory, they could have used some of it personally, arguably making them "ultimate users." In *Amway*, though some internal consumption of inventory was common, Amway was not found to be an illegal pyramid scheme. *See Amway*, 93 F.T.C. at 716–17, 725 n.24. BurnLounge is correct that when participants bought packages in part for internal consumption (to obtain the ability to sell music through BurnPages and to use the package merchandise), the participants were the "ultimate users" of the merchandise and that this internal sale alone does not make BurnLounge a pyramid scheme. But it is incorrect to conclude that all rewards paid on these sales were related to the sale of products to ultimate users.

Whether the rewards are related to the sale of products depends on how BurnLounge's bonus structure operated in practice. *See Omnitrition*, 79 F.3d at 781. In practice, the rewards BurnLounge paid for package sales were not tied to the consumer demand for the merchandise in the packages; they were paid to Moguls for recruiting new participants. The fact that the rewards were paid for recruiting is shown by the necessity of recruiting to earn cash rewards and the evidence that the scheme was set up to motivate Moguls through the opportunity to earn cash. Rewards for recruiting were "unrelated" to sales to ultimate users because BurnLounge incentivized recruiting participants, not product sales. The FTC and other courts have consistently applied the *Omnitrition* test in this way. *See Gold Unlimited*, 177 F.3d at 476, 481; *Stull*, 2011 WL 4476419, at *4–5; *Equinox Int'l*,

1999 WL 1425373, at *6; *Holiday Magic*, 84 F.T.C. at 1028–32; *Peterson*, 48 P.3d at 930.

BurnLounge and Arnold cite a passage from an FTC advisory letter, Exhibit 3 at trial, to argue that proof of internal consumption does not establish that BurnLounge was a pyramid. Read in its entirety, the relevant passage of the letter is consistent with the district court's analysis. The relevant passage reads:

> Much has been made of the personal, or internal, consumption issue in recent years. In fact, the amount of internal consumption in any multi-level compensation business does not determine whether or not the FTC will consider the plan a pyramid scheme. The critical question for the FTC is whether the revenues that primarily support the commissions paid to all participants are generated from purchases of goods and services that are not simply incidental to the purchase of the right to participate in a money-making venture.

As discussed above, the rewards BurnLounge paid to Moguls were primarily in return for selling the right to participate in the money-making venture—the Mogul program. The merchandise in the packages was simply incidental.

The district court correctly applied the *Omnitrition* test and its conclusion that BurnLounge was an illegal pyramid scheme was amply supported by the evidence. The fact that some sales occurred that were unrelated to the opportunity to earn cash rewards does not negate the evidence that the

opportunity to earn cash rewards was the major draw of the BurnLounge Mogul scheme.

C. Vander Nat's Testimony

BurnLounge and Arnold moved to strike the testimony of FTC expert Dr. Peter Vander Nat as inadmissible under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993).[6] The district court denied the motion. The district court did not abuse its discretion by admitting Vander Nat's testimony, and we affirm its ruling.

The admission of expert testimony is governed by Federal Rule of Evidence 702. The Supreme Court in *Daubert* held that "the trial judge must ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." 509 U.S. at 589. This is a flexible inquiry and several factors must be considered. *Id.* at 593–94. In *Kumho Tire Co., LTD v. Carmichael*, the Supreme Court held that the trial court's gatekeeping function explained in *Daubert* applies not only to scientific testimony, but to all expert testimony. *Kumho Tire*, 526 U.S. 137, 147 (1999). And the Court emphasized that the *Daubert* factors are not an exhaustive checklist; rather, the trial court must base its inquiry on the facts of each case. *Id.* at 150. When we consider the admissibility of expert testimony, we are mindful that there is less danger that a trial court will be "unduly impressed by the expert's testimony or opinion" in a bench trial. *Shore v. Mohave Cnty., State of Ariz.*, 644 F.2d 1320, 1322–23 (9th Cir. 1981).

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[6] Although Taylor briefed this issue on appeal, we can find no record that he joined the motion in the district court.

Vander Nat's testimony was relevant because he testified about whether BurnLounge was a pyramid and about the amount of consumer harm. His testimony was also reliable given his doctorate in economics and advanced degree in mathematics, which he called on to interpret BurnLounge's sales data; his previous experience analyzing pyramids; his previous experiences testifying in court in five similar cases and providing expert deposition testimony in seven similar cases; his published article on the difference between pyramids and legal MLMs; and his personal experience spending several weeks analyzing BurnLounge's business model.

BurnLounge and Arnold argue that the district court's reliance on Vander Nat's mathematical projections and formulas was an abuse of discretion because "*Ger-Ro-Mar* teaches that the math is not itself sufficient." BurnLounge's reliance on *Ger-Ro-Mar, Inc. v. FTC*, 518 F.2d 33 (2d Cir. 1975), is misplaced. In that case the Second Circuit found that the FTC "relied solely upon an abstract mathematical theorem without any attempt to relate the theory to the marketplace." *Id.* at 38. Here, the FTC used Vander Nat's analysis of BurnLounge's own data to show how BurnLounge's business worked in practice. BurnLounge's data convincingly illustrated the disproportionate rate at which Moguls were motivated by the chance to earn cash rewards rather than the merchandise BurnLounge included in the packages. Vander Nat was qualified to testify and it was proper for the district court to decide that his testimony would be helpful to the trier of fact (here the court). *See Daubert*, 509 U.S. at 591–92.

BurnLounge and Arnold also argue that Vander Nat did not base his analysis on the definition of "pyramid" accepted

by this court in *Omnitrition*, and that he used his own four-pronged test. This argument fails because Vander Nat testified about pyramids in terms that do not materially differ from those used by this court in *Omnitrition*: he explained that a "pyramid scheme is an organization in which the participants obtain their monetary rewards primarily through enrolling new people into the program rather than selling goods and services to the public." The "four-prong test" referred to by Appellants included Vander Nat's consideration of BurnLounge's terms and conditions, marketing materials, an optimal scenario for the BurnLounge model (illustrating the results if all participants performed at their best), and BurnLounge's sales data. This was not a new four-prong test, and Vander Nat's consideration of these characteristics of the business was permissible. The Sixth Circuit relied on similar expert testimony regarding a MLM business's "marketing materials, organizational structure, and recruiting policies" in another pyramid case. *See Gold Unlimited*, 177 F.3d at 475, 481.

Finally, BurnLounge had a sufficient opportunity to cast doubt on Vander Nat's testimony at trial because it cross-examined him for two days. *See De Saracho v. Custom Food Mach., Inc.*, 206 F.3d 874, 880 (9th Cir. 2000).

We conclude that the district court did not abuse its discretion by admitting Vander Nat's testimony given the flexible inquiry permitted by *Daubert* and *Kumho*'s instruction that trial courts base their inquiry on the facts of the case.

IV. CONCLUSION

We affirm the district court's holding that BurnLounge was an illegal pyramid scheme, in violation of § 5(a) of the FTCA. BurnLounge's scheme satisfied both prongs of the *Omnitrition* test because Moguls paid for the right to sell products, the rewards BurnLounge paid were primarily for recruitment, and Moguls were clearly motivated by the opportunity to earn cash rewards from recruitment. We reject the argument raised by BurnLounge and Arnold that the district court abused its discretion when it admitted Vander Nat's testimony because the testimony was relevant and reliable. The district court's decision as to these two issues is **AFFIRMED.**[7]

[7] We discuss the district court's consumer harm calculation and the FTC's cross-appeal in a separate memorandum disposition.

This is Exhibit " 10 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

PRIMERICA

Orientation

Manual

STEP 2

Name ______________________________ **Solution #** ______________________

What do **you** want out of Primerica? ____

Follow a Proven System & Become an Example of Success:

- Your success is important to us! A large part of your success will depend on you getting off to a FAST START & FOLLOWING THE SYSTEM! This business is a turn-key system, so take it step by step!

The Competitive Edge:

- The Industry's Strength: Image (millions of dollars spent on ads) · Our Strength: Personal Touch (millions of dollars invested back into our reps)

Our System is a Warm Market Business:

- **WO*RD OF MOUTH*** IS THE MOST CREDIBLE FORM OF MARKETING. WE NEED LOTS OF PEOPLE TELLING LOTS OF PEOPLE ABOUT YOUR BUSINESS. WE NEED TO LET LOTS OF PEOPLE KNOW ABOUT YOUR BUSINESS, IN A WAY, THAT IT HAS A HUGE **IMPACT** ON THEM.
- As you are not yet licensed when you start, your trainer will help you create a strong reputation for you in your warm market.(YOU=TRUST) + (TRAINER= EXPERIENCE) =- RESULTS + REFERRALS

Your 30 Day Game Plan:

Step 1: Make a list
Step 2: Learn how to schedule appointments on www.mypfstraining.com
Step 3: Call & Schedule Auto and Home Quote and find your FIN.
Step 4: Set 3 training appointments and bring 3 people to the Business Overview (within the five pointer market)
Step 5: Get Licensed ASAP [No License = No Cash Flow]

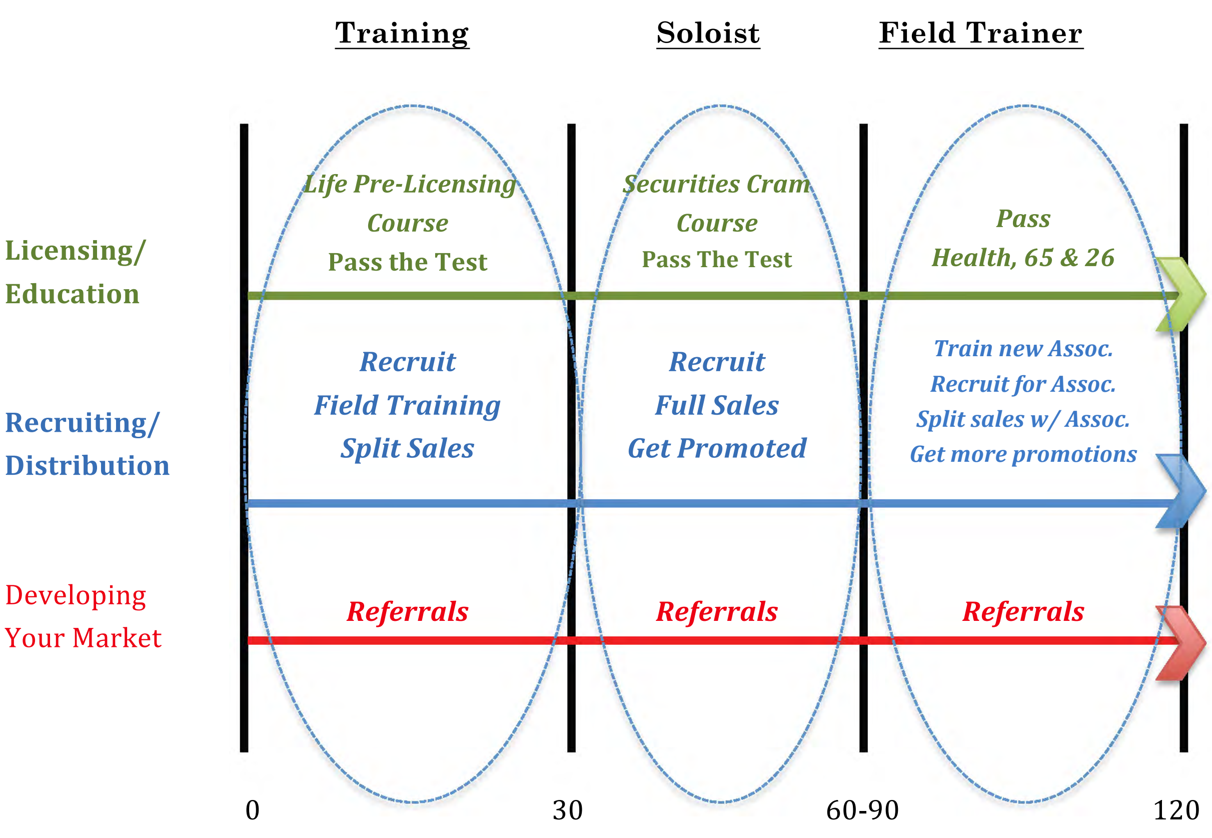
Our Weekly Schedule:

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
AM	*	*	*	*	*	**Training @ 9-12 ****	
PM				**Business Overview @ 7:30-9**			**Online Webinar @ 10:00 pm ****

* Optional/ Full Timer's Accountability Call @ **8** am **(209) 647-1600** Enter **129141**

** Saturday Training and Sunday Night webinar (https://jonlavin.ilinc.com/join/bfbbvyv) same call in # as above.

Getting off to a FAST Start



**Your ability to move <u>all fronts</u> forward (do these things simultaneously) is going to determine how fast you build a business.

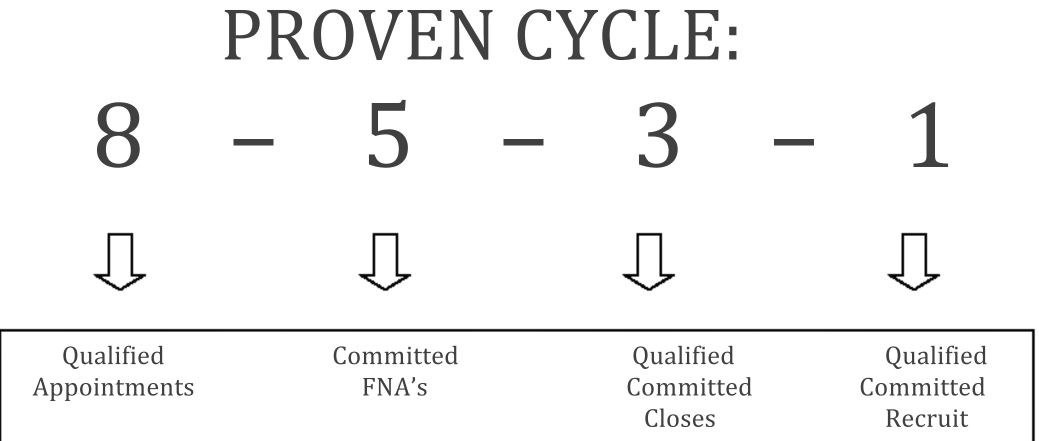
*** What you do with your trainer is what new people will do with you

ACCOUNTABILITY

- Decide what *level* you want to play!
- Agree on the *price* it will take!

Thief Gambler Champion

PROVEN CYCLE:



SUB: 1 CYCLE A MONTH
STARTER: 2 CYCLES A MONTH
STAR: 1 CYCLE A WEEK (30:30)

- Let's agree on the level of accountability!
  - If I'm not giving everything you need, you get on me!
  - Can I keep you accountable?
  - If it gets a little hard, we can always back it down.

Success System to RVP

Regional Vice President 110% + Bonus

- 20 New Team Recruits 2 Months in a Row
- $20 K Team Premium 2 Months in a Row
- Fully Licensed, Including Series 26 (Broker/Principle License)
- Ownership Exchange (Replacement Leg = 10x$10,000)
- 5 Direct Districts and 1 Direct RM minimum
- 75% QBI or Above

Senior Regional Manager 80%

- 15 New Team Recruits
- $15 K Team Premium
- 1 Direct RM

Regional Manager 70%

- 10 New Team Recruits
- $10 K Team Premium
- Series 6 & 63 Licensed
- 3 Direct Districts + 1 Direct Division Licensed

Division Manager 60%

- 6 New Team Recruits
- $6 K Team Premium
- U4 Paperwork submitted
- 2 Direct Districts Licensed

District Manager 50%

- 3 Recruits (cumulative)
- 3 Life Training Sales (cumulative)
- Life Licensed

Senior Representative 35%

- 1 Recruit & 1 Life Training Sale (your own life sale can count)

**You cannot buy a Primerica franchise (RVP position), you have to earn it through sweat equity.
**Primerica will pay you $10,000 in PRI stock for becoming an RVP.

Benefits of Achieving a District Promotion
BEFORE you get licensed

You will have…

- Higher pay when you do get licensed (25% to 50% = 100% raise!)
- An abundance of referrals (when licensed the referrals become yours)
- A growing team (3 recruits will be recruiting too)
- A pipeline filled with activity waiting for you
- On Track for the $500 Distribution Builders Bonus
- Ability to override your team = passive income
- Practical training will allow you to field train your team quicker & become independent!
- WHAT YOU DO IN YOUR TRAINING IS WHAT YOU WILL EXPECT FROM YOUR TEAM FOR THE REST OF YOUR CAREER! It's your legacy!

NEW ASSOCIATE FAST START MANUAL

Why have you decided to get involved with our company?

The why is more important than the how. If the why is big enough, people will do whatever it takes to find out the how!

How do you get off to a Fast Start?

Keys to Success:

- If you follow our system, every goal or dream you have, **can** and **will** be accomplished.
- Within about 60 days from now you will be licensed and trained along with 1- 3 licensed and trained people on your team. Several others on your team will be on track to do the same.
- You will be in a position to earn $1,000 – 3,000 per month, be a top producer and win all the company trips.
- You can be on track to be RVP within 12-18 months

So, on a scale of 1-10, what is your desire to make all of this happen?

- Don't let negative people destroy your positive attitude and desire to win.
  People usually are negative because they aren't willing to win, they don't believe they can win and they quit.

- All you need to do while getting licensed is get me in front of 15 people that are in the right market, across the Kitchen Table in the next 30 days.

- How many days/nights can you give to Primerica right now? ___

PRIMERICA

RVP's Main Office

2193 Northlake Pkwy

Suite 107

Tucker, GA 30084

770-458-1610

Business Briefings

Day:	Time:
Tuesday	7:30 pm
Saturday	10:30 am

Agent Training

Day:	Time:
Tuesday	7:30 pm
Saturday	10:00 am

Conference Calls:

Wednesday 10:00 pm est

Call in #: 559-726-1300

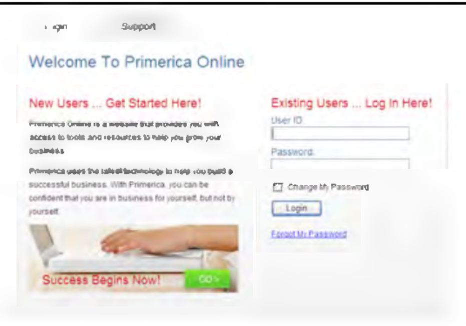
Pin: 894539#

Guide to Success

While most people are dreaming of success; winners wake up and work hard to achieve it.

STEP 1

- Activate Primerica Online (POL) as soon as you get your Solution # ___________________
- Go to www.primericaonline.com
- Click GO



STEP 2

COMMIT TO THE 4 POINT GAMEPLAN

1. **EVERYONE IS FOCUSED ON RECRUITING**
2. **EVERYONE COMES TO THE BUSINESS BRIEFING**
3. **IMPLEMENT YOUR PERSONAL PROGRAM (LIFE INSURANCE)**
4. **RACE TO DISTRICT LEADER**

STEP 3 DEVELOP WARM MARKET LIST

1. DOWNLOAD THE PRIMERICA APP ON SMART PHONE
2. GO TO CONTACT MANAGER AND BUILD YOUR CONTACT LIST
3. QUALIFY THE LIST
4. SET A MINIMUM OF 3 APPOINTMENTS AND INVITE 3 GUESTS
5. RECORD THE APPOINTMENTS & ACTIVITY IN YOUR CONTACT LIST
6. COMPETE FOR IPAD MINI WITH ENGAGE FOR 90
7. IF YOU CAN'T DOWNLOAD PRIMERICA APP, USE 4 MINUTE NAME GAME AND CREATE TOP 25 LIST

4 MINUTE NAME GAME

FAMILY	FRIENDS
CO-WORKERS	CHURCH/NEIGHBORS

Transfer Names to Top 25 List

*****RVP Must Have A Copy of This List*****

Top 25 Business Builders List

Name		Phone Number	Relationship	Trait	Market						Credibility					Score	Priority
					Married	Kids 21 or younger	Homeowner	Age 25-55	Full-Time Job	$30,000 +	Known 1 Yr.	Spouse Name	Invited to Home	In Last 6 Mos	Helped You		
1																	
2																	
3																	
4																	
5																	
6																	
7																	
8																	
9																	
10																	
11																	
12																	
13																	

Traits: C= Competitive: E= Enthusiastic: A=Ambitious: M= Money Motivated: S= Great People Skills: H= Likes Helping People

Top 25 Business Builders List

*****RVP Must Have A Copy of This List*****

					Market						Credibility						
Name		**Phone Number**	**Relationship**	Trait	Married	Kids 21 or younger	Homeowner	Age 25-55	Full-Time Job	$30,000 +	Known 1 Yr.	Spouse Name	Invited to Home	In Last 6 Mos	Helped You	Score	Priority
14																	
15																	
16																	
17																	
18																	
19																	
20																	
21																	
22																	
23																	
24																	
25																	

Traits: C= Competitive: E= Enthusiastic: A=Ambitious: M= Money Motivated: S= Great People Skills: H= Likes Helping People

APPOINTMENT SETTING – HOT MARKET

Hello ___________________ this is _______________________ .

Hey, the reason I am calling is I need your help!
I am starting to work with a new company and I am going to school to get a license.

I need you to view a presentation in the field with my trainer. It probably will not interest you…I just need your help! It takes about a ½ hour. I need both you and your (wife or husband) [use name if you know it] to be there.

CHORUS
I'm working with my trainer on __ day and __ day of this week. Which is better?
Shall we come over at __ pm or is __ pm better? Thanks I'll see you on __ day at __(time).

AREAS OF CONCERN

What is it? (What do you do?)
"We show families how to make money, save money and get ahead financially. It probably won't interest you. I just need help with my training." ***Chorus***

What's the name of the company?

Primerica, you've heard of us haven't you?
If Yes
Great! You can really help me out then, are you a client? Yes or No
Well there have been some significant changes in the company, so when I come over I'll show you all the updates. ***Chorus***
If No
Well we don't do a lot of advertising, but that's why I want to get together with you and show you everything.
Chorus

I have to talk to my wife/husband. Can I call you back?

That's fine ____. I'll tell you what, if you could meet with me, which of those evenings do you think would be best? Oh probably ___ day
6:00pm or 8:00pm? Probably ___ pm
Well why don't we do this? Why don't we tentatively plan for ___ (day) @ ___ pm and if there is a problem, give me a call back as soon as you can, and we'll reschedule it. Sound good? Yes. Great, I'll see you on ___ (day) at ___(pm)

INVITING GUESTS – HOT MARKET (Family & Friends)

Helpful Hints

- Your job is to "invite". Do not try to explain the business. Let us explain it.
- Giving information **will not** get people to the meeting. It will only lead to more questions.
- **Never** use the words, insurance, mortgages or investments. **It is illegal** to talk about financial products until you are licensed to market them.
- Don't speak formally to your friends, be natural, like you're inviting them out.
- Once they commit to come, **get off the phone** so they don't overwhelm you with questions.
- **Pick them up**. This is the most effective way to get them to the meeting.
- **Don't reinvent the wheel**. Practice these scripts several times before calling.

INVITE SCRIPT

Hi_______, this is __________ (short chat). Are you going to be free on __________ evening? (WFA)

"YES"
Go to Closing Statement

"NO"
What do you have planned for next ____________? Go to Closing Statement

CLOSING STATEMENT

"I need a big favor. I'm getting started part-time with a company called Primerica. The company is expanding in the area. I think it's something you'll be interested in, but even if you're not would you come to a Business Briefing with me on _________ night, so you can give me your opinion. I'd really appreciate your support. Can you do me that favor?"

CHORUS

"Yes"
Great, I'll pick you up at ______(time).

OR
Let me give you the directions to the meeting place.

FINAL TIE-DOWN
The meeting starts promptly at _________ so you will need to be there no later than ___________. By the way you need to wear business casual attire because I'm going to introduce you to my vice-president. I look forward to seeing you, I know you will be impressed.

AREAS OF CONCERN

What is it all about? /What do you do?
The company helps people get out of debt and save more money. I'm just getting started, and I don't have all the information yet. My Vice President will give you all the details when you come. Can I count on you to help me? (CHORUS)

I'm Really Busy
Hey so am I – if you called me I'd make time for you, I only need an hour and a half of your time. I really value your opinion. Could you do me that favor and come with me? (CHORUS)

Is This A Pyramid
Actually, Primerica has been in business since 1977. Do you think that I would be involved in something that wasn't legitimate? Will you come out and get all the information before making a decision? (CHORUS)

Confirmation Call The Night Before The Meeting
I'm just calling to remind you of the Business Briefing on tomorrow @ ______pm. I know that you will be impressed with the information. See you then.

STEPS TO LICENSING

1. REGISTER FOR PRE-LICENSING CLASS

LOCATION ADDRESS:

DAY	DATE	TIME
FRIDAY		6:00 – 10:30 PM
SATURDAY		8:00 AM – 6:00 PM
SUNDAY		8:00 AM – 6:00 PM

2. REVIEW THE "WELCOME TO PRE-LICENSING" PACKET

3. BEFORE ATTENDING CLASS WATCH THE "PASS NOW" PRE-STUDY VIDEOS ON POL

- **WWW.PRIMERICAONLINE.COM**
- **SELECT "LICENSING & EDUCATION" TAB**
- **FROM THE DROP DOWN SELECT "EDUCATION"**
- **IN THE MENU ON THE LEFT SELECT "PASS NOW VIDEOS"**

4. SCHEDULE AND PAY FOR YOUR STATE EXAM BEFORE ATTENDING PFSU. SCHEDULE TO TAKE THE EXAM WITHIN 5 DAYS OF COMPLETING PFSU BY CALLING:

- **PEARSONVUE: 800-274-0488**
- **EXAM FEE IS $90 TESTING FEE (PRIMERICA WILL REIMBURSE AFTER YOU PASS THE EXAM)**
- **REGISTRATION PRE-LICENSING PROVIDER NAME AND ID NUMBER: 20184**

5. ATTEND AND COMPLETE THE PFSU PRE-LICENSING CLASS.

6. ACCESS "PASSNOW" THROUGH POL AND COMPLETE THE PRACTICE TEST; EARN A GREEN "READY TO TEST" BEFORE YOUR TEST DATE.

7. ARRIVE 30 MINUTES EARLY AT THE TEST CENTER – WELL RESTED AND PASS THE EXAM

8. SUBMIT THE ORIGINAL PRE-LICENSING CERTIFICATE, PASS NOTICE, GID-103 AND CITIZENSHIP AFFIDAVIT, INCLUDING COPY OF PHOTO ID TO RVP'S OFFICE

9. IF YOU DON'T PASS THE TEST, COMPLETE THE BONUS EXAM ON "PASSNOW" AND EARN A GREEN "READY TO TEST". CALL THE REGIONAL LICENSING CENTER AT 770-564-6371 TO HAVE THEM SCHEDULE & PAY FOR RE-TEST

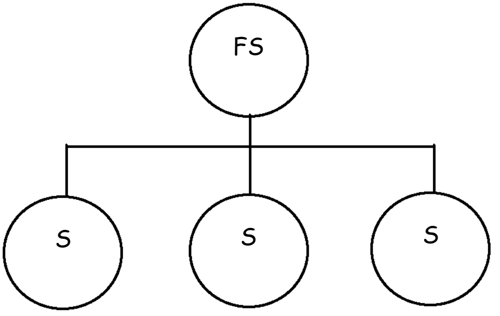
3 x 3 in 30 days = $300

30-Day Activity from IBA Date		**Requirement**	**Maximum Time Frame**	**Payment**
Recruits	Field Training			
1 x	1	Complete PFSU	60 days	**$100 PLUS…**
2 x	2	Pass Notice Received	90 days	**$200**
3 x	3	← Total →		= **$300**

PROMOTION GUIDELINES

REP – 25%*

SR REP – 35%*



Legend
F- Field Trained
(4 Life training sales)

L – Permanently Licensed

S – Showing Up

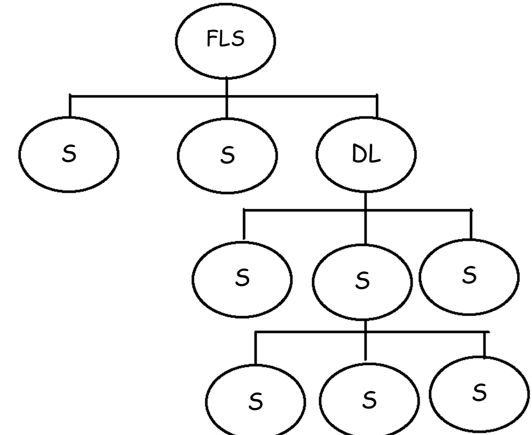
DLT – District Leader Team

FAST TRACK DISTRICT LEADER – 50%*
FIRST 60 DAYS

4 RECRUITS & 4 LIFE SALES
PASS LIFE EXAM

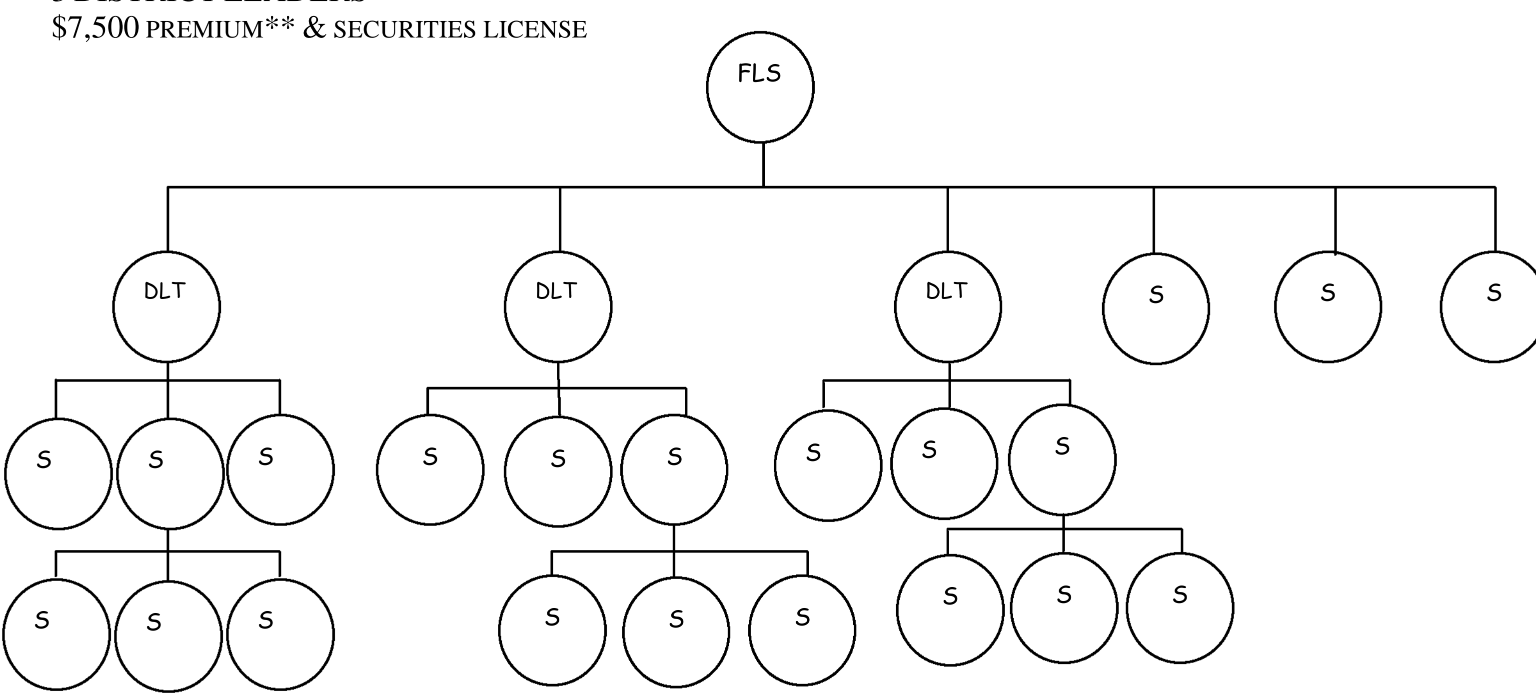
***AFTER FIRST 60 DAYS MUST GET 3 TEAM RECRUITS & $2,500 TEAM PREMIUM** IN 1 MONTH**
PERMANENT LICENSE

DIVISION LEADER – 60%*
1 DISTRICT LEADER
$5,000 TEAM PREMIUM**
U-4 SUBMITTED



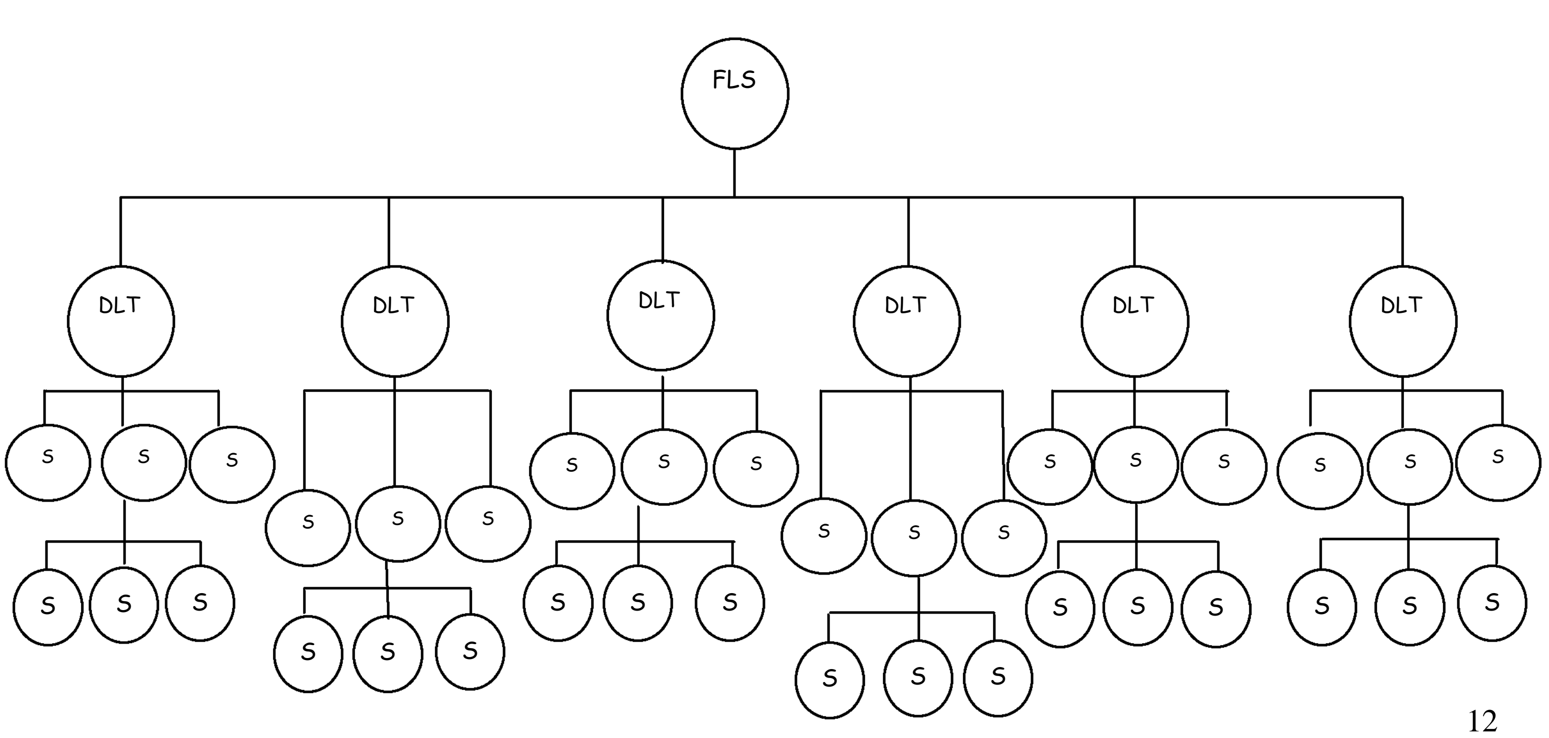
*PERCENTAGES BASED ON CUSTOM ADVANTAGE 30, ISSUE AGES 26-45
**DISTRICT, DIVISION, & REGIONAL LEADERS MAX 25% OF PREMIUM FROM ANY LEG. RVP MAX OF 50% OF PREMIUM FROM ANY LEG

REGIONAL LEADER – 70%*
3 DISTRICT LEADERS
$7,500 PREMIUM** & SECURITIES LICENSE



RVP – 110%*
6 DISTRICT LEADERS
30 x 30,000 over 2 consecutive months**
Min. 10 x 10,000/mo; 5,000 personal both months
Provide upline with replacement – RVP's choice

Series 6, 63, 26 & 70% QBI



This is Exhibit " 11 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Business Blog

Redress checks and compliance checks: Lessons from the FTC's Herbalife and Vemma cases

By: Lesley Fair January 10, 2017

As part of the FTC's historic $200 million settlement with Herbalife, about 350,000 Herbalife distributors should be watching their mail for a partial refund check. The FTC has more information about the refunds and advice for people thinking about investing in a multilevel marketing opportunity. But it's also a good time for some straight talk with members of the MLM industry.

The FTC has a more than 40-year history challenging unfair and deceptive MLM practices, including recent law enforcement actions against Herbalife and Vemma. The specific terms of those orders – which require the companies to restructure their operations from top to bottom – apply just to Herbalife and Vemma. But industry members can learn a lot by reviewing the conduct the FTC says violated the law and understanding the principles underlying those orders.

Here are some lessons MLMs can take from those lawsuits.

False or unsubstantiated earnings claims violate the FTC Act. Established truth-in-advertising standards apply to all companies within the FTC's jurisdiction, and that includes MLMs. Every MLM case the FTC has brought to date has alleged – among other things – misleading money-making representations. Some MLMs use limos, luxury, and lavish lifestyles as the bait to lure consumers, but their pie-in-the-sky promises turn out to be half-baked. Others try a subtler approach, appealing to consumers' desire to be their own boss, spend more time with their children, or secure their families' financial future. Regardless of whether it's hard sell or soft soap, deception is deception. And let's face it: The facts bear out that very few MLM participants earn more than a small amount of supplemental income. That's why it's unwise for MLMs to make earnings claims – expressly or by implication – that don't reflect what typical participants achieve.

Monitor the claims your distributors are making. Some industry members may respond, "We never make earnings claims!" Maybe not, but what are your distributors saying? Even a truthful income

testimonial can be misleading if typical distributors are unlikely to achieve those results. And if your distributors are making misleading claims, you could be liable. MLMs should have an effective monitoring program to ensure that distributors comply with the law and aren't conveying misleading claims. In addition, MLMs should provide sufficient information and training so that prospective recruits have a realistic picture of the business.

At the heart of a legitimate MLM are real sales to real customers. For companies acting within the law, the business is driven by selling products to real customers. Who do we mean by "real customers"? People unaffiliated with the company who actually buy and use the product the MLM sells – real retail sales, in other words. And by "real sales," we mean sales that are both profitable and verifiable – retail sales that can be confirmed. Contrast that with MLMs built primarily on bringing in more and more recruits and racking up sales to other insiders. Very few people are going to make money and most participants will be left in the lurch.

Make sure compensation and other incentives are tied to real sales to real customers. The FTC complaints against Herbalife and Vemma challenged compensation structures that rewarded distributors without regard to retail sales. The court-enforceable orders in those cases require the companies to dismantle those systems. In their place, Herbalife and Vemma must implement systems that incentivize participants to sell products to people outside the network. Is it time to take a closer look at your MLM's compensation structure?

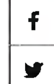
For more information see this response to a letter from the Direct Selling Association.

Tags: Consumer Protection | Bureau of Consumer Protection | Franchises, Business Opportunities, and Investments | Advertising and Marketing | Advertising and Marketing Basics

This is Exhibit " 12 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Consumer News



Is the DSA Ignoring Illegal Health Claims?

TINA.org investigation reveals MLM supplements recommended for everything from cancer to Ebola.

Nov 06, 2016 | Updated September 15, 2017

UPDATE 9/15/17: Nine months after posing the question, Is the DSA ignoring illegal health claims made by distributors of its member companies? TINA.org has an answer. Out of an aggregate sampling of about 2,000 inappropriate health claims, at least 1,000 remain on the internet, a TINA.org audit has found. Our original article follows.

Despite declarations by the Direct Selling Association () that it is committed to business ethics, a TINA.org investigation has found that 97 percent of DSA member companies selling nutritional supplements have distributors marketing their products with illegal health claims. Not only are distributors making dubious claims but TINA.org also documented DSA member companies making health claims that violate the law.

Time and again, the DSA, which currently represents 158 direct selling

companies, has issued press releases congratulating itself on its "longstanding commitment to the highest level of business ethics," and claiming that "[a]s the voice of the direct selling in the United States, business ethics and consumer protection are the heart of DSA's mission." But TINA.org's investigation revealed a wide range of illegal health claims being made by DSA members and their distributors that call into question the organization's true commitment to consumer protection.

TINA.org Investigation

MLM Health Claims Database

Using DSA membership lists from March 2016 and November 2016, TINA.org's investigation found that out of 62 member companies selling nutritional supplements, 60 have distributors who are making (or have made) claims that their products can diagnose, treat, cure, prevent, alleviate the symptoms of, and/or reduce the risk of developing a multitude of diseases, which means they are making illegal disease-treatment claims. TINA.org has notified each of the MLM companies about the problematic claims it has found.

Well over a thousand inappropriate health claims ranging from cancer cures to disappearing gangrene have been catalogued by TINA.org. The claims are being made across the Internet, including on social media, by a multitude of MLM distributors from DSA member companies including Herbalife, which recently agreed to a $200 million settlement with the FTC that requires it to revamp its compensation structure.

FTC and FDA law (and the DSA Code of Ethics for that matter) state that unless there is the appropriate scientific backup and approval, no one associated with an MLM business – not the company, not its distributors, not its medical board nor any other expert endorsers – can make disease-treatment claims.

So while the DSA states that it "enforces one of the most rigorous self-regulatory codes of ethics in business today, ensuring that direct-selling companies not only follow the law, but in many cases exceed its requirements," the facts tell a different story.

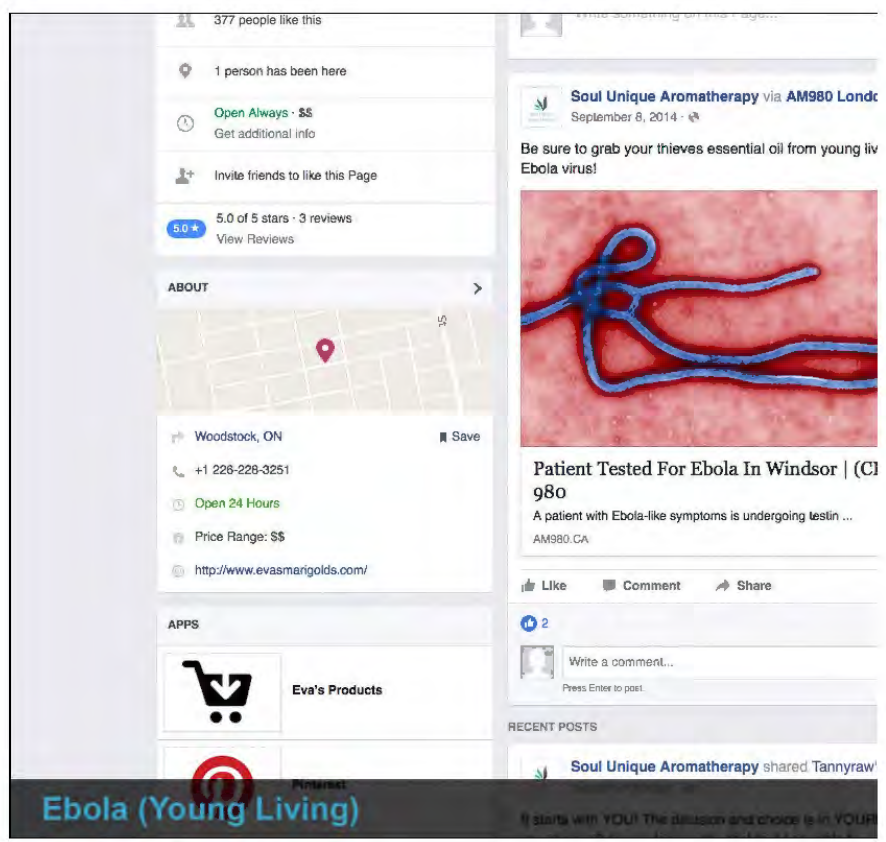
- Half of the companies with seats on the 28-member DSA Board of Directors sell nutritional supplements. Of those 14 companies, 13 have distributors who are making illegal disease-treatment claims, including AdvoCare, Herbalife, Melaleuca, and Nu Skin.
- In the past five years, the DSA has handed out 27 awards to 15 member

companies whose distributors have marketed nutritional supplements with inappropriate health claims. Those companies include Amway, 4Life and Team Beachbody, which collectively earned 10 of the 27 awards.

- In 2016, the DSA presented awards to nine MLMs whose products were being illegally marketed with disease-treatment claims by distributors, including Nerium, Jusuru, Usana and Shaklee. (Note: Nerium is not identified as selling nutritional supplements in DSA membership lists.)

- And 60 percent of the DSA's 20 top-selling members (based on 2015 net sales) have distributors who make inappropriate health claims to market their nutritional supplements, including Young Living, Arbonne, Isagenix and Juice Plus.

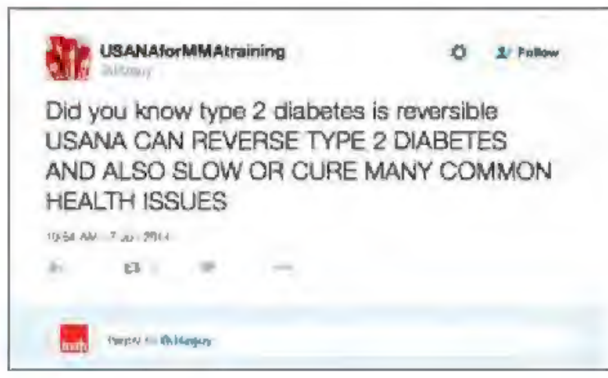
Disease-treatment claims abound



The disease-treatment claims used to market these MLM supplements are not hard to find. Simply by Googling the name of one of the MLM companies and "cancer," or "arthritis," or "eczema," or "diabetes," or any other disease of one's choosing, a plethora of websites and social media posts making false and deceptive claims pop up. From autism, Alzheimer's and HIV/AIDS, to eczema, Ebola and epilepsy, there is an MLM supplement that is being marketed to cure, treat, mitigate, or prevent almost any disease or disorder one can think of. And for most product lines, distributors claim the product(s) are a cure-all for a variety of diseases.

For example, Silver Shield, which is sold by Nature's Sunshine, is marketed by

one distributor as having the ability to treat the bubonic plague when ingested; fight ear infections if put in the ear; help with leg ulcers when applied topically; and can also be used to disinfect one's bathroom. Then there's GanoCafé by GanoExcel, a coffee that combats malaria, has anti-ulcer effects, promotes wound healing, and increases sperm count.



Another common marketing tactic is the assertion that these MLM nutritional supplements help with cancer, diabetes, and arthritis. In fact, TINA.org's investigation identified more than 55 DSA member companies whose distributors claim their product(s) cure, mitigate, treat, prevent, or reduce the risk of developing cancer; more than 45 companies with members claiming help with diabetes; and more than 40 touting their supplements for arthritis.

[To view a sample of inappropriate health claims made by distributors from 60 DSA member companies (some past and present) see: www.truthinadvertising.org/mlm-health-claims-database]

This misleading marketing exploits vulnerable consumers desperate to improve their health and the health of their loved ones, and diverts sales away from supplement companies that follow the law. Despite this, the DSA boasts that "[l]egitimate direct sellers take pride in their commitment to ethical business practices and consumer service, with DSA's Code of Ethics serving as a cornerstone." But with 36 percent of DSA member companies selling nutritional supplements, and 97 percent of those companies having distributors who make inappropriate health claims, it's hard to fuse such rhetoric with reality.

Prohibitions on health claim marketing

TINA.org's investigation makes clear that there is a systemic problem within the MLM industry when it comes to health claims. Thousands of distributors

are marketing MLM products to treat or cure diseases, with many relying on wildly inappropriate health testimonials to market their wares and the business opportunity. But federal laws and the DSA Code of Ethics require that such claims be supported by appropriate scientific backup and approval.

FTC law prohibits companies and its distributors from making disease-treatment claims unless there is competent and reliable scientific evidence to support the health claim(s) being made, which means having research that is generally accepted in the profession to yield accurate and reliable results. Such accurate and reliable results require at least one (and maybe two) scientific studies that are placebo-controlled, randomized, double-blind clinical trials with an adequate sampling size (known as RCTs).

Satisfying FTC requirements is just one hurdle that must be cleared. There is another federal agency that has a say when it comes to disease-treatment claims, and that's the FDA.

The FDA defines a drug as "a substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease." If a product falls within the definition of a drug under FDA law, then it is subject to rigorous study and testing to gain FDA approval. So under FDA law, only a drug (and not a supplement) can make a claim that it can "diagnose, treat, cure or prevent a disease."

These general legal standards for health claims apply to all marketing claims, including testimonials. It's simply not enough that a testimonial represents the honest opinion of the endorser. Under FTC and FDA law, MLMs and its distributors must have appropriate scientific evidence and approval to back up the underlying claim(s) being made.

In a statement to TINA.org, DSA President Joseph Mariano said the organization collaborates closely with regulators. He also said:

> **Beginning in 2017, 100 percent of DSA member companies will undergo a mandatory ethics review to ensure compliance with our Code of Ethics, including in the areas of income and product claims.**

But TINA.org Executive Director Bonnie Patten said: "There is no doubt that the DSA and its member companies are well aware of what their distributors can and cannot say when it comes to marketing nutritional supplements as evidenced by the statements of CEOs from 4Life, Jusuru and Kyani to TINA.org. This leads to the inevitable question of what possible value does the DSA Code of Ethics have if so many chose to simply ignore it?"

UPDATE 12/13/16: DSA Code of Ethics Administrator Jared O. Blum in an email to TINA.org said his office has requested that each member company review the health claims TINA.org compiled and respond to his office about their efforts to identify and remove any problematic postings.

This is Exhibit " 13 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

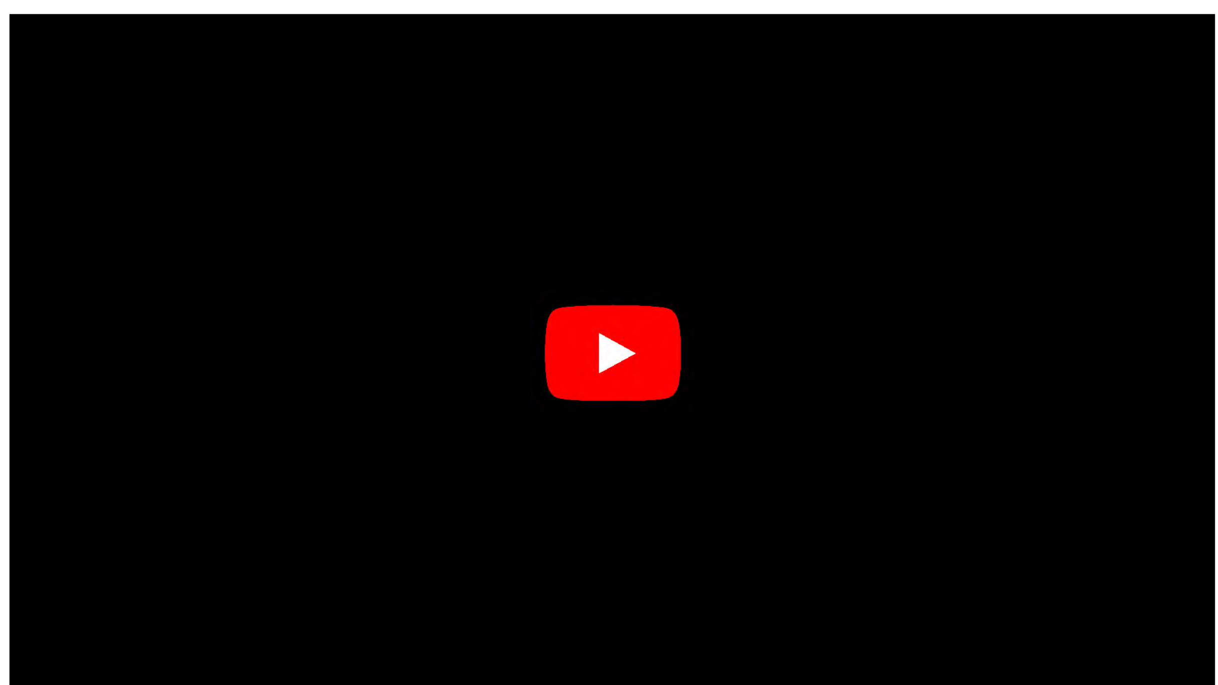
DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Consumer News

Multilevel Marketing: The Day Job that Doesn't Pay

More than 97 percent of DSA member companies use or have used misleading income claims.

Dec 18, 2017



When then FTC Chairwoman Edith Ramirez took the stage at the Direct Selling Association's Business & Policy Conference in Washington, D.C. in October 2016, she did not mince words when it came to the widespread use of inappropriate earnings claims as a means of recruitment in the MLM industry.

> **[M]ulti-level marketers should stop presenting business opportunities as a way for individuals to quit their jobs, earn thousands of dollars a month, make career-level income, or get rich because in reality, very few participants are likely to do that. Although it may be true that a very small percentage of participants do have success of this type, testimonials from these rare individuals are likely to be misleading because participants generally do not realize similar incomes.**

More than a year later, it appears few if any of the DSA members in attendance that day took the warning to heart.

Story highlights

- TINA.org investigation
- Most Distributors Do Not Earn Substantial Incomes
- Link Between Income Claims and Pyramid Schemes

A TINA.org investigation found more than 97 percent of DSA member companies engaged in misleading marketing schemes that peddle false and unsubstantiated earnings claims trying to convince prospective distributors to join their MLM network. TINA.org's probe examined the marketing of every DSA member company as of Nov. 29, 2017 and found that 137 out of 140 misrepresented the amount of money participants are likely to earn — misrepresentations that cause real and substantial harm to consumers.

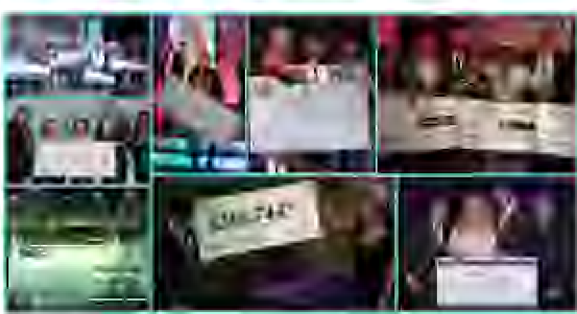
TINA.org's findings not only constitute violations of FTC law, they also breach the DSA's own Code of Ethics and in doing so contradict DSA President Joe Mariano's public statements on the supposed higher standards of the code:

> **DSA enforces one of the most rigorous self-regulatory codes of ethics in business today, ensuring that direct selling companies not only follow the law, but in many cases exceed its requirements.**

"All too often, consumers with limited capital are induced to part with their money by MLM promises of unlimited wealth that will never come to fruition," said TINA.org's Executive Director Bonnie Patten. "It's time that the DSA and its membership were held accountable for these unsubstantiated income claims."

As a result of these findings, TINA.org has notified the DSA, the DSA Code of Ethics Administrator, and each MLM company in TINA.org's database of the problematic claims.

TINA.org investigation



Click to See Database

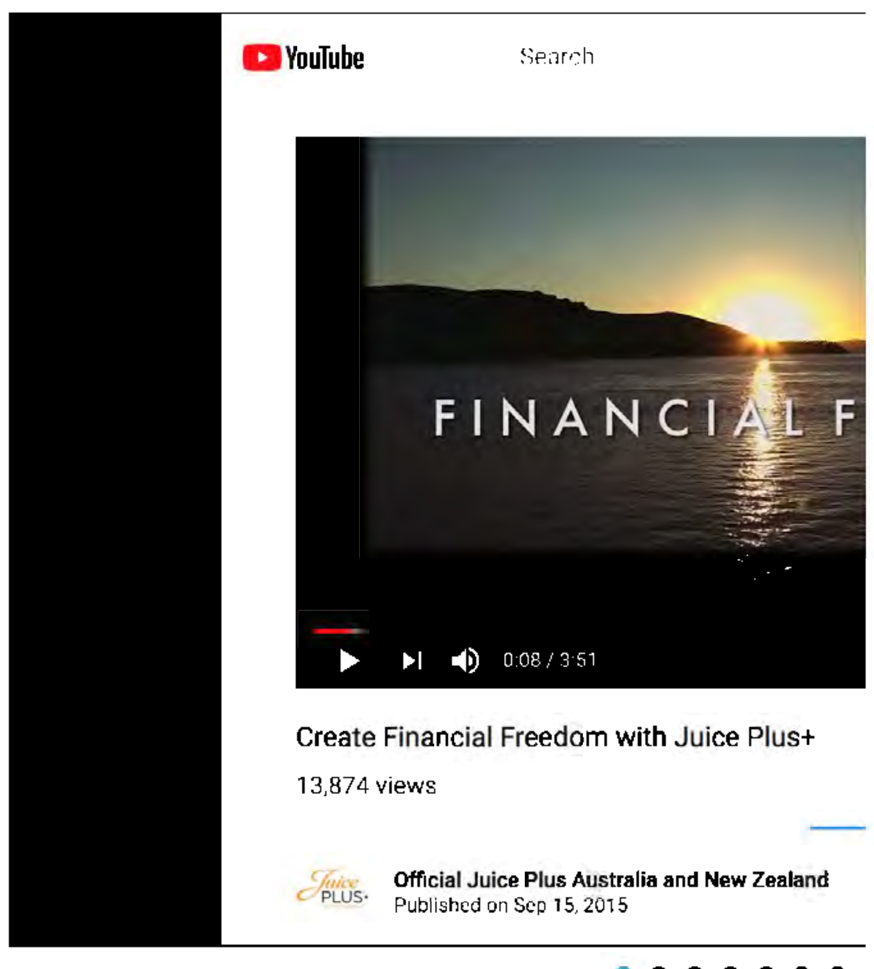
Using the Nov. 29, 2017 DSA membership list, TINA.org investigated every company on the roster and found that out of 140 member companies (which includes divisions of certain companies), 137 are making or have made misleading income representations. TINA.org has amassed more than 1,000 examples of companies and/or their distributors making inappropriate

earnings claims on their websites and social media platforms. This, despite the fact that Mariano informed TINA.org just last year that:

> **Beginning in 2017, 100 percent of DSA member companies will undergo a mandatory ethics review to ensure compliance with our Code of Ethics, including in the areas of income and product claims.**

The claims that TINA.org has compiled range from assurances of achieving financial freedom, to making unlimited income, to being able to quit your job and stay home with your children. And these income representations are not hard to find. For the majority of companies, one need look no further than their websites and social media pages. Other assertions of wealth can be found simply by googling the name of an MLM company and "millionaire," or "financial freedom," or "free car," resulting in a plethora of websites and social media posts making false and deceptive claims. Such was the strategy that led to a number of TINA.org's findings.

While most of the MLM databases on TINA.org contain a sampling of around 20 inappropriate income claims, four companies (Kyani, Nerium International, Reliv International, and Team National) have more than 100, Jeunesse Global has more than 80, and 25 companies have less than 10 (Aerus, Become International, Boisset Collection, Carico International, Compelling Creations, Dudley Beauty, Energetix, Flavon USA, Harmony Green America, HTE USA, John Amico Haircare Products, The Kirby Company, New Earth, Orenda International, RBC Life, Regal Ware, Rena Ware International, Rexair, Sanki Global, SAS Spurilla, Simply Said, SimplyFun, Tealightful, Tristar Enterprises and Zinzino). TINA.org did not find inappropriate income claims for three companies: Red Rock Traditions, WBC Group (which is affiliated with Origami Owl), and World Book.



Time and again, the DSA has issued press releases congratulating itself on how it "continues to set the standard for industry behavior," and promoting its "stringent commitment to the highest standards of ethical business practices in direct selling." But TINA.org's investigation documenting thousands of unsubstantiated earnings claims calls into question the organization's true commitment to consumer protection. For example, TINA.org found:

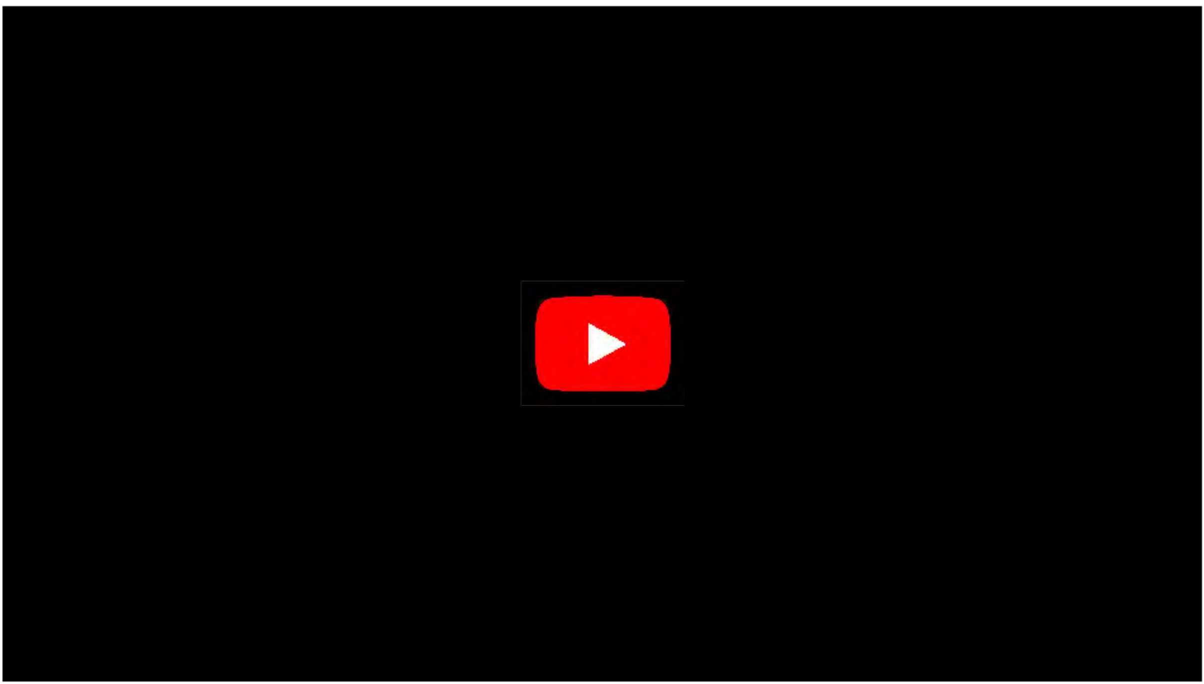
- Every company that holds a seat on the DSA Board of Directors is making unsubstantiated income claims, including Amway, Herbalife, Mary Kay, New Avon, Nerium, and Team National.
- In the past five years, the DSA has handed out 22 awards to 15 current DSA member companies that market their business opportunity with inappropriate earnings representations. These companies include Damsel in Defense, Jeunesse, Pampered Chef, Princess House, and USANA.
- In 2017, the DSA presented awards to six member MLMs, all of which are recruiting distributors with false earnings claims, including Ruby Ribbon, Via One Hope, and Scentsy.
- And 100 percent of the DSA's 20 top-selling members (based on 2016 net sales) are employing false and unsubstantiated income claims to market their companies, including ACN, AdvoCare, Arbonne International, Medifast-OPTAVIA, Melaleuca, Nu Skin, Stream and Thirty-One Gifts.

[To view a sample of inappropriate income claims made by 137 DSA member

companies (and divisions of companies), click here.]

To learn about DSA member companies making illegal disease-treatment claims, click here.

Most distributors do not earn substantial incomes



It is well established that the vast majority of distributors will never achieve financial independence with their MLM business. As Mariano, the DSA president, wrote just last year:

> **[W]e must increase our efforts to ensure prospective distributors are fully aware–clearly and unashamedly–that for most, direct selling can provide supplemental income. Most distributors will not realize a replacement income, let alone a lavish lifestyle.**

And this fact, that most MLM participants do not earn substantial incomes, is not new. The DSA acknowledged more than a decade ago that the majority of distributors made less than $10,000 per year from direct selling, with a median annual gross income of about $2,400, or $200 per month, which means that half of all distributors made *less* than $200 per month before deducting expenses associated with their business.

Moreover, a review of 32 income disclosure statements that TINA.org was able to dig up for current DSA member companies revealed that more than 80 percent of distributors grossed less than $1,200 annually or less than $100 per month before expenses. And for about half of these companies, the disclosures indicate that the majority of distributors made no money at all.

For example, Team National, whose CEO holds a seat on the DSA Board of

Directors and also chairs the DSA Education Committee, revealed in its 2016 income earnings disclosure statement that 93 percent of its active distributors (or about 45,000 people) averaged a gross income of less than $500 for the year, or less than $42 per month before deducting expenses. The disclosure goes on to state that about 86 percent of all active distributors "received no income at all," which equates to almost 42,000 distributors losing money. At the same time, Team National has posted more than 120 distributor testimonials, including over 50 videos, making lavish lifestyle claims.

Given these statistics, it's not surprising that last year former FTC chairwoman Ramirez stated:

> **It is time that MLM income representations matched the income reality of the majority of multi-level marketing participants. This means both explicit statements about how much a participant is likely to earn, as well as implied claims and lifestyle claims.**

Link between income claims and pyramid schemes

In the past 40 years, the FTC has filed 26 cases against MLMs alleging that they were operating illegal pyramid schemes. In all of these cases, the FTC also alleged that the defendants made false earnings representations. Undoubtedly one of the reasons for this link is that claims of life-changing income are generally tied to a distributor's recruitment efforts (as opposed to selling the companies' products or services). And one of the hallmarks of a pyramid scheme is its "recruitment focus."

Moreover, TINA.org's investigation found that claims of unlimited wealth were almost always tied to a recruitment focus. As top Jeunesse distributor Kim Hui explained:

> **So first thing we've got to do is go out there and recruit. . . . We're building a distribution channel if you would and so what we do – the first thing we do is recruit. What do we recruit? We recruit entrepreneurs. . . . And the second thing we do is that we teach other people how to recruit because this business is all about duplication. It's not about one person selling all the time cause that's linear income, you know, trading time for money. But this business model is about building distribution and about creating wealth.**

In addition to recent FTC actions against Herbalife and Vemma Nutrition Company alleging deceptive income claims and pyramid scheme behavior, at

least 12 federal class-action lawsuits have been filed this year making similar allegations. These lawsuits claim, among other things, pyramid scheme activities together with false earnings representations against MLM companies and their top distributors. For example, plaintiffs in a recent lawsuit against Nerium International allege:

> **Nerium . . . represented to plaintiffs . . . that Nerium provides a business opportunity that can build 'a dream lifestyle' and that Plaintiffs could be financially independent by virtue of selling Nerium's 'age-defying' creams. But in reality, these promises of riches, wealth, and gifts couldn't be further from the truth. Characterized by some of its former employees as a scam and a cult, Nerium touts that it has generated one billion dollars in cumulative sales after just four years. These sales are based on the recruitment of new brand partners into the pyramid scheme that Nerium has amassed.**

Such allegations show the risk that MLMs run in touting false and unsubstantiated income claims. For while MLMs making inappropriate earnings claims may not be pyramid schemes, all pyramid schemes boast of unlimited riches. As explained in the seminal case of Koscot Interplanetary, Inc., a pyramid scheme "thrives by enticing prospective investors to participate in its enterprise, holding out as a lure the expectation of galactic profits. All too often, the beguiled investors are disappointed by paltry returns." And as Ramirez stated:

> **False and unsubstantiated earnings claims are deceptive and unlawful under Section 5 of the FTC Act. Unfortunately, however, our law enforcement experience shows that many MLMs continue to misrepresent the amount of money participants are likely to earn. In fact, in all of our cases against multi-level marketers, the FTC has alleged that the defendants made false earnings representations. These misrepresentations cause real harm to consumers, and they need to stop.**

In a statement to TINA.org, DSA President Joe Mariano said:

> **DSA welcomes information about compliance with our Code of Ethics from any source. Any credible information relating to possible non-compliance with our Code an [sic] or the law will be reviewed by the DSA Code Administrator and responded to appropriately. TINA has not provided DSA any report or specific information and it is thus impossible to comment further upon the veracity of any claims, complaints, or allegations until such information is provided to the Association, the DSA Code Administrator, or individual member companies.**

For more of TINA.org's coverage of MLM companies, click here.

This is Exhibit " 14 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

Important Earnings Statement

This representative has achieved an extraordinary level of success that is not typical. Most representatives will not achieve such cash flow levels or earnings milestones. From January 1 through December 31, 2022, Primerica paid cash flow to its North American sales force at an average of $7,479, which includes commissions paid on all lines of business to life licensed representatives. Figures include U.S. and Canadian dollars remaining in the local currency earned by the representative, not adjusted for exchange rates.

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This is Exhibit " 15 " referred to in the Affidavit of William W. Keep, sworn this 28th day of September, 2023

DEVYN TAYLOR ENS
A Commissioner for Oaths
in and for Alberta
My Commission Expires January 1, 2024
Appointee # 0761114

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2022

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

For the transition period from __________to

Commission File Number: 001-34680

Primerica, Inc.
(Exact name of registrant as specified in its charter)

Delaware	**27-1204330**
(State or other jurisdiction of incorporation or organization)	**(I.R.S. Employer Identification No.)**
1 Primerica Parkway Duluth, Georgia	**30099**
(Address of principal executive offices)	**(ZIP Code)**

Registrant's telephone number, including area code: (770) 381-1000

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock	PRI	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. ☒ Yes ☐ No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. ☐ Yes ☒ No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. ☒ Yes ☐ No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☒	Accelerated filer	☐
Non-accelerated filer	☐	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements. ☐

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b). ☐

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). ☐ Yes ☒ No

The aggregate market value of the voting common equity held by non-affiliates of the registrant as of June 30, 2022, was $4,501,224,081. The number of shares of the registrant's Common Stock outstanding at January 31, 2023, with $0.01 par value, was 36,645,594.

Documents Incorporated By Reference

Certain information contained in the Proxy Statement for the Company's Annual Meeting of Stockholders to be held on May 17, 2023 is incorporated by reference into Part III hereof.

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS.

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is intended to inform the reader about matters affecting the financial condition and results of operations of Primerica, Inc. (the "Parent Company") and its subsidiaries (collectively, "we", "us" or the "Company") for the three-year period ended December 31, 2022. As a result, the following discussion should be read in conjunction with the consolidated financial statements and accompanying notes that are included herein. This discussion contains forward-looking statements that constitute our plans, estimates and beliefs. These forward-looking statements involve numerous risks and uncertainties, including, but not limited to, those discussed in "Item 1A. Risk Factors". Actual results may differ materially from those contained in any forward-looking statements.

This section generally discusses 2022 and 2021 items and comparisons between 2022 and 2021 financial results. Discussions of 2020 items and comparisons between 2021 and 2020 financial results can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2021 (the "2021 MD&A").

This MD&A is divided into the following sections:

- Business Trends and Conditions
- Factors Affecting Our Results
- Critical Accounting Estimates
- Results of Operations
- Financial Condition
- Liquidity and Capital Resources

Business Trends and Conditions

The relative strength and stability of financial markets and economies in the United States and Canada affect our growth and profitability. Our business is, and we expect will continue to be, influenced by a number of industry-wide and product-specific trends and conditions. Economic conditions, including unemployment levels and consumer confidence, influence investment and spending decisions by middle-income consumers, who are generally our primary clients. These conditions and factors also impact prospective recruits' perceptions of the business opportunity that becoming an independent sales representative offers, which can drive or dampen recruiting. Consumer spending and borrowing levels affect how consumers evaluate their savings and debt management plans. In addition, interest rates and equity market returns impact consumer demand for the savings and investment products we distribute. Our customers' perception of the strength of the capital markets may also influence their decisions to invest in the investment and savings products we distribute.

The financial and distribution results of our operations in Canada, as reported in U.S. dollars, are affected by changes in the currency exchange rate. As a result, changes in the Canadian dollar exchange rate may significantly affect the result of our business for all amounts translated and reported in U.S. dollars.

The COVID-19 pandemic ("COVID-19") continued to impact our business in 2022, but to a much lesser extent than in 2021, as discussed in more detail later in this section, the Results of Operations section, and the Financial Condition section. Since March 2022, we have experienced fewer COVID-19 related claims than in prior periods. In addition, throughout the second half of 2021 and the entirety of 2022, policy sales and persistency have trended toward pre-COVID-19 levels.

Significant volatility in capital markets during 2022 has also impacted our business. This volatility led to declines in the capital markets which adversely impacted revenue generated by the Investments and Savings Products segment. The sharp rise in market interest rates during 2022 resulted in unrealized losses in our investment portfolio. We have not recognized losses caused by interest rate volatility in the income statement as we have the ability to hold these investments until maturity or a market price recovery, and we have no present intention to dispose of them.

During 2022, inflation reached levels not seen since the 1980s, which led to an increased cost of living for middle-income families. If elevated inflation continues it could impact demand for our products.

The effects of these trends and conditions are discussed below, in the Results of Operations section and in the Financial Condition section.

Size of the Independent Sales Force. Our ability to increase the size of the independent sales force ("independent sales representatives" or "independent sales force") is largely based on the success of the sales force's recruiting efforts as well as training and motivating recruits to get licensed to sell life insurance. We believe that recruitment and licensing levels are important to independent sales force trends, and growth in recruiting and licensing is usually indicative of future growth in the overall size of the independent sales force. Recruiting changes do not always result in commensurate changes in the size of the licensed independent sales force because new recruits may obtain the requisite licenses at rates above or below historical levels.

Details on new recruits activity and life-licensed independent sales representative activity were as follows:

	Year ended December 31,		
	2022	2021	2020
New recruits	359,735	349,374	400,345
New life-licensed independent sales representatives	45,147	39,622	48,106
Life-licensed independent sales representatives, at period end	135,208	129,515	134,907

The number of new recruits increased in 2022 compared to 2021 primarily due to strong recruiting efforts and the offering of special recruiting incentives following our biennial convention held in June 2022. Approximately 83,000 individuals were recruited while the special incentives were in place. Various recruiting incentives in both 2022 and 2021 also positively impacted recruiting results during each year.

New life-licensed independent sales representatives increased in 2022 compared to 2021 primarily due to the elevated recruiting volume discussed above combined with licensing process improvements throughout 2022. These improvements included new licensing progress-tracking tools and additional in-person licensing classes.

The number of life-licensed independent sales representatives grew to 135,208 as of December 31, 2022 and reflects recent improvements to the licensing process and the elevated recruiting volume discussed above.

Term Life Insurance Product Sales and Face Amount In Force. The average number of life-licensed independent sales representatives and the number of term life insurance policies issued, as well as the average monthly rate of new policies issued per life-licensed independent sales representative (historically between 0.18 and 0.22), were as follows:

	Year ended December 31,		
	2022	2021	2020
Average number of life-licensed independent sales representatives	132,077	131,315	133,302
Number of new policies issued	291,918	323,855	352,868
Average monthly rate of new policies issued per life-licensed independent sales representative	0.18	0.21	0.22

New policies issued during 2022 decreased compared to 2021 due to elevated demand during 2021 from COVID-19. As deaths associated with the COVID-19 pandemic subsided during 2022, the demand for life insurance products moderated. In addition, the impact from higher costs of living on middle-income families may have contributed to softer demand for life insurance products during the second half of 2022.

Productivity in 2022, measured by the average monthly rate of new policies issued per life-licensed independent sales representative, remained within our historical range, although lower than 2021 primarily due to the elevated demand for protection products in 2021 as described above.

The changes in the face amount of our in-force book of term life insurance policies were as follows:

	Year ended December 31,					
	2022	% of beginning balance	2021	% of beginning balance	2020	% of beginning balance
			(Dollars in millions)			
Face amount in-force, beginning of period	$ 903,404		$ 858,818		$ 808,262	
Net change in face amount:						
Issued face amount	103,822	11 %	108,521	13 %	109,436	14 %
Terminations	(82,894)	(9)%	(64,798)	(8)%	(60,848)	(8)%
Foreign currency	(7,524)	*	862	*	1,968	*
Net change in face amount	13,404	1 %	44,585	5 %	50,556	6 %
Face amount in-force, end of period	$ 916,808		$ 903,403		$ 858,818	

* Less than 1%.

The face amount of term life policies in-force increased from 2021 to 2022 as the level of face amount issued continued to exceed the face amount terminated. The increase was partially offset by movement in the foreign exchange rate as the U.S. dollar strengthened in relation to the Canadian dollar, which negatively impacted the translated face amount in force as of December 31, 2022. Issued face amount during 2022 decreased versus 2021 due to a decrease in the number of new policies issued partially offset by higher average issued face amounts. Policy terminations were higher during 2022 as persistency normalized towards pre-pandemic levels.

Our average issued face amount per policy increased to approximately $260,100 in 2022 compared to $251,500 in 2021 and $240,600 in 2020. The average issued face amount was higher in 2022 compared with 2021, as the product mix in 2021 favored our rapidly issued term life product that provides for lower maximum face amounts.

Investment and Savings Product Sales, Asset Values and Accounts/Positions. Investment and savings products sales and average client asset values were as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change	
	2022	2021	2020	$	%	$	%
	(Dollars in millions)						
Product sales:							
U.S. retail mutual funds	$ 4,266	$ 5,146	$ 3,499	$ (880)	(17)%	$ 1,647	47 %
Canada retail mutual funds - with upfront sales commissions	912	1,439	$ 892	$ (527)	(37)%	$ 547	61 %
Annuities and other	2,629	3,076	2,210	(447)	(15)%	866	39 %
Total sales-based revenue generating product sales	7,807	9,661	6,601	(1,854)	(19)%	3,060	46 %
Managed investments	1,513	1,506	900	7	*	606	67 %
Canada retail mutual funds - no upfront sales commissions	494	318	146	176	55 %	172	118 %
Segregated funds	195	219	196	(24)	(11)%	23	12 %
Total product sales	$ 10,009	$ 11,704	$ 7,843	$ (1,695)	(14)%	$ 3,861	49 %
Average client asset values:							
Retail mutual funds	$ 53,822	$ 55,997	$ 42,570	$ (2,175)	(4)%	$ 13,427	32 %
Annuities and other	23,947	25,211	20,524	(1,264)	(5)%	4,687	23 %
Managed investments	6,951	6,086	4,201	865	14 %	1,885	45 %
Segregated funds	2,474	2,698	2,413	(224)	(8)%	285	12 %
Total average client asset values	$ 87,194	$ 89,992	$ 69,708	$ (2,798)	(3)%	$ 20,284	29 %

* Less than 1%.

The rollforward of asset values in client accounts was as follows:

	Year ended December 31,					
	2022	% of beginning balance	2021	% of beginning balance	2020	% of beginning balance
	(Dollars in millions)					
Asset values, beginning of period	$ 97,312		$ 81,533		$ 70,537	
Net change in asset values:						
Inflows	10,009	10 %	11,703	14 %	7,843	11 %
Redemptions	(6,587)	(7)%	(7,161)	(9)%	(5,538)	(8)%
Net flows	3,422	4 %	4,542	6 %	2,305	3 %
Change in fair value, net	(15,855)	(16)%	11,146	14 %	8,521	12 %
Foreign currency, net	(930)	*	91	*	170	*
Net change in asset values	(13,363)	(14)%	15,779	19 %	10,996	16 %
Asset values, end of period	$ 83,949		$ 97,312		$ 81,533	

* Less than 1%.

Average number of fee-generating positions was as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change	
	2022	2021	2020	Positions	%	Positions	%
	(Positions in thousands)						
Average number of fee-generating positions [(1)]:							
Recordkeeping and custodial	2,281	2,171	2,060	110	5 %	111	5 %
Recordkeeping only	814	749	678	65	9 %	71	10 %
Total average number of fee-generating positions	3,095	2,920	2,738	175	6 %	182	7 %

(1) We receive transfer agent recordkeeping fees by mutual fund positions. An individual client account may include multiple mutual fund positions. We may also receive fees, which are earned on a per account basis, for custodial services that we provide to clients with retirement plan accounts that hold positions in these mutual funds.

Product sales. The decrease in investment and savings product sales in 2022 from 2021 was led by lower sales of retail mutual funds and variable annuities as investor demand during 2022 deteriorated in response to negative market conditions.

Average client asset values. Average client asset values decreased in 2022 compared to 2021 primarily due to negative equity market conditions during 2022. Net flows remained positive for 2022, albeit to a lesser extent than in 2021.

Rollforward of client asset values. Ending client asset values decreased in 2022 from 2021 primarily due to negative market performance in 2022. Also contributing to the decrease was movement in the foreign exchange rate as the U.S. dollar strengthened in relation to the Canadian dollar, which negatively impacted client asset values as of December 31, 2022. Net flows remained positive for 2022, albeit to a lesser extent than in 2021.

Average number of fee-generating positions. The average number of fee-generating positions increased in 2022 from 2021 primarily due to the cumulative effect of retail mutual fund sales in recent periods that led to an increase in the number of retail mutual fund positions serviced on our transfer agent recordkeeping platform.

Senior Health Key Performance Indicators.

Submitted Policies and Approved Policies

Submitted policies. Submitted policies represent the number of completed applications that, with respect to each application, the applicant has authorized us to submit to the health insurance carrier. The applicant may need to take additional action, including providing subsequent information, before the application is reviewed by the health insurance carrier.

Approved policies. Approved policies represent an estimate of submitted policies approved by the health insurance carriers for the identified product during the indicated period. Not all approved policies will go in force. In general, the relationship between submitted policies and approved policies has been seasonally consistent. Therefore, factors impacting the number of submitted policies generally impact the number of approved policies.

The number of Senior Health submitted policies and approved policies were as follows:

	Year ended December 31,	
	2022	**2021**[1]
Number of Senior Health submitted policies	85,038	60,009
Number of Senior Health approved policies	77,086	50,323

[1] From the acquisition date of July 1, 2021.

The Senior Health segment experiences notable seasonality with the strongest demand occurring in the fourth quarter due to the Medicare Annual Election Period ("AEP") from October 15th to December 7th. We also experience seasonally higher demand in the first quarter due to the Medicare Open Enrollment Period from January 1st to March 31st, which allows individuals to switch Medicare Advantage plans. Meanwhile, the second and third quarters experience seasonally lower demand as the focus for submitted policies is limited to participants that are dual eligible (Medicare and Medicaid), qualify for a special enrollment period, recently aged into Medicare or are enrolling off of an employer-sponsored plan, and other less common situations.

The number of submitted and approved policies in 2022 compared to 2021 is primarily impacted by the timing of the acquisition of e-TeleQuote on July 1, 2021. A full year of submitted and approved policies are included in 2022 compared to only six months for 2021. The number of submitted and approved policies in 2022 also reflects the Company's efforts to scale back growth and limit the number of agents in favor of developing more efficient lead procurement. Approved policies as a percentage of submitted policies increased during 2022 due in part to our strategic decision to limit our agent count to the most productive agents.

Senior Health Policies Sourced by Primerica Independent Sales Representatives

Primerica independent sales representatives are eligible to refer Medicare participants to e-TeleQuote licensed agents for potential enrollment in policies distributed by e-TeleQuote after completion of a brief certification course offered by Primerica. At December 31, 2022, there were 93,348 Primerica independent sales representatives certified to refer participants for enrollment in Senior Health policies compared to 26,441 at December 31, 2021.

The number of submitted policies by e-TeleQuote sourced from Primerica independent sales representatives measures the number of Senior Health policies submitted by e-TeleQuote to its third-party health insurance carriers that originated through the Primerica independent sales force.

	Year ended December 31,	
	2022	**2021**[1]
Submitted policies sourced by Primerica independent sales representatives	8,501	4,494

[1] From the acquisition date of July 1, 2021.

The number of submitted policies sourced by Primerica independent sales representatives during 2022 increased compared to 2021 primarily due to the timing of our acquisition of e-TeleQuote on July 1, 2021. A full year of submitted policies sourced by Primerica independent sales representatives are included during 2022 compared to only six months for 2021.

Lifetime Value of Commissions and Contract Acquisition Costs

Lifetime value of commissions ("LTV"). LTV represents the cumulative total of commissions and administrative fees estimated to be collected over the expected life of a policy for policies approved during the period. For more information on LTV, refer to Note 18 (Revenue from Contracts with Customers) of our consolidated financial statements included elsewhere in this report and the Factors Affecting our Results – Senior Health Segment section.

Contract acquisition costs ("CAC"). CAC represents the total direct costs incurred to acquire approved policies. CAC are primarily comprised of the costs associated with acquiring leads, including fees paid to Primerica Senior Health certified independent sales representatives, as well as compensation, licensing, and training costs associated with our team of e-TeleQuote licensed health insurance agents. The number of e-TeleQuote licensed health insurance agents, agent tenure, attrition rate and productivity all impact CAC. Other than costs incurred to assist beneficiaries who are switching plans with the same carrier, we incur the entire cost of approved policies prior to enrollment and prior to receiving our first commission-related payment.

Per policy metrics for LTV and CAC measure our ability to profitably distribute Senior Health insurance products.

The LTV per approved policy, CAC per approved policy, and ratio of LTV to CAC per approved policy were as follows:

	Year ended December 31,	
	2022	2021[(1)]
LTV per policy approved during the period	$ 860	$ 1,109
CAC per policy approved during the period	$ 888	$ 1,049
LTV/CAC per approved policy	0.97	1.10

(1) From the acquisition date of July 1, 2021.

LTV per approved policy reflects current estimates for renewal rates, policy retention and chargeback activity taking into consideration the most recent experience through December 31, 2022. The Company saw lower renewal retention rates during 2022 compared to historical experience due to an increased number of consumers who changed plans and increased plan offerings by carriers. This dynamic led to the lower LTV estimated per approved policy in 2022 compared to 2021. The LTV per approved policy estimated in 2021 was higher than what we subsequently expect to realize due to the impact of the lower renewal activity experienced in 2022.

The reduction in CAC per approved policy in 2022 reflects a number of other factors including revised lead acquisition strategies, improved lead routing, and enhancements in agent training. This led to a decrease in CAC per approved policy in 2022 compared to 2021.

Regulatory Changes.

Worker classification standards. There has been a trend toward administrative and legislative activity around worker classification. For example, in January 2021, the Department of Labor ("DOL") under the prior presidential administration issued a rulemaking interpreting the "economic realities" worker classification standard applicable to the Fair Labor Standards Act ("FLSA"). In October 2022, the DOL under the current presidential administration proposed a new rule that would rescind the 2021 rule and replace it with its own interpretation of the "economic realities" standard under the FLSA. Other federal and state legislative and regulatory proposals regarding worker classification have also come under consideration. It is difficult to predict what the outcome of worker classification activity may be. Changes to worker classification laws could impact our business as sales representatives (other than those hired by e-TeleQuote) are independent contractors.

Restrictions on compensation models in Canada. The organization of provincial and territorial securities commissions throughout Canada (collectively referred to as the "Canadian Securities Administrators" or "CSA") published final rule amendments to prohibit upfront sales commissions by fund companies for the sale of mutual funds offered under a prospectus in Canada ("DSC Ban"). The final amendments became effective on June 1, 2022. These rules resulted in changes in compensation arrangements with both the fund companies that offer the mutual fund products we distribute and the independent sales representatives. In particular, we entered into agreements with two third-party mutual fund companies to develop and offer a broad range of funds that are sold exclusively by our independent sales representatives. These agreements provide for the payment to us of asset-based revenue by the mutual fund companies. We also earn revenue through an asset-based fee charged to clients. As part of our new model (the "Principal Distributor model") we are funding an advance of compensation at the time of sale to our independent sales representatives, taken at their option, to partially replace upfront sales commission cash flow from fund companies paid under the deferred sales charge compensation model. We expect that these changes to our mutual fund model will have the impact of initially decreasing our pre-tax operating income in the short term due to the elimination of upfront commissions. Over the long term, we expect pre-tax operating income to recover through the collection of asset-based commissions over time. We began offering our new Principal Distributor model on July 6, 2022. Although we received the requisite approval, the CSA has indicated that it intends to closely examine the model, including potentially through a public consultation on sales practices, and may require undertakings or consider future amendments that would require modifications to the model, including with respect to its advance and chargeback features. At this time we cannot quantify the financial impact, if any, of future changes to our business that may be necessary in order to comply if our Principal Distributor model is required to be modified or discontinued. During the year ended December 31, 2022, Canadian mutual funds represented approximately 14% of our total investment and savings product sales and approximately 13% of our average client asset values.

In an announcement on February 10, 2022, and in line with the DSC Ban for the sale of mutual funds, the organization of provincial and territorial insurance regulators in Canada (collectively referred to as the "Canadian Council of Insurance Regulators" or "CCIR") urged insurers to refrain from new deferred sales charges in segregated fund contracts beginning June 1, 2022, and to expect a transition to a cessation of such deferred sales charges by June 1, 2023. In addition, on September 8, 2022, the CCIR issued a

discussion paper for consultation to consider other changes to upfront compensation, including advance compensation and chargeback features such as those used in our Principal Distributor model. The consultation period on the discussion paper is now closed and the CCIR is now considering the comments that were submitted, including ours, to determine whether they will require changes to segregated funds compensation practices. We expect that changes, if any, to segregated funds compensation practices, will also be adopted by securities regulators, which may impact our Principal Distributor model. Currently, our Canadian segregated fund products are primarily sold on a deferred sales charge basis and we pay upfront commissions to the independent agents for the sale of these products. At this time, without further clarity from regulators on allowable segregated fund compensation practices, we expect a decline in segregated fund product sales beginning in June 2023. We earn revenue from Canadian segregated fund products based on a percentage of client assets under management. During the year ended December 31, 2022, Canadian segregated funds represented approximately 2% of our total investment and savings product sales and approximately 3% of our average client asset values.

Factors Affecting Our Results

Refer to the Business Trends and Conditions section for discussion of the potential impact on our business from the COVID-19 pandemic.

Term Life Insurance Segment. The Term Life Insurance segment results are primarily driven by sales volumes, how closely actual experience matches our pricing assumptions, terms and use of reinsurance, and expenses.

Sales and policies in-force. Sales of term policies and the size and characteristics of our in-force book of policies are vital to our results over the long term. Premium revenue is recognized as it is earned over the term of the policy, and eligible acquisition expenses are deferred and amortized ratably with the level premiums of the underlying policies. However, because we incur significant cash outflows at or about the time policies are issued, including the payment of sales commissions and underwriting costs, changes in life insurance sales volume in a period will have a more immediate impact on our cash flows than on revenue and expense recognition in that period.

Historically, we have found that while sales volume of term life insurance products between fiscal periods may vary based on a variety of factors, the productivity of sales representatives generally remains within a range (i.e., an average monthly rate of new policies issued per life-licensed independent sales representative between 0.18 and 0.22). The volume of term life insurance products sales will fluctuate in the short term, but over the longer term, our sales volume generally correlates to the size of the independent sales force.

Pricing assumptions. Our pricing methodology is intended to provide us with appropriate profit margins for the risks we assume. We determine pricing classifications based on the coverage sought, such as the size and term of the policy, and certain policyholder attributes, such as age and health. In addition, we generally utilize unisex rates for term life insurance policies. The pricing assumptions that underlie our rates are based upon our best estimates of mortality, persistency, disability, and interest rates at the time of issuance, sales force commission rates, issue and underwriting expenses, operating expenses and the characteristics of the insureds, including the distribution of sex, age, underwriting class, product and amount of coverage. Our results will be affected to the extent there is a variance between our pricing assumptions and actual experience.

- *Persistency*. Persistency is a measure of how long our insurance policies stay in-force. As a general matter, persistency that is lower than our pricing assumptions adversely affects our results over the long term because we lose the recurring revenue stream associated with the policies that lapse. Determining the near-term effects of changes in persistency is more complicated. When actual persistency is lower than our pricing assumptions, we must accelerate the amortization of deferred policy acquisition costs (“DAC”). The resultant increase in amortization expense is offset by a corresponding release of reserves associated with lapsed policies, which causes a reduction in benefits and claims expense. The future policy benefit reserves associated with any given policy will change over the term of such policy. As a general matter, future policy benefit reserves are lowest at the inception of a policy term and rise steadily to a peak before declining to zero at the expiration of the policy term. Accordingly, depending on when the lapse occurs in relation to the overall policy term, the reduction in benefits and claims expense may be greater or less than the increase in amortization expense, and, consequently, the effects on earnings for a given period could be positive or negative. Persistency levels will impact results to the extent actual experience deviates from the persistency assumptions that are locked-in at time of issue.
- *Mortality.* Our profitability will fluctuate to the extent actual mortality rates differ from the assumptions that are locked-in at time of issue. We mitigate a significant portion of our mortality exposure through reinsurance.
- *Disability.* Our profitability will fluctuate to the extent actual disability rates, including recovery rates for individuals currently disabled, differ from the assumptions that are locked-in at the time of issue or time of disability.
- *Interest Rates.* We use an assumption for future interest rates that initially reflects the portfolio’s current reinvestment rate gradually increasing over seven years to a level consistent with our expectation of future yield growth. Both DAC and the future policy benefit reserve liability increase with the assumed interest rate. Since DAC is higher than the future policy benefit reserve liability in the early years of a policy, a lower assumed interest rate generally will result in lower profits. In the later years, when the future policy benefit reserve liability is higher than DAC, a lower assumed interest rate generally will result in higher profits. These assumed interest rates, which like other pricing assumptions are locked-in at issue, impact the timing but not the aggregate amount of DAC and future policy benefit reserve changes. We allocate net investment income generated by the investment portfolio to the Term Life Insurance segment in an amount equal to the assumed net interest accreted to the segment’s U.S. generally accepted accounting principles (“U.S. GAAP”)-measured

future policy benefit reserve liability less DAC. All remaining net investment income, and therefore the impact of actual interest rates, is attributed to the Corporate and Other Distributed Products segment.

Reinsurance. We use reinsurance extensively, which has a significant effect on our results of operations. We have generally reinsured between 80% and 90% of the mortality risk on term life insurance (excluding coverage under certain riders) on a quota share yearly renewable term (“YRT”) basis. To the extent actual mortality experience is more or less favorable than the contractual rate, the reinsurer will earn incremental profits or bear the incremental cost, as applicable. In contrast to coinsurance, which is intended to eliminate all risks (other than counterparty risk of the reinsurer) and rewards associated with a specified percentage of the block of policies subject to the reinsurance arrangement, the YRT reinsurance arrangements we enter into are intended only to reduce volatility associated with variances between estimated and actual mortality rates.

In 2010, as part of our corporate reorganization and the initial public offering of our common stock, we entered into significant coinsurance transactions (the “IPO coinsurance transactions”) with entities then affiliated with Citigroup, Inc. (collectively, the “IPO coinsurers”) and ceded between 80% and 90% of the risks and rewards of term life insurance policies that were in-force at year-end 2009. We administer all such policies subject to these coinsurance agreements. Policies reaching the end of their initial level term period are no longer ceded under the IPO coinsurance transactions.

The effect of our reinsurance arrangements on ceded premiums and benefits and expenses on our statements of income follows:

- *Ceded premiums.* Ceded premiums are the premiums we pay to reinsurers. These amounts are deducted from the direct premiums we earn to calculate our net premium revenues. Similar to direct premium revenues, ceded coinsurance premiums remain level over the initial term of the insurance policy. Ceded YRT premiums increase over the period that the policy has been in-force. Accordingly, ceded YRT premiums generally constitute an increasing percentage of direct premiums over the policy term.
- *Benefits and claims.* Benefits and claims include incurred claim amounts and changes in future policy benefit reserves. Reinsurance reduces incurred claims in direct proportion to the percentage ceded. Coinsurance also reduces the change in future policy benefit reserves in direct proportion to the percentage ceded, while YRT reinsurance does not significantly impact the change in these reserves.
- *Amortization of DAC.* DAC, and therefore amortization of DAC, is reduced on a pro-rata basis for the coinsured business, including the business reinsured with the IPO coinsurers. There is no impact on amortization of DAC associated with our YRT contracts.
- *Insurance expenses.* Insurance expenses are reduced by the allowances received from coinsurance. There is no impact on insurance expenses associated with our YRT contracts.

We may alter our reinsurance practices at any time due to the unavailability of YRT reinsurance at attractive rates or the availability of alternatives to reduce our risk exposure. We presently intend to continue ceding approximately 90% of our U.S. and Canadian mortality risk on new business.

Expenses. Results are also affected by variances in client acquisition, maintenance and administration expense levels.

Investment and Savings Products Segment. The Investment and Savings Products segment results are primarily driven by sales, the value of assets in client accounts for which we earn ongoing management, marketing and support, and distribution fees, and the number of transfer agent recordkeeping positions and non-bank custodial fee-generating accounts we administer.

Sales. We earn commissions and fees, such as dealer re-allowances and marketing and distribution fees, based on sales of mutual fund products and annuities in the United States and sales of certain mutual fund products in Canada. Sales of investment and savings products are influenced by the overall demand for investment products in the United States and Canada, as well as by the size and productivity of the independent sales force. We generally experience seasonality in the Investment and Savings Products segment results due to our high concentration of sales of retirement account products. These accounts are typically funded in February through April, coincident with our clients’ tax return preparation season. While we believe the size of the independent sales force is a factor in driving sales volume in this segment, there are a number of other variables, such as economic and market conditions, which may have a significantly greater effect on sales volume in any given fiscal period.

Asset values in client accounts. We earn marketing and distribution fees (trail commissions or, with respect to U.S. mutual funds, 12b-1 fees) on mutual fund and annuity assets in the United States and Canada. In the United States, we also earn investment advisory and administrative fees on assets in managed investments. In Canada, we earn marketing, distribution, and shareholder services fees on mutual fund assets for which we serve as the principal distributor and management fees on the segregated funds for which we serve as investment manager. Asset values are influenced by new product sales, ongoing contributions to existing accounts, redemptions and the change in market values in existing accounts. While we offer a wide variety of asset classes and investment styles, our clients’ accounts are primarily invested in equity funds. Volatility in equity markets will impact the value of assets in client accounts and in turn impact the revenue we earn on those assets.

Positions. We earn transfer agent recordkeeping fees for administrative functions we perform on behalf of several of our mutual fund providers. An individual client account may include multiple fund positions for which we earn transfer agent recordkeeping fees. We may also receive fees earned for non-bank custodial services that we provide to clients with retirement plan accounts.

Sales mix. While our investment and savings products all provide similar long-term economic returns to the Company, our results in a given fiscal period will be affected by changes in the overall mix of products within these categories. Examples of changes in the sales mix that influence our results include the following:

- sales of annuity products in the United States will generate higher revenues in the period such sales occur than sales of other investment products that either generate lower upfront revenues or, in the case of managed investments and segregated funds, no upfront revenues;
- sales of a higher proportion of managed investments, Canadian mutual funds, and segregated funds products will spread the revenues generated over time because we earn higher revenues based on assets under management for these accounts each period as opposed to earning upfront revenues based on product sales; and
- sales of a higher proportion of mutual fund products sold will impact the timing and amount of revenue we earn given the distinct transfer agent recordkeeping and non-bank custodial services we provide for certain mutual fund products we distribute.

Senior Health Segment. The Senior Health segment results are primarily driven by approved policies, LTV per approved policy and tail revenue adjustments, CAC per approved policy, and other revenue.

Approved policies. Approved policies represent submitted policies approved by health insurance carriers for the identified product during the indicated period. Not all approved policies will go in force. In general, the relationship between submitted policies and approved policies has been seasonally consistent. Therefore, factors impacting the number of submitted policies generally impact the number of approved policies. Revenue is primarily generated from approved policies and LTVs are recorded when the enrollment is approved by the applicable health insurance carrier. Medicare Advantage plans make up the substantial portion of the approved policies we distribute. The number of approved policies are influenced by the following:

- the size and growth of the population of senior citizens in the United States;
- the appeal of government-funded Medicare Advantage plans that provide privately administered healthcare coverage with enhanced benefits relative to original Medicare;
- our ability to generate and obtain leads for our team of e-TeleQuote licensed health insurance agents;
- our ability to staff and train our team of e-TeleQuote licensed health insurance agents to manage leads and help eligible Medicare participants through the enrollment process; and
- our health insurance carrier relationships that allow us to offer plans that most appropriately meet eligible Medicare participants' needs.

LTV per approved policy and tail revenue adjustments. When a policy is approved by the health insurance carrier, commission revenue is recognized based on an estimated LTV per approved policy. LTV per approved policy is the cumulative total of commissions estimated to be collected over the expected life of a policy, subject to constraints applied in accordance with our revenue recognition policy. Specifically, LTV per approved policy is equal to the sum of the initial commissions, less an estimate of chargebacks for paid policies that are disenrolled in the first policy year, plus forecasted renewal commissions. This estimate is driven by a number of factors including, but not limited to, contracted commission rates from carriers, expected policy turnover, emerging chargeback activity and applied constraints. These factors may result in varying values from period to period.

We recognize adjustments to revenue outside of LTV for approved policies from prior periods when our cash collections are, or are expected to be, different from the estimated constrained LTVs, which we refer to as tail revenue adjustments. The recognition of tail revenue adjustments results from a change in the estimate of expected cash collections when actual cash collections or communicated rate increases have indicated a trend that is different from the estimated constrained LTV. Tail revenue adjustments can be positive or negative and we recognize positive adjustments to revenue when we do not believe it is probable that a significant reversal of cumulative revenue will occur.

CAC per approved policy. Results are also driven by the costs of acquisition, which is defined as the total direct costs incurred per approved policy. Our costs of acquisition are primarily comprised of the cost to generate and acquire leads, including fees paid to Primerica Senior Health certified independent sales representatives, and the labor, benefits, bonus compensation, licensing and training costs associated with our team of e-TeleQuote licensed health insurance agents. Other than costs incurred to assist beneficiaries with switching plans within the same carrier, we incur our entire cost of approved policies prior to enrollment and prior to receiving our first commission related payment. Factors that impact our costs of acquisition per approved policy include:

- the market price of externally-generated leads;
- our ability to efficiently procure internally-generated leads; and
- the productivity of our e-TeleQuote licensed health insurance agents in converting procured leads into approved policies.

Other revenue. Other revenue recognized in the Senior Health segment includes marketing development revenues received for providing marketing services to certain health insurance carriers. Marketing development revenue provides additional revenue to deliver approved policies and are based on meeting agreed-upon objectives with certain health insurance carriers. Marketing

development revenue serves to offset contract acquisition costs associated with distribution of approved policies. Agreements for marketing development revenue are generally short-term in nature and can vary from period to period.

Corporate and Other Distributed Products Segment. We earn revenues and pay commissions and referral fees within the Corporate and Other Distributed Products segment for mortgage loan originations, prepaid legal services, auto and homeowners' insurance referrals, and other financial products, all of which are originated by third parties. The Corporate and Other Distributed Products segment also includes in-force policies from several discontinued lines of insurance underwritten by National Benefit Life Insurance Company ("NBLIC").

Corporate and Other Distributed Products segment net investment income reflects actual net investment income recognized by the Company less the amount allocated to the Term Life Insurance segment based on the assumed net interest accreted to the segment's U.S. GAAP-measured future policy benefit reserve liability less DAC. Actual net investment income reflected in the Corporate and Other Distributed Products segment is impacted by the size and performance of our invested asset portfolio, which can be influenced by interest rates, credit spreads, and the mix of invested assets.

The Corporate and Other Distributed Products segment also includes corporate income and expenses not allocated to our other segments, general and administrative expenses (other than expenses that are allocated to the Term Life Insurance or Investment and Savings Products segments), interest expense on notes payable, redundant reserve financing transactions and our revolving credit facility ("Revolving Credit Facility"), as well as realized gains and losses on our invested asset portfolio.

Capital Structure. Our financial results are affected by our capital structure, which includes our senior unsecured notes (the "Senior Notes"), redundant reserve financing transactions, our Revolving Credit Facility, and our common stock. See Note 10 (Debt), Note 12 (Stockholders' Equity) and Note 16 (Commitments and Contingent Liabilities) to our consolidated financial statements included elsewhere in this report for more information on changes in our capital structure.

Foreign Currency. The Canadian dollar is the functional currency for our Canadian subsidiaries and our consolidated financial results, reported in U.S. dollars, are affected by changes in the currency exchange rate. As such, the translated amount of revenues, expenses, assets and liabilities attributable to our Canadian subsidiaries will be higher or lower in periods where the Canadian dollar appreciates or weakens relative to the U.S. dollar, respectively.

The year-end exchange rates (USD per CAD) used by the Company to translate our Canadian dollar functional currency assets and liabilities into U.S. dollars decreased by 7% in 2022 from 2021. Also, the average exchange rates used by the Company in 2022 to translate our Canadian dollar functional currency revenues and expenses into U.S. dollars decreased 4% compared to 2021.

See the Results of Operations section, the Financial Condition section, and "Quantitative and Qualitative Disclosures About Market Risk – Canadian Currency Risk" and Note 3 (Segment and Geographical Information) to our consolidated financial statements included elsewhere in this report, for more information on our Canadian subsidiaries and the impact of foreign currency on our financial results.

Income Taxes. The profitability of the Company and its subsidiaries is affected by income taxes assessed by federal, state, and U.S. territorial jurisdictions in the U.S. and federal and provincial jurisdictions in Canada. Changes in tax legislation may impact the measurement of our deferred tax assets and liabilities and the amount of income tax expense we incur.

Critical Accounting Estimates

We prepare our financial statements in accordance with U.S. GAAP. These principles are established primarily by the Financial Accounting Standards Board. The preparation of financial statements in conformity with U.S. GAAP requires us to make estimates and assumptions based on currently available information when recording transactions resulting from business operations. Our significant accounting policies are described in Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies) to our consolidated financial statements included elsewhere in this report. The most significant items on our consolidated balance sheets are based on fair value determinations, accounting estimates and actuarial determinations, which are susceptible to changes in future periods and could affect our results of operations and financial position.

The estimates that we deem to be most critical to an understanding of our results of operations and financial position are those related to DAC, future policy benefit reserves and corresponding amounts recoverable from reinsurers, income taxes, renewal commissions receivable, goodwill and the valuation of investments. The preparation and evaluation of these critical accounting estimates involve the use of various assumptions developed from management's analyses and judgments. Subsequent experience or use of other assumptions could produce significantly different results.

Deferred Policy Acquisition Costs. We defer incremental direct costs of successful contract acquisitions that result directly from and are essential to the contract transaction(s) and that would not have been incurred had the contract transaction(s) not occurred. These costs include commissions and policy issue expenses. Deferrable term life insurance policy acquisition costs are amortized over the initial level premium-paying period of the related policies in proportion to premium income and include assumptions made by us regarding persistency, expenses, interest rates and claims, which are updated on new business to reflect recent experience. In accordance with current U.S. GAAP, assumptions are not allowed to be modified, or unlocked on in-force term life insurance business, unless recoverability testing deems estimated future cash flows to be inadequate. DAC is subject to recoverability testing annually and when circumstances indicate that recoverability is uncertain.

The DAC balance in the Term Life Insurance segment is susceptible to differences between estimated and actual persistency experience, which could impact the DAC amortization expense. The impact is more pronounced for early duration lapse variance than later durations.

Beginning in 2023, we will be reporting under Accounting Standards Update No. 2018-12, Financial Services—Insurance (Topic 944) — Targeted Improvements to the Accounting for Long-Duration Contracts (“ASU 2018-12” or “LDTI”). We will adopt ASU 2018-12 when we issue our condensed consolidated financial statements as of and for the three months ending March 31, 2023 via the modified retrospective method, which will allow us to carryover our historical DAC balance as of the January 1, 2021 adoption date. ASU 2018-12 includes changes to how insurance companies that issue long-duration contracts amortize DAC by eliminating the accretion of interest and providing for amortization on a straight-line basis over the coverage period. We have determined that we will use current face amount as the unit of measure to amortize DAC for our term life insurance products and will use policy count as the unit of measure to amortize DAC for our Canadian segregated funds products. We will also amortize DAC under LDTI based on policy cohorts rather than on a seriatim basis. As a result of these changes, we expect the DAC amortization on our term life insurance products to be slower and less volatile under LDTI compared to current U.S. GAAP. For Canadian segregated funds products, we also expect DAC amortization under LDTI to be less volatile than under current U.S. GAAP. The standard no longer locks in assumptions and also removes the DAC recoverability testing requirement. For additional information on DAC, see Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies) and Note 7 (Deferred Policy Acquisition Costs) to our consolidated financial statements included elsewhere in this report.

Future Policy Benefit Reserves and Reinsurance. Liabilities for future policy benefits on our term life insurance products are reserves established for death claims and waiver of premium benefits and have been computed using a net level method and include assumptions as to mortality, persistency, interest rates, disability rates, and other assumptions based on our historical experience, modified as necessary for new business to reflect anticipated trends and to include provisions for possible adverse deviation. Reserves related to reinsured policies are accounted for using assumptions consistent with those used to determine the future policy benefit reserves and are included in reinsurance recoverables in our consolidated balance sheets. Similar to the term life insurance DAC discussion above, we do not modify the assumptions used to establish future policy benefit reserves during the policy term under current U.S. GAAP unless recoverability testing deems them to be inadequate and there is no remaining DAC associated with the underlying policies. Our results depend significantly upon the extent to which our actual experience is consistent with the assumptions we used in determining our future policy benefit reserves. Our future policy benefit reserve assumptions and estimates require significant judgment and, therefore, are inherently uncertain. We cannot determine with precision the ultimate amounts that we will pay for actual claims or the timing of those payments.

Similar to DAC, the balances of future policy benefit reserves and reinsurance recoverables have been susceptible to differences between estimated and actual persistency experience.

As noted above, the Company will adopt ASU 2018-12 effective January 1, 2023 via the modified retrospective method. The amendments in this update change accounting guidance for insurance companies that issue long-duration contracts, including term life insurance. ASU 2018-12 requires companies that issue long-duration insurance contracts to update cash flow assumptions used in measuring future policy benefits, including mortality, disability, and persistency, at least annually instead of locking those assumptions at contract inception and reflecting differences in assumptions and actual cash flows as the experience occurs. The impact of assumption changes and experience variances will be partly reflected in the period of the change and partly spread to future periods, based on the remaining duration of the impacted policy cohort(s), by unlocking the net premium ratio used to measure future policy benefits for the impacted policy cohort(s) (referred to as a “cohort”).

ASU 2018-12 also includes changes to how insurance companies that issue long-duration contracts update the discount rate assumptions used in measuring future policy benefits reserves while increasing the level of financial statement disclosures required. Changes in the future policy benefit reserves as a result of updating current market observable rates are recorded through accumulated other comprehensive income. The adoption of ASU 2018-12 will have an impact on our consolidated financial statements and related disclosures and will require changes to our processes, systems, and controls. We anticipate a reduction of approximately $1.2 billion to $1.5 billion (net of income tax) in accumulated other comprehensive income in the equity section of our consolidated balance sheet on the transition date, January 1, 2021 (the “Transition Date”). The expected impact on our consolidated balance sheet is the net effect of revaluing future policy benefits liabilities and reinsurance recoverables using current interest rates prescribed by the standard as of the Transition Date versus interest rate assumptions locked in when the policies were issued. We maintain a large volume of policies in our term life business written over several decades and policies written several years ago include interest rate assumptions that were made when rates were much higher than they were on the Transition Date. Since the Transition Date, market observable rates have increased and the impact to accumulated other comprehensive income as of December 31, 2022 will be much less significant. As observed since the Transition Date, changes in current interest rates from period to period will create volatility in the amount of accumulated other comprehensive income recognized. For additional information on future policy benefits, reinsurance and the impact to accumulated other comprehensive income see Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies) and Note 6 (Reinsurance) to our consolidated financial statements included elsewhere in this report.

Income Taxes. We account for income taxes using the asset and liability method. We recognize deferred tax assets and liabilities for the future tax consequences attributable to (i) temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and (ii) operating loss and tax credit carryforwards. Deferred tax assets are

recognized subject to management's judgment that realization is more likely than not applicable to the periods in which we expect the temporary difference will reverse. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled.

In light of the multiple tax jurisdictions in which we operate, our tax returns are subject to routine audit by the Internal Revenue Service and other taxation authorities. These audits at times may produce alternative views regarding particular tax positions taken in the year(s) of review. As a result, the Company records uncertain tax positions, which require recognition at the time when it is deemed more likely than not that the position in question will be upheld. Although management believes that the judgment and estimates involved are reasonable and that the necessary provisions have been recorded, changes in circumstances or unexpected events could adversely affect our financial position, results of operations, and cash flows.

For additional information on income taxes, see Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies) and Note 11 (Income Taxes) to our consolidated financial statements included elsewhere in this report.

Renewal commissions receivable. We earn commissions when e-TeleQuote enrolls individual insurance policies on behalf of its customers, third-party health insurance carriers. We have no further obligations to our customers once an eligible Medicare participant is enrolled. We are entitled to commissions at the time the initial policy is approved by the health insurance carrier and are entitled to renewal commissions for as long as the policy renews. The estimate of renewal commissions is part of the variable consideration recognized and requires significant judgment including determining the number of periods in which a renewal will occur and the value of those renewal commissions to be received if renewed. We utilize the expected value approach to do this, incorporating a combination of historical lapse data and effective commission rates to estimate forecasted renewal consideration. We apply a constraint on our estimate of renewal commissions so that it is probable that a significant reversal in the amount of cumulative revenue will not occur. Variable consideration in excess of the amount constrained is recognized in subsequent reporting periods when the uncertainty is resolved.

We utilize a practical expedient to estimate renewal commissions revenue by applying the use of a portfolio approach to policies grouped together by health insurance carrier, Medicare product type, and policy effective date. This provides a practical approach to estimating the renewal commissions expected to be collected by evaluating various factors, including but not limited to, contracted commission rates, disenrollment experience and renewal persistency rates. We continuously evaluate the assumptions and inputs into our calculation of renewal commissions revenue and refine our estimates based on current information. There could be situations where new facts or circumstances, that were not available at the time of the initial estimate, may indicate that the renewal commissions receivable recognized is higher or lower than our original expectation of renewal commissions that will be collected. In those situations, the renewal commissions receivable will be written down or up to its revised expected value by recording tail revenue adjustments. During 2022, we recorded $18.9 million in net negative tail revenue adjustments as retention for policies scheduled to renew was lower than expected.

During 2022, we also recorded a $11.9 million measurement period adjustment to reduce the acquisition date balance of renewal commissions receivable upon the expiration of the purchase price measurement period on June 30, 2022, one year subsequent to the acquisition date of e-TeleQuote. The adjustment resulted from the Company's reassessment of the estimates made by e-TeleQuote for variable consideration expected for approved policies as of the acquisition date. The reassessment of estimates involved the implementation of an enhanced algorithmic model for processing historical lapse data and forecasting future policy duration curves. For additional information on measurement period adjustments, see Note 20 (Acquisition) to our consolidated financial statements included elsewhere in this report.

Goodwill. In applying the acquisition method of accounting for the e-TeleQuote business combination, amounts assigned to identifiable assets and liabilities acquired are based on estimated fair values as of the date of acquisition, subject to certain exceptions, with the remainder recorded as goodwill. Significant judgment is used to determine the value of the acquired assets and liabilities as well as the purchase consideration for non-controlling interests. Key assumptions used to develop these estimates include projected revenue, expenses, and cash flows, weighted average cost of capital, estimates of customer turnover rates, estimates of terminal values, forward-looking estimates of peer company values, and assessment of the probabilities of the earnout metrics.

Goodwill is tested at the reporting unit level, all of which is attributable to the Senior Health segment (which is defined as the reporting unit). The annual date used by the Company to test goodwill for impairment is July 1. The Company will also test goodwill for impairment between annual tests if an event occurs or circumstances change that would more likely than not result in the fair value of the Senior Health reporting unit being lower than its carrying value.

As of July 1, 2022, the Company performed a quantitative impairment analysis using the income approach by preparing a discounted cash flow analysis to determine the reporting unit's fair value. The discounted cash flow analysis included key assumptions such as the weighted average cost of capital ("WACC"), long-term growth rate, and projected operating results such as approved policies, lifetime value of commissions, contract acquisition costs, operating expenses, collections of renewal commissions receivable, and utilization of net operating losses for income tax purposes. We did not utilize a market approach as part of the quantitative impairment analysis because we believe management's expectation of the cash flows generated by the reporting unit were more relevant in determining the fair value given inherent limitations in the credibility of available peer company data.

After the fair value of the reporting unit was determined, the Company calculated its carrying value by taking the reporting unit's assets minus its liabilities. The carrying value of the reporting unit was than compared to its fair value to determine the extent of any goodwill impairment. Based on this analysis, we recognized goodwill impairment charges of $60.0 million, which represent the excess of the Senior Health reporting unit's carrying value over its estimated fair value at July 1, 2022. The goodwill impairment charges

recognized did not impact the Company’s income tax expense as the goodwill acquired from the e-TeleQuote acquisition does not have any tax basis. The decline in the reporting unit's fair value below its carrying value was primarily attributable to an increase in the market-based WACC used to discount the forecasted cash flows. The increase in the WACC was driven by recent increases in the equity market risk premium and higher interest rates. The determination of whether the carrying value of the reporting unit exceeds its fair value involves a high degree of estimation and can be affected by a number of industry and company-specific risk factors that are subject to change over time.

For additional information on goodwill, see Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies) and Note 21 (Goodwill) to our consolidated financial statements included elsewhere in this report.

Invested Assets. We hold primarily fixed-maturity securities, including bonds and redeemable preferred stocks. We have classified these invested assets as available-for-sale, except for the securities of our U.S. broker-dealer subsidiary, which we have classified as trading securities. We also hold a credit-enhanced note, which we classified as a held-to-maturity security that was issued in exchange for a surplus note (the “Surplus Note”) with an equal principal amount as part of a redundant reserve financing transaction. All of these securities are carried at fair value, except for the held-to-maturity security, which is carried at amortized cost. Unrealized gains and losses on available-for-sale securities are included as a separate component of other comprehensive income in our consolidated statements of comprehensive income.

We also hold equity securities, including common and non-redeemable preferred stock. These equity securities are measured at fair value and changes in unrealized gains and losses are recognized in net income. Changes in fair value of trading securities are included in net income in the accompanying consolidated statements of income in the period in which the change occurred.

Fair value. Fair value is the price that would be received upon the sale of an asset in an orderly transaction between market participants at the measurement date. Fair value measurements are based upon observable and unobservable inputs. Observable inputs reflect market data obtained from independent sources, while unobservable inputs reflect our view of market assumptions in the absence of observable market information. We classify and disclose all invested assets carried at fair value in one of the three fair value measurement categories prescribed by U.S. GAAP.

As of each reporting period, we classify all invested assets in their entirety based on the lowest level of input that is significant to the fair value measurement. Significant levels of estimation and judgment are required to determine the fair value of certain of our investments. The factors influencing these estimations and judgments are subject to change in subsequent reporting periods.

Credit Losses for Available-for-sale Fixed-maturity Securities. For available-for-sale securities in an unrealized loss position that we intend to sell or would more-likely-than-not be required to sell before the expected recovery of the amortized cost basis, we recognize the impairment as a credit loss in our consolidated statements of income by writing down the amortized cost basis to the fair value. For available-for-sale securities in an unrealized loss position that we do not intend to sell or it is not more-likely-than-not that we will be required to sell before the expected recovery of the amortized cost basis, we recognize the portion of the impairment that is due to a credit loss in our consolidated statements of income through an allowance. We reverse credit losses previously recognized in the allowance in situations where the estimate of credit losses on those securities has declined. We do not consider the length of time an available-for-sale security has been in an unrealized loss position when estimating credit losses.

Analyses that we perform to determine whether an impairment is due to a credit loss or other factors involve the use of estimates, assumptions, and subjectivity. We evaluate a number of quantitative and qualitative factors when determining the credit loss on individual securities, including issuer-specific risks as well as relevant macroeconomic risks. If these factors or future events change, we could experience material credit losses recognized in our consolidated statements of income for available-for-sale securities in future periods, which could adversely affect our financial condition, results of operations and the size and quality of our invested assets portfolio.

For additional information on our invested assets, see Note 1 (Description of Business, Basis of Presentation, and Summary of Significant Accounting Policies), Note 4 (Investments) and Note 5 (Fair Value of Financial Instruments) to our consolidated financial statements included elsewhere in this report.

Results of Operations

Revenues. Our revenues consist of the following:

- *Net premiums.* Reflects direct premiums payable by our policyholders on our in-force insurance policies, primarily term life insurance, net of reinsurance premiums that we pay to reinsurers.
- *Commissions and fees.* Consists primarily of dealer re-allowances earned on the sales of investment and savings products, trail commissions and management fees based on the asset values of client accounts, marketing and distribution fees from product originators, fees for non-bank custodial services rendered in our capacity as nominee on client retirement accounts funded by mutual funds on our servicing platform, transfer agent recordkeeping fees for mutual funds on our servicing platform, and fees associated with the sale of other distributed products. Also consists of commissions and fees earned from the distribution of Medicare-related insurance products on behalf of health insurance carriers.

• *Net investment income*. Represents income, net of investment-related expenses, generated by our invested asset portfolio, which consists primarily of interest income earned on fixed-maturity investments. Investment income recorded on our held-to-maturity invested asset and the offsetting interest expense recorded for our Surplus Note are included in net investment income.
• *Investment gains (losses)*. Primarily reflects the difference between amortized cost and amounts realized on the sale of available-for-sale securities, credit losses recognized on available-for-sale securities and changes in the fair value of equity securities.
• *Other, net*. Reflects revenues generated from the fees charged for access to Primerica Online ("POL"), our primary sales force support tool, marketing development revenue received from health insurance carriers, as well as revenues from the sale of other miscellaneous items.

Benefits and Expenses. Our operating expenses consist of the following:

• *Benefits and claims.* Reflects the benefits and claims payable on insurance policies, changes in our reserves for future policy claims and reserves for other benefits payable, net of reinsurance.
• *Amortization of DAC.* Represents the amortization of capitalized costs directly associated with the sale of an insurance policy or segregated fund, including sales commissions, medical examination and other underwriting costs, and other eligible policy issuance costs.
• *Sales commissions*. Represents commissions to the sales representatives in connection with the sale of investment and savings products, and products other than insurance products.
• *Insurance expenses.* Reflects non-capitalized insurance expenses, including staff compensation, technology and communications, insurance independent sales force-related costs, printing, postage and distribution of insurance sales materials, outsourcing and professional fees, premium taxes, and other corporate and administrative fees and expenses related to our insurance operations. Insurance expenses also include both indirect policy issuance costs and costs associated with unsuccessful efforts to acquire new policies.
• *Insurance commissions*. Reflects sales commissions with respect to insurance products that are not eligible for deferral.
• *Contract acquisition costs.* Reflects the total direct costs incurred to acquire an approved policy during the period on Senior Health products. Contract acquisition costs are primarily comprised of the cost to generate and acquire compliant leads and the labor, benefits, incentive compensation and training costs associated with our team of e-TeleQuote licensed health insurance agents. The number of e-TeleQuote licensed health insurance agents, agent tenure and attrition rate all impact CAC.
• *Interest expense.* Reflects interest on our notes payable, any interest and the commitment fee on our Revolving Credit Facility, the financing charges related to the letter of credit issued under the credit facility agreement with Deutsche Bank, fees paid for the credit enhancement feature on our held-to-maturity invested asset, and a finance charge incurred pursuant to one of our coinsurance agreements with an IPO coinsurer.
• *Goodwill impairment loss.* Represents the excess of the Senior Health reporting unit's carrying value over its estimated fair value.
• *Loss on extinguishment of debt.* Consists primarily of the make whole premium paid in 2021 to extinguish senior notes issued in 2012 prior to the scheduled 2022 maturity date.
• *Other operating expenses.* Consists primarily of expenses that are unrelated to the distribution of life insurance products, including staff compensation, technology and communications, various sales force-related costs, non-bank custodial and transfer agent recordkeeping administrative costs, outsourcing and professional fees, and other corporate and administrative fees and expenses.

Insurance expenses and other operating expenses directly attributable to the Term Life Insurance, Investment and Savings Products and Senior Health segments are recorded directly to the applicable segment. We allocate certain other revenue and operating expenses that are not directly attributable to a specific operating segment using methods expected to reasonably measure the benefit received by each reporting segment. Such methods include time studies, recorded usage, revenue distribution, and sales force representative distribution. These allocated items include fees charged for access to POL and costs incurred for technology, sales force support, occupancy and other general and administrative costs. Costs that are not directly charged or allocated to our three primary operating segments are included in the Corporate and Other Distributed Products segment.

Primerica, Inc. and Subsidiaries Results. Our results of operations for the years ended December 31, 2022, 2021, and 2020 were as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change [1]	
	2022	2021	2020[1]	$	%	$	%
	(Dollars in thousands)						
Revenues:							
Direct premiums	$ 3,230,120	$ 3,122,148	$ 2,907,149	$ 107,972	3 %	$ 214,999	7 %
Ceded premiums	(1,629,892)	(1,616,264)	(1,580,766)	13,628	*	35,498	2 %
Net premiums	1,600,228	1,505,884	1,326,383	94,344	6 %	179,501	14 %
Commissions and fees	944,676	1,042,813	751,271	(98,137)	(9)%	291,542	39 %
Investment income net of investment expenses	156,987	142,795	141,287	14,192	10 %	1,508	1 %
Interest expense on surplus note	(63,922)	(62,207)	(57,473)	1,715	3 %	4,734	8 %
Net investment income	93,065	80,588	83,814	12,477	15 %	(3,226)	(4)%
Realized investment gains (losses)	1,444	4,665	1,359	(3,221)	*	3,306	*
Other investment gains (losses)	(2,439)	1,207	(6,355)	(3,646)	*	7,562	*
Investment gains (losses)	(995)	5,872	(4,996)	(6,867)	*	10,868	*
Other, net	83,159	74,575	61,069	8,584	12 %	13,506	22 %
Total revenues	2,720,133	2,709,732	2,217,541	10,401	*	492,191	22 %
Benefits and expenses:							
Benefits and claims	665,749	722,753	615,569	(57,004)	(8)%	107,184	17 %
Amortization of DAC	356,143	251,179	224,321	104,964	42 %	26,858	12 %
Sales commissions	462,764	522,308	376,636	(59,544)	(11)%	145,672	39 %
Insurance expenses	235,405	202,605	188,117	32,800	16 %	14,488	8 %
Insurance commissions	30,261	34,532	32,134	(4,271)	(12)%	2,398	7 %
Contract acquisition costs	68,431	52,788	-	15,643	30 %	52,788	*
Interest expense	27,237	30,618	28,839	(3,381)	(11)%	1,779	6 %
Goodwill impairment loss	60,000	76,000	-	(16,000)	(21)%	76,000	*
Loss on extinguishment of debt	-	8,927	-	(8,927)	*	8,927	*
Other operating expenses	320,394	296,851	245,195	23,543	8 %	51,656	21 %
Total benefits and expenses	2,226,384	2,198,561	1,710,811	27,823	1 %	487,750	29 %
Income before income taxes	493,749	511,171	506,730	(17,422)	(3)%	4,441	1 %
Income taxes	125,775	139,191	120,566	(13,416)	(10)%	18,625	15 %
Net income	367,974	371,980	386,164	(4,006)	(1)%	(14,184)	(4)%
Net income (loss) attributable to noncontrolling interests	(5,038)	(1,377)	-	(3,661)	(266)%	(1,377)	*
Net income attributable to Primerica, Inc.	$ 373,012	$ 373,357	$ 386,164	$ (345)	*	$ (12,807)	(3)%

[1] Refer to the 2021 MD&A for discussions of 2020 items and comparisons between 2021 and 2020 financial results.
* Less than 1% or not meaningful

Total revenues. Total revenues increased in 2022 from 2021 primarily driven by growth in net premiums in the Term Life segment. The increase in Term Life segment net premiums was driven by incremental premiums on term life insurance policies that are not subject to the IPO coinsurance transactions as well as the layering effect of life insurance sales. Commissions and fees decreased due to lower sales-based revenues driven by lower demand for variable annuity and mutual funds investment products.

Net investment income increased in 2022 from 2021 due to $9.0 million from higher yields in the invested asset portfolio and $5.4 million from a larger invested asset portfolio compared to the prior year. Investment income net of investment expenses includes interest earned on our held-to-maturity asset, which is offset by interest expense on the Surplus Note, thereby eliminating any impact on net investment income. Amounts recognized for each line item will remain offsetting and will fluctuate from period to period along with the principal amounts of the held-to-maturity asset and the Surplus Note based on the balance of reserves being contractually supported under a redundant reserve financing transaction used by Vidalia Re, Inc. (“Vidalia Re”). For more information on the Surplus Note, see Note 4 (Investments) and Note 10 (Debt) to our unaudited consolidated financial statements included elsewhere in this report.

Investment gains (losses) decreased to a loss during 2022 compared to a gain in 2021 primarily due to a $2.4 million negative mark-to-market adjustment on equity securities held within our investment portfolio in 2022 as a result of negative equity market performance compared to a $2.4 million positive mark-to-market adjustment on equity securities held within our investment portfolio in the comparable 2021 period.

Other, net revenues increased in 2022 from 2021 primarily due to the timing of the acquisition of e-TeleQuote on July 1, 2021. A full year of marketing development revenue was included in the Senior Health segment in 2022 compared to only six months in 2021. Also contributing to the increase in Other, net revenues was an increase in fees received for access to POL, our primary sales force support tool, consistent with subscriber growth.

Total benefits and expenses. Total benefits and expenses increased in 2022 from 2021 primarily due to growth in the amortization of DAC as a result of lower year-over-year persistency in the Term Life Insurance segment's in-force book of business, as well as higher

contract acquisitions costs in the Senior Health segment as a result of the acquisition of e-TeleQuote on July 1, 2021. Insurance and other operating expenses were also higher during 2022 due to growth in the business and higher costs associated with sales force leadership events, which included the biennial convention. These increases were partially offset by lower COVID-19 related claims experience in the Term Life Insurance segment, lower sales commissions in line with lower commissions and fees revenue in the Investment and Savings Products segment as discussed above and a lower non-cash goodwill impairment charge in the Senior Health segment. In addition, total benefits and expenses in 2021 was negatively impacted by a $8.9 million loss on extinguishment of debt as a result of the accelerated repayment of senior notes issued in 2012 that were scheduled to mature in 2022.

Income taxes. Our effective income tax rate for 2022 was 25.5% compared to 27.2% in 2021. The decrease in the effective tax rate in 2022 was driven by a smaller non-cash goodwill impairment charge that is not deductible for income tax purposes, state income tax benefits at e-TeleQuote and revaluation of Canadian deferred tax assets as a result of a Canadian statutory rate increase.

Net income (loss) attributable to noncontrolling interests. The net loss attributable to noncontrolling interest increased during 2022 compared to 2021 primarily due to higher operating losses incurred by the Senior Health segment prior to the redemption of the noncontrolling interest on July 1, 2022.

For additional information, see the discussions of results of operations by segment below.

Term Life Insurance Segment. Our results for the Term Life Insurance segment for the years ended December 31, 2022, 2021, and 2020 were as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change[(1)]	
	2022	2021	2020[(1)]	$	%	$	%
	(Dollars in thousands)						
Revenues:							
Direct premiums	$ 3,209,088	$ 3,099,828	$ 2,883,583	$ 109,260	4 %	$ 216,245	7 %
Ceded premiums	(1,623,442)	(1,609,598)	(1,573,922)	13,844	*	35,676	2 %
Net Premiums	1,585,646	1,490,230	1,309,661	95,416	6 %	180,569	14 %
Allocated net investment income	51,160	36,486	27,030	14,674	40 %	9,456	35 %
Other, net	50,320	48,970	46,079	1,350	3 %	2,891	6 %
Total revenues	1,687,126	1,575,686	1,382,770	111,440	7 %	192,916	14 %
Benefits and expenses:							
Benefits and claims	649,530	703,897	593,948	(54,367)	(8)%	109,949	19 %
Amortization of DAC	342,925	241,451	216,208	101,474	42 %	25,243	12 %
Insurance expenses	230,796	197,262	182,471	33,534	17 %	14,791	8 %
Insurance commissions	15,335	18,457	17,592	(3,122)	(17)%	865	5 %
Total benefits and expenses	1,238,586	1,161,067	1,010,219	77,519	7 %	150,848	15 %
Income before income taxes	$ 448,540	$ 414,619	$ 372,551	33,921	8 %	42,068	11 %

(1) Refer to the 2021 MD&A for discussions of 2020 items and comparisons between 2021 and 2020 financial results.
* Less than 1% or not meaningful

Net premiums. Direct premiums increased in 2022 from 2021 largely due to sales of new policies that contributed to growth in the in-force book of business. This is partially offset by an increase in ceded premiums, which includes $55.5 million in higher non-level YRT reinsurance ceded premiums as business not subject to the IPO coinsurance transactions ages, reduced by $41.6 million in lower coinsurance ceded premiums due to the run-off of business subject to the IPO coinsurance transactions.

Allocated net investment income. Allocated net investment income increased in 2022 from 2021 due to an increase in the assumed net interest accreted to the Term Life Insurance segment's future policy benefit reserve liability less deferred acquisition costs as the Term Life Insurance segment's in-force business continues to grow.

Benefits and claims. Benefits and claims decreased in 2022 from 2021 primarily due to lower COVID-19 related claims experience. Total benefits and claims during 2022 includes approximately $11 million of excess claims, net of reinsurance compared to approximately $63 million of excess claims, net of reinsurance in 2021.

Amortization of DAC. The amortization of DAC increased in 2022 from 2021 primarily due to higher policy lapse rates. During 2022, lapses on policies that were issued during the height of the COVID-19 pandemic were higher than historical trends. Lapses on policies issued prior to the onset of the COVID-19 pandemic continue to be moderately lower than historical trends.

Insurance expenses. Insurance expenses increased in 2022 from 2021 due to higher costs associated with growth in the sales force and the business and higher employee compensation costs. Also contributing to the increase were higher costs associated with adding the previously postponed biennial convention to our normal cycle of sales force leadership events.

Insurance commissions. Insurance commissions decreased in 2022 from 2021 as a result of higher non-deferrable sales force promotional activities offered in 2021 to incentivize the independent sales force during the COVID-19 pandemic.

Investment and Savings Products Segment. Our results of operations for the Investment and Savings Products segment for the years ended December 31, 2022, 2021, and 2020 were as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change[1]	
	2022	2021	2020[1]	$	%	$	%
	(Dollars in thousands)						
Revenues:							
Commissions and fees:							
Sales-based revenues	$ 326,378	$ 401,508	$ 284,651	$ (75,130)	(19)%	$ 116,857	41 %
Asset-based revenues	434,053	441,303	339,904	(7,250)	(2)%	101,399	30 %
Account-based revenues	90,391	86,939	83,041	3,452	4 %	3,898	5 %
Other, net	12,610	12,097	11,271	513	4 %	826	7 %
Total revenues	863,432	941,847	718,867	(78,415)	(8)%	222,980	31 %
Expenses:							
Amortization of DAC	12,141	8,668	7,055	3,473	40 %	1,613	23 %
Insurance commissions	13,834	14,904	13,184	(1,070)	(7)%	1,720	13 %
Sales commissions:							
Sales-based	234,711	287,359	201,148	(52,648)	(18)%	86,211	43 %
Asset-based	206,838	206,201	154,572	637	*	51,629	33 %
Other operating expenses	156,578	150,130	140,264	6,448	4 %	9,866	7 %
Total expenses	624,102	667,262	516,223	(43,160)	(6)%	151,039	29 %
Income before income taxes	$ 239,330	$ 274,585	$ 202,644	$ (35,255)	(13)%	$ 71,941	36 %

(1)Refer to the 2021 MD&A for discussions of 2020 items and comparisons between 2021 and 2020 financial results.
* Less than 1% or not meaningful

Commissions and fees. Commissions and fees decreased in 2022 from 2021 driven by lower sales-based revenues in 2022 as investor demand for mutual fund products and variable annuity products weakened due to volatility in capital markets. Also contributing to the decrease in 2022 were lower asset-based revenues, driven by negative equity market performance, partially offset by positive net flows.

Amortization of DAC. Amortization of DAC increased in 2022 from 2021 due to unfavorable market performance of the funds underlying our Canadian segregated funds in 2022 compared to favorable market performance of such funds in 2021.

Sales commissions. The decrease in sales-based commissions in 2022 from 2021 was generally in line with the decrease in sales-based revenue. Asset-based commissions were relatively flat for 2022 and were consistent with the movement in asset-based revenues, excluding the Canadian segregated funds revenue. Asset-based expenses for our Canadian segregated funds are reflected within insurance commissions and amortization of DAC.

Other operating expenses. Other operating expenses increased in 2022 from 2021 due to higher costs associated with adding the previously postponed biennial convention to our normal cycle of sales force leadership events and higher expenses to support growth in managed accounts assets.

Senior Health Segment. Our results of operations for the Senior Health segment for the years ended December 31, 2022 and 2021 were as follows:

	Year ended December 31,		2022 vs. 2021 change	
	2022	2021	$	%
	(Dollars in thousands)			
Revenues:				
Commissions and fees	$ 47,420	$ 50,903	$ (3,483)	(7)%
Other, net	15,262	9,537	5,725	60 %
Total revenues	62,682	60,440	2,242	4 %
Benefits and expenses:				
Contract acquisition costs	68,431	52,788	15,643	30 %
Goodwill impairment loss	60,000	76,000	(16,000)	(21)%
Other operating expenses	32,924	16,702	16,222	97 %
Total benefits and expenses	161,355	145,490	15,865	11 %
Income (loss) before income taxes	$ (98,673)	$ (85,050)	$ (13,623)	(16)%

Commissions and fees. Excluding the impact of tail revenue adjustments, commissions and fees increased during 2022 compared to 2021 primarily due to the timing of the acquisition of e-TeleQuote on July 1, 2021. As a result, 2022 includes a full year of operations compared to only six months in 2021. This increase was completely offset by the recognition of $18.9 million of net negative tail

revenue adjustments in 2022 as a result of lower than expected renewals and refined renewal estimates on policies approved in prior periods. The negative tail revenue adjustment offset commissions and fees revenue of $66.3 million recognized for the lifetime value of commissions for policies approved during 2022. In comparison, a negative tail adjustment of $4.9 million was recognized during 2021. Also contributing to the year-over-year change in commissions and fees in 2022 compared to 2021 was lower sales volume during AEP due to our strategic initiative to limit the number of licensed health insurance agents.

Other, net. Marketing development revenue increased during 2022 compared to 2021 primarily due to the timing of the acquisition of e-TeleQuote on July 1, 2021. As a result, 2022 includes a full year of operations compared to only six months in 2021. Partially offsetting the increase in marketing development revenue was lower year-over-year amounts earned during AEP in connection with lower year-over-year AEP sales volumes in 2022 versus 2021.

Contract acquisition costs. Contract acquisition costs increased during 2022 compared to 2021 primarily due to the timing of the acquisition of e-TeleQuote on July 1, 2021. As a result, a full year of operations are included in 2022 compared to only six months in 2021. This increase was partially offset by lower costs in 2022 from reduced sales volumes as well as lower unit contract acquisition costs attributable to a number of factors including revised lead acquisition strategies, improved lead routing, and enhancements in agent training.

Goodwill impairment loss. Goodwill impairment loss reflects the non-cash goodwill impairment charge, which represents the excess of the Senior Health reporting unit's carrying value over its estimated fair value.

Other operating expenses. Other operating expenses increased during 2022 compared to 2021 primarily due to the timing of the acquisition of e-TeleQuote on July 1, 2021. As a result, 2022 includes a full year of operations compared to only six months in 2021. Other operating expenses includes $11.0 million and $5.8 million of amortization expense for acquired intangible assets and internally developed software for 2022 and 2021, respectively.

Corporate and Other Distributed Products Segment. Our results of operations for the Corporate and Other Distributed Products segment for the years ended December 31, 2022, 2021, and 2020 were as follows:

	Year ended December 31,			2022 vs. 2021 change		2021 vs. 2020 change[1]	
	2022	2021	2020[1]	$	%	$	%
			(Dollars in thousands)				
Revenues:							
Direct premiums	$ 21,032	$ 22,320	$ 23,566	$ (1,288)	(6)%	$ (1,246)	(5)%
Ceded premiums	(6,450)	(6,666)	(6,844)	(216)	(3)%	(178)	(3)%
Net Premiums	14,582	15,654	16,722	(1,072)	(7)%	(1,068)	(6)%
Commissions and fees	46,434	62,160	43,675	(15,726)	(25)%	18,485	42 %
Allocated investment income net of investment expenses	105,827	106,309	114,257	(482)	*	(7,948)	(7)%
Interest expense on surplus note	(63,922)	(62,207)	(57,473)	1,715	3 %	4,734	8 %
Allocated net investment income	41,905	44,102	56,784	(2,197)	(5)%	(12,682)	(22)%
Realized investment gains (losses)	1,444	4,665	1,359	(3,221)	*	3,306	*
Other investment gains (losses)	(2,439)	1,207	(6,355)	(3,646)	*	7,562	*
Investment gains (losses)	(995)	5,872	(4,996)	(6,867)	*	10,868	*
Other, net	4,967	3,971	3,719	996	25 %	252	7 %
Total revenues	106,893	131,759	115,904	(24,866)	(19)%	15,855	14 %
Benefits and expenses:							
Benefits and claims	16,219	18,856	21,621	(2,637)	(14)%	(2,765)	(13)%
Amortization of DAC	1,077	1,060	1,058	17	2 %	2	*
Insurance expenses	4,609	5,343	5,646	(734)	(14)%	(303)	(5)%
Insurance commissions	1,092	1,171	1,358	(79)	(7)%	(187)	(14)%
Sales commissions	21,215	28,748	20,916	(7,533)	(26)%	7,832	37 %
Interest expense	27,237	30,618	28,839	(3,381)	(11)%	1,779	6 %
Loss on extinguishment of debt	-	8,927	-	(8,927)	*	8,927	*
Other operating expenses	130,892	130,019	104,931	873	*	25,088	24 %
Total benefits and expenses	202,341	224,742	184,369	(22,401)	(10)%	40,373	22 %
Loss before income taxes	$ (95,448)	$ (92,983)	$ (68,465)	$ 2,465	3 %	$ 24,518	36 %

[1] Refer the 2021 MD&A for discussions of 2020 items and comparisons between 2021 and 2020 financial results.
* Less than 1% or not meaningful

Total revenues. Total revenues decreased in 2022 from 2021 primarily due to lower commissions and fees from our mortgage distribution business as a result of rising interest rates. Also contributing to the decrease is investment losses, which are discussed in the Primerica, Inc. and Subsidiaries Results section above, and a decrease in net investment income as more net investment income was allocated to the Term Life Insurance segment, which is discussed in the Term Life Insurance Segment Results section above.

Total Benefits and Expenses. Total benefits and expenses decreased in 2022 from 2021 due to lower sales commissions from our mortgage distribution business and lower benefits and claims experienced on closed blocks of non-term life insurance business underwritten by NBLIC. In addition, other operating expenses in 2021 were higher due to transaction related expenses incurred in connection with e-TeleQuote, the loss on extinguishment of debt as a result of the accelerated repayment of senior notes scheduled to mature in 2022 and higher interest expense. Interest expense in 2021 was higher than 2022 as a result of borrowings on the Revolving Credit Facility to fund the e-TeleQuote acquisition and an overlap of interest obligations due to the issuance of the Senior Notes in November 2021 before the early extinguishment of our previous senior notes.

Financial Condition

Investments. Our insurance business is primarily focused on selling term life insurance, which does not include an investment component for the policyholder. The invested asset portfolio funded by premiums from our term life insurance business does not involve the substantial asset accumulations and spread requirements that exist with other non-term life insurance products. As a result, the profitability of our term life insurance business is not as sensitive to the impact that interest rates have on our invested asset portfolio and investment income as the profitability of other companies that distribute non-term life insurance products.

We follow a conservative investment strategy designed to emphasize the preservation of our invested assets and provide adequate liquidity for the prompt payment of claims. To meet business needs and mitigate risks, our investment guidelines provide restrictions on our portfolio's composition, including limits on asset type, per issuer limits, credit quality limits, portfolio duration, limits on the amount of investments in approved countries and permissible security types. We also manage and monitor our allocation of investments to limit the accumulation of any disproportionate concentrations of risk among industry sectors or issuer countries outside of the U.S. and Canada. In addition, as of December 31, 2022, we did not hold any country of issuer concentrations outside of the U.S. or Canada that represented more than 5% of the fair value of our available-for-sale invested asset portfolio or any industry concentrations of corporate bonds that represented more than 10% of the fair value of our available-for-sale invested asset portfolio.

We invest a portion of our portfolio in assets denominated in Canadian dollars to support our Canadian operations. Additionally, to ensure adequate liquidity for payment of claims, we take into account the maturity and duration of our invested asset portfolio and our general liability profile.

We also hold within our invested asset portfolio a credit enhanced note ("LLC Note") issued by a limited liability company owned by a third-party service provider which is classified as a held-to-maturity security. The LLC Note, which is scheduled to mature on December 31, 2030, was obtained in exchange for the Surplus Note of equal principal amount issued by Vidalia Re, a special purpose financial captive insurance company and wholly owned subsidiary of Primerica Life Insurance Company ("Primerica Life"). For more information on the LLC Note, see Note 4 (Investments) to our consolidated financial statements included elsewhere in this report.

We have an investment committee composed of members of our senior management team that is responsible for establishing and maintaining our investment guidelines and supervising our investment activity. Our investment committee regularly monitors our overall investment results and our compliance with our investment objectives and guidelines. We use a third-party investment advisor to assist us in the management of our investing activities. Our investment advisor reports to our investment committee.

Our invested asset portfolio is subject to a variety of risks, including risks related to general economic conditions, market volatility, interest rate fluctuations, liquidity risk and credit and default risk. Investment guideline restrictions have been established to minimize the effect of these risks but may not always be effective due to factors beyond our control. Interest rates and credit spreads are highly sensitive to many factors, including governmental monetary policies, domestic and international economic and political conditions and other factors beyond our control. A significant increase in interest rates or credit spreads could result in significant losses in the value of our invested asset portfolio. For example, the significant increase in interest rates during 2022 resulted in the invested asset portfolio having an unrealized loss of $305.9 million as of December 31, 2022 compared to an unrealized gain of $81.2 million as of December 31, 2021. We believe that fluctuations caused by movement in interest rates and credit spreads generally have little bearing on the recoverability of our investments as we have the ability to hold these investments until maturity or a market price recovery and we have no present intention to dispose of them.

Details on asset mix (excluding our held-to-maturity security) were as follows:

	December 31, 2022		December 31, 2021	
	Fair value	Cost or amortized cost	Fair value	Cost or amortized cost
U.S. government and agencies	1%	1%	1%	1%
Foreign government	5%	5%	5%	5%
States and political subdivisions	4%	4%	5%	5%
Corporates	48%	49%	53%	52%
Mortgage- and asset-backed securities	22%	23%	20%	20%
Short-term investments	2%	2%	2%	3%
Equity securities	1%	1%	1%	1%
Trading securities	1%	1%	1%	1%
Cash and cash equivalents	16%	14%	12%	12%
Total	100%	100%	100%	100%

The composition and duration of our portfolio will vary depending on several factors, including the yield curve and our opinion of the relative value among various asset classes. The proportion of the invested asset portfolio invested in corporate bonds decreased and the proportion invested in mortgage- and asset-backed securities increased from 2021 to 2022 as a result of our view of the relative value between those asset classes. The year-end average rating, duration and book yield of our fixed-maturity portfolio (excluding our held-to-maturity security) were as follows:

	December 31, 2022	December 31, 2021
Average rating of our fixed-maturity portfolio	A	A
Average duration of our fixed-maturity portfolio	4.7 years	4.8 years
Average book yield of our fixed-maturity portfolio	3.44%	3.12%

The increase in the average book yield of our fixed-maturity portfolio as of December 31, 2022 reflects the rise in market interest rates in 2022.

Ratings for our investments in fixed-maturity securities are determined using Nationally Recognized Statistical Rating Organizations designations and/or equivalent ratings. The distribution of our investments in fixed-maturity securities (excluding our held-to-maturity security) by rating, including those classified as trading securities, were as follows:

	December 31, 2022		December 31, 2021	
	Amortized cost [(1)]	%	Amortized cost [(1)]	%
	(Dollars in thousands)			
AAA	$ 606,982	22 %	$ 495,055	19 %
AA	321,450	11 %	312,418	12 %
A	688,936	25 %	644,775	24 %
BBB	1,120,096	40 %	1,079,123	41 %
Below investment grade	67,450	2 %	93,294	4 %
Not rated	199	*	21,078	*
Total	$ 2,805,113	100 %	$ 2,645,743	100 %

(1) Includes trading securities at carrying value and available-for-sale securities at amortized cost.
* Less than 1%.

The ten largest holdings within our fixed-maturity securities invested asset portfolio (excluding our held-to-maturity security) were as follows:

	December 31, 2022			
Issuer	Fair value	Amortized cost [(1)]	Unrealized gain (loss)	Credit rating
		(Dollars in thousands)		
Government of Canada	$ 20,709	$ 22,122	$ (1,413)	AAA
Province of Quebec Canada	16,052	16,658	(606)	A+
Province of Ontario Canada	14,139	14,708	(569)	AA
Ontario Teachers' Pension Plan	12,538	14,327	(1,789)	AA+
Province of Alberta Canada	11,727	12,819	(1,092)	BBB+
Morgan Stanley	11,304	11,782	(478)	BBB+
Manulife Financial Corp	10,603	11,592	(989)	A
TC Energy Corp	10,240	11,656	(1,416)	BBB+
ConocoPhillips	9,249	10,697	(1,448)	A
Province of Saskatchewan Canada	9,247	9,634	(387)	AA
Total – ten largest holdings	$ 125,808	$ 135,995	$ (10,187)	
Total – fixed-maturity securities	$ 2,499,154	$ 2,805,113		
Percent of total fixed-maturity securities	5 %	5 %		

(1) Includes trading securities at carrying value and available-for-sale securities at amortized cost.

For additional information on our invested asset portfolio, see Note 4 (Investments) and Note 5 (Fair Value of Financial Instruments) to our consolidated financial statements included elsewhere in this report.

Other Significant Assets and Liabilities. The balances of and changes in other significant assets and liabilities were as follows:

	December 31,		Change	
	2022	2021	$	%
		(Dollars in thousands)		
Assets:				
Reinsurance recoverables	$ 4,015,909	$ 4,268,419	$ (252,510)	(6)%
Deferred policy acquisition costs, net	3,081,886	2,943,782	138,104	5 %
Liabilities:				
Future policy benefits	$ 7,390,800	$ 7,138,649	$ 252,151	4 %

Reinsurance recoverables. Reinsurance recoverables reflects future policy benefit reserves and claim reserves ceded to reinsurers, including the IPO coinsurers. Reinsurance recoverables as of December 31, 2022 decreased compared with December 31, 2021 primarily due to lower pending COVID-19 claims ceded to reinsurers, the translation impact on Canadian reinsurance recoverables due to the strengthening U.S. dollar, and the continued runoff of the IPO book of business.

Deferred policy acquisition costs, net. The increase in DAC was primarily a result of the cumulative impact of incremental commissions and expenses deferred as a result of new business in 2022 not subject to the IPO coinsurance agreements, partially offset by higher year-over-year amortization due to the decline in term life insurance persistency.

Future policy benefits. The increase in future policy benefits was a result of continued growth in our in-force book of business, partially offset by releases in reserves due to weaker year-over-year persistency.

For additional information, see the notes to our consolidated financial statements included elsewhere in this report.

Liquidity and Capital Resources

Dividends and other payments to the Parent Company from its subsidiaries are our principal sources of cash. The amount of dividends paid by the subsidiaries is dependent on their capital needs to fund future growth and applicable regulatory restrictions. The primary uses of funds by the Parent Company include the payments of stockholder dividends, interest on notes payable, general operating expenses, and income taxes, as well as repurchases of shares of our common stock outstanding. During 2022, our life insurance underwriting companies declared and paid ordinary dividends of $277.9 million to the Parent Company. See Note 15 (Statutory Accounting and Dividend Restrictions) to our consolidated financial statements included elsewhere in this report for more information on insurance subsidiary dividends and statutory restrictions. In addition, in 2022 our non-life insurance subsidiaries declared and paid dividends of $173.0 million to the Parent Company. At December 31, 2022, the Parent Company had cash and invested assets of $306.9 million.

The Parent Company's subsidiaries generate operating cash flows primarily from term life insurance premiums (net of premiums ceded to reinsurers), income from invested assets, commissions and fees collected from the distribution of investment and savings products, Medicare-related insurance plans as well as other financial products. The subsidiaries' principal operating cash outflows include the payment of insurance claims and benefits (net of ceded claims recovered from reinsurers), commissions to the sales force, contract acquisition costs, insurance and other operating expenses, interest expense for future policy benefit reserves financing transactions, and income taxes.

The distribution and underwriting of term life insurance requires upfront cash outlays at the time the policy is issued as we pay a substantial majority of the sales commission during the first year following the sale of a policy and incur costs for underwriting activities at the inception of a policy's term. During the early years of a policy's term, we generally receive level term premiums in excess of claims paid. We invest the excess cash generated during earlier policy years in fixed-maturity and equity securities held in support of future policy benefit reserves. In later policy years, cash received from the maturity or sale of invested assets is used to pay claims in excess of level term premiums received.

e-TeleQuote is a senior health insurance distributor of Medicare-related insurance plans. e-Tele-Quote collects cash receipts over a number of years after selling a plan, while the cash outflow for commission expense and other acquisition costs to sell the plans are generally recognized at the time of enrollment. Therefore, in periods of growth, net cash flows at e-TeleQuote are expected to be negative, which may require the Parent Company to provide working capital to e-TeleQuote. During the year ended December 31 2022, as a result of the Company's efforts to scale back e-TeleQuote's growth in favor of developing more efficient lead procurement and limiting the number of licensed health insurance agents, the Parent Company did not provide funding to e-TeleQuote as cash tax benefits from net operating losses were sufficient to cover operating needs.

Historically, cash flows generated by our businesses, primarily from our existing block of term life policies and our investment and savings products, have provided us with sufficient liquidity to meet our operating requirements. We anticipate that cash flows from our businesses will continue to provide sufficient operating liquidity over the next 12 months.

If necessary, we could seek to enhance our liquidity position or capital structure through sales of our available-for-sale investment portfolio, changes in the timing or amount of share repurchases, borrowings against our revolving credit facility, or some combination of these sources. Additionally, we believe that cash flows from our businesses and potential sources of funding will sufficiently support our long-term liquidity needs.

Cash Flows. The components of the changes in cash and cash equivalents were as follows:

	Year ended December 31,		
	2022	2021	2020[(1)]
		(In thousands)	
Net cash provided by (used in) operating activities	$ 757,665	$ 656,956	$ 643,417
Net cash provided by (used in) investing activities	(200,048)	(923,383)	(53,529)
Net cash provided by (used in) financing activities	(457,850)	107,974	(301,790)
Effect of foreign exchange rate changes on cash	(3,028)	3,385	2,595
Change in cash and cash equivalents	$ 96,739	$ (155,068)	$ 290,693

(1)Refer to the 2021 MD&A for discussions of 2020 items and comparisons between 2021 and 2020 financial results.

Operating Activities. Cash provided by operating activities increased in 2022 from 2021. Although net income decreased slightly during 2022, cash generated from operating activities increased as it excludes non-cash charges such as amortization of deferred policy acquisition costs, goodwill impairments and renewal commissions tail adjustments. Also contributing to the year-over-year increase in cash provided by operating activities were lower cash outlays for deferred acquisition costs due to lower term life policy sales.

Investing Activities. Cash used in investing activities decreased in 2022 from 2021 primarily due to funding the acquisition of e-TeleQuote on July 1, 2021. Also contributing to the decrease were lower purchases of securities in the invested assets portfolio. In 2021, purchases of securities were higher as the Company deployed the net cash received from the issuance of the Senior Notes.

Financing Activities. Financing activities was a use of cash during 2022 compared to a source of cash during 2021. This movement is primarily due to cash used to fund share repurchases during 2022. By comparison, the Company paused share repurchases during 2021 to accumulate cash to fund the acquisition of e-TeleQuote. In addition, during 2021 cash provided by financing activities included cash received from the issuance of the Senior Notes partially offset by the early extinguishment of our previous senior notes that were scheduled to mature in 2022.

Risk-Based Capital ("RBC"). The National Association of Insurance Commissioners ("NAIC") has established RBC standards for U.S. life insurers, as well as a risk-based capital model act (the "RBC Model Act") that has been adopted by the insurance regulatory authorities. The RBC Model Act requires that life insurers annually submit a report to state regulators regarding their RBC based upon four categories of risk: asset risk; insurance risk; interest rate risk and business risk. The capital requirement for each is determined by applying factors that vary based upon the degree of risk to various asset, premiums and policy benefit reserve items. The formula is an early warning tool to identify possible weakly capitalized companies for purposes of initiating further regulatory action.

As of December 31, 2022, our U.S. life insurance subsidiaries maintained statutory capital and surplus substantially in excess of the applicable regulatory requirements and remain well positioned to support existing operations and fund future growth.

In Canada, an insurer's minimum capital requirement is overseen by the Office of the Superintendent of Financial Institutions ("OSFI") and determined as the sum of the capital requirements for five categories of risk: asset default risk; mortality/morbidity/lapse risks; changes in interest rate environment risk; segregated funds risk; and foreign exchange risk. As of December 31, 2022, Primerica Life Insurance Company of Canada was in compliance with Canada's minimum capital requirements as determined by OSFI.

For more information regarding statutory capital requirements and dividend capacities of our insurance subsidiaries, see Note 15 (Statutory Accounting and Dividend Restrictions) to our consolidated financial statements included elsewhere in this report.

Redundant Reserve Financings. The Model Regulation entitled Valuation of Life Insurance Policies, commonly known as Regulation XXX, requires insurers to carry statutory policy benefit reserves for term life insurance policies with long-term premium guarantees which are often significantly in excess of the future policy benefit reserves that insurers deem necessary to satisfy claim obligations ("redundant policy benefit reserves"). Accordingly, many insurance companies have sought ways to reduce their capital needs by financing redundant policy benefit reserves through bank financing, reinsurance arrangements and other financing transactions.

We have established Peach Re, Inc. ("Peach Re") and Vidalia Re as special purpose financial captive insurance companies and wholly owned subsidiaries of Primerica Life. Primerica Life has ceded certain term life policies issued prior to 2011 to Peach Re as part of a Regulation XXX redundant reserve financing transaction (the "Peach Re Redundant Reserve Financing Transaction") and has ceded certain term life policies issued in 2011 through 2017 to Vidalia Re as part of a Regulation XXX redundant reserve financing transaction (the "Vidalia Re Redundant Reserve Financing Transaction"). These redundant reserve financing transactions allow us to more efficiently manage and deploy our capital.

The NAIC has adopted a model regulation for determining reserves using a principle-based approach ("principle-based reserves" or "PBR"), which is designed to reflect each insurer's own experience in calculating reserves and move away from a single prescriptive reserving formula. Primerica Life adopted PBR as of January 1, 2018 and NBLIC adopted the New York amended version of PBR effective January 1, 2021. PBR significantly reduced the redundant statutory policy benefit reserve requirements while still ensuring adequate liabilities are held. The regulation only applies for business issued after the effective date. See Note 4 (Investments), Note 10

(Debt) and Note 16 (Commitments and Contingent Liabilities) to our consolidated financial statements included elsewhere in this report for more information on these redundant reserve financing transactions.

Notes Payable – Long term. The Company has $600.0 million of publicly-traded Senior Notes outstanding issued at a price of 99.550% with an annual interest rate of 2.80%, payable semi-annually in arrears on May 19 and November 19. The Senior Notes are scheduled to mature on November 19, 2031. We were in compliance with the covenants of the Senior Notes at December 31, 2022. No events of default occurred on the Senior Notes during the year ended December 31, 2022.

Notes Payable – Short term. On July 1, 2021, as part of the acquisition of e-TeleQuote, Primerica Health, Inc. ("Primerica Health") issued a $15.0 million majority shareholder note due July 1, 2022. This note was retired during the year ended December 31, 2022.

Financial Ratings. As of December 31, 2022, the investment grade credit ratings for our Senior Notes were as follows:

Agency	Senior Notes rating
Moody's	Baa1, stable outlook
Standard & Poor's	A-, stable outlook
A.M. Best Company	a-, stable outlook

As of December 31, 2022, Primerica Life's financial strength ratings were as follows:

Agency	Financial strength rating
Moody's	A1, stable outlook
Standard & Poor's	AA-, stable outlook
A.M. Best Company	A+, stable outlook

Securities Lending. We participate in securities lending transactions with brokers to increase investment income with minimal risk. See Note 4 (Investments) to our consolidated financial statements included elsewhere in this report for additional information.

Surplus Note. Vidalia Re issued a Surplus Note in exchange for the LLC Note as a part of the Vidalia Re Redundant Reserve Financing Transaction. The Surplus Note has a principal amount equal to the LLC Note and is scheduled to mature on December 31, 2030. For more information on the Surplus Note, see Note 10 (Debt) to our consolidated financial statements included elsewhere in this report.

Off-Balance Sheet Arrangements. We have no transactions, agreements or other contractual arrangements to which an entity unconsolidated with the Company is a party, under which the Company maintains any off-balance sheet obligations or guarantees as of December 31, 2022.

Credit Facility Agreement. We maintain an unsecured $200.0 million Revolving Credit Facility with a syndicate of commercial banks that has a scheduled termination date of June 22, 2026. Amounts outstanding under the Revolving Credit Facility bear interest at a periodic rate equal to the London Interbank Offered Rate ("LIBOR") or the base rate, plus in either case an applicable margin. The Revolving Credit Facility contains language that allows for the Company and the lenders to agree on a comparable or successor reference rate in the event LIBOR is no longer available. The Revolving Credit Facility also permits the issuance of letters of credit. The applicable margins are based on our debt rating with such margins for LIBOR rate loans and letters of credit ranging from 1.000% to 1.625% per annum and for base rate loans ranging from 0.000% to 0.625% per annum. Under the Revolving Credit Facility, we incur a commitment fee that is payable quarterly in arrears and is determined by our debt rating. This commitment fee ranges from 0.100% to 0.225% per annum of the aggregate $200.0 million commitment of the lenders under the Revolving Credit Facility. As of December 31, 2022, no amounts were outstanding under the Revolving Credit Facility and we were in compliance with its covenants. Furthermore, no events of default occurred under the Revolving Credit Facility in 2022.

Contractual Obligations. Our material cash requirements from known contractual and other obligations primarily consist of following:

Future Policy Benefits. Our liability for future policy benefits, which is presented in the consolidated balance sheets, represents the present value of estimated future policy benefits to be paid, less the present value of estimated future net benefit premiums to be collected. Net benefit premiums represent the portion of gross premiums required to provide for all benefits and associated expenses. These benefit payments are contingent on policyholders continuing to renew their policies and make their premium payments. We expect to fully fund the obligations for future policy benefits from cash flows from general account invested assets, claims reimbursed by reinsurers, and from future premiums.

Policy Claims. Policy claims, which is presented in the consolidated balance sheets and Note 9 (Policy Claims and Other Benefits Payable) to our consolidated financial statements included elsewhere in this report, represents claims and benefits that have been incurred but not paid to policyholders and are assumed to be due within a year.

Other Policyholder Funds. Other policyholders' funds, which is presented in the consolidated balance sheet, primarily represent claim payments left on deposit with us that are payable on demand.

Notes Payable and Interest Obligations. We have debt obligations for the principal balance of our Senior Notes, which is presented in the consolidated balance sheets and described further in Note 10 (Debt) to our consolidated financial statements included elsewhere in

the report. We also maintain interest obligations for interest on our Senior Notes, the commitment fee on our Revolving Credit Facility, the financing charges related to an issued letter of credit, fees paid for the credit enhancement feature on the LLC Note and a finance charge incurred pursuant to one of our IPO coinsurance agreements as of December 31, 2022. We did not expect the principal or interest on the Surplus Note will result in any cash requirements as the payments due for these items are contractually offset by the principal and interest on the LLC Note as long as we hold the LLC Note. The Company asserts its positive intent and ability to hold the LLC Note until maturity.

Lease Obligations. Our lease obligations primarily represent payments for operating leases related to office space. For additional information on leases see Note 19 (Leases) to our consolidated financial statements included elsewhere in this report.

For additional information concerning our commitments and contingencies, see Note 16 (Commitments and Contingent Liabilities) to our consolidated financial statements included elsewhere in this report.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK.

Market risk is the risk of the loss of fair value resulting from adverse changes in market rates and prices, such as interest rates and foreign currency exchange rates. Market risk is directly influenced by the volatility and liquidity in the markets in which the related underlying financial instruments are traded. Sensitivity analysis measures the impact of hypothetical changes in interest rates, foreign exchange rates and other market rates or prices on the profitability of market-sensitive financial instruments.

The following discussion about the potential effects of changes in interest rates and Canadian currency exchange rates is based on shock-tests, which model the effects of interest rate and Canadian exchange rate shifts on our financial condition and results of operations. Although we believe shock tests provide the most meaningful analysis permitted by the rules and regulations of the SEC, they are constrained by several factors, including the necessity to conduct the analysis based on a single point in time and by their inability to include the extraordinarily complex market reactions that normally would arise from the market shifts modeled. Although the following results of shock tests for changes in interest rates and Canadian currency exchange rates may have some limited use as benchmarks, they should not be viewed as forecasts. These disclosures also are selective in nature and address, in the case of interest rates, only the potential direct impact on our financial instruments and, in the case of Canadian currency exchange rates, the potential translation impact on net income from our Canadian subsidiaries. They do not include a variety of other potential factors that could affect our business as a result of these changes in interest rates and Canadian currency exchange rates.

Interest Rate Risk. The fair value of the fixed-maturity securities (excluding the held-to-maturity security) in our invested asset portfolio as of December 31, 2022 and 2021 was $2.5 billion and $2.7 billion, respectively. One of the primary market risks for this portion of our invested asset portfolio is interest rate risk. One means of assessing the exposure of our fixed-maturity securities portfolios to interest rate changes is a duration-based analysis that measures the potential changes in market value resulting from a hypothetical change in interest rates of 100 basis points across all maturities. This model is sometimes referred to as a parallel shift in the yield curve. Under this model, with all other factors constant and assuming no offsetting change in the value of our liabilities, we estimated that such an increase in interest rates would cause the fair value of our fixed-maturity securities portfolios to decline by $105.1 million, or 4%, based on our actual securities positions as of December 31, 2022. For comparative purposes, the same increase in rates would have caused the fair value of our fixed-maturity securities portfolios to decline by $119.6 million, or 4%, based on our actual securities positions as of December 31, 2021.

Canadian Currency Risk. We also have exposure to foreign currency exchange risk to the extent we conduct business in Canada. A strong Canadian dollar relative to the U.S. dollar results in higher levels of reported revenues, expenses, net income, assets, liabilities, and accumulated comprehensive income (loss) in our U.S. dollar financial statements, and a weaker Canadian dollar would have the opposite effect. Generally, our Canadian dollar-denominated assets are held in support of our Canadian dollar-denominated liabilities. For the year ended December 31, 2022, 13% of our revenues from operations, excluding realized investment gains, and 20% of income before income taxes were generated by our Canadian operations. For the year ended December 31, 2021, 15% of our revenues from operations, excluding realized investment gains, and 19% of income before income taxes were generated by our Canadian operations.

One means of assessing exposure to changes in Canadian currency exchange rates is to model the effects on reported income using a sensitivity analysis. We analyzed our Canadian currency exposure for the year ended December 31, 2022. Net exposure was measured assuming a 10% decrease in the value of the Canadian dollar relative to the U.S. dollar. We estimated that such a decrease would decrease our income before income taxes for the year ended December 31, 2022 by $9.9 million.

Our investment in the net assets of our Canadian operations is also subject to Canadian currency risk. If we were to assume a 10% decrease in Canadian currency exchange rates compared to the U.S. dollar, the translated value of our net investment in our Canadian subsidiaries in U.S. dollars would decrease by $29.0 million based on net assets as of December 31, 2022. For comparative purposes, a similar decrease in Canadian currency exchange rates compared to the U.S. dollar would have caused the translated value of our net investment in our Canadian subsidiaries in U.S. dollars to decline by $27.3 million based on net assets as of December 31, 2021. Historically, we have not hedged this exposure, although we may elect to do so in future periods. The impact of translating the balance