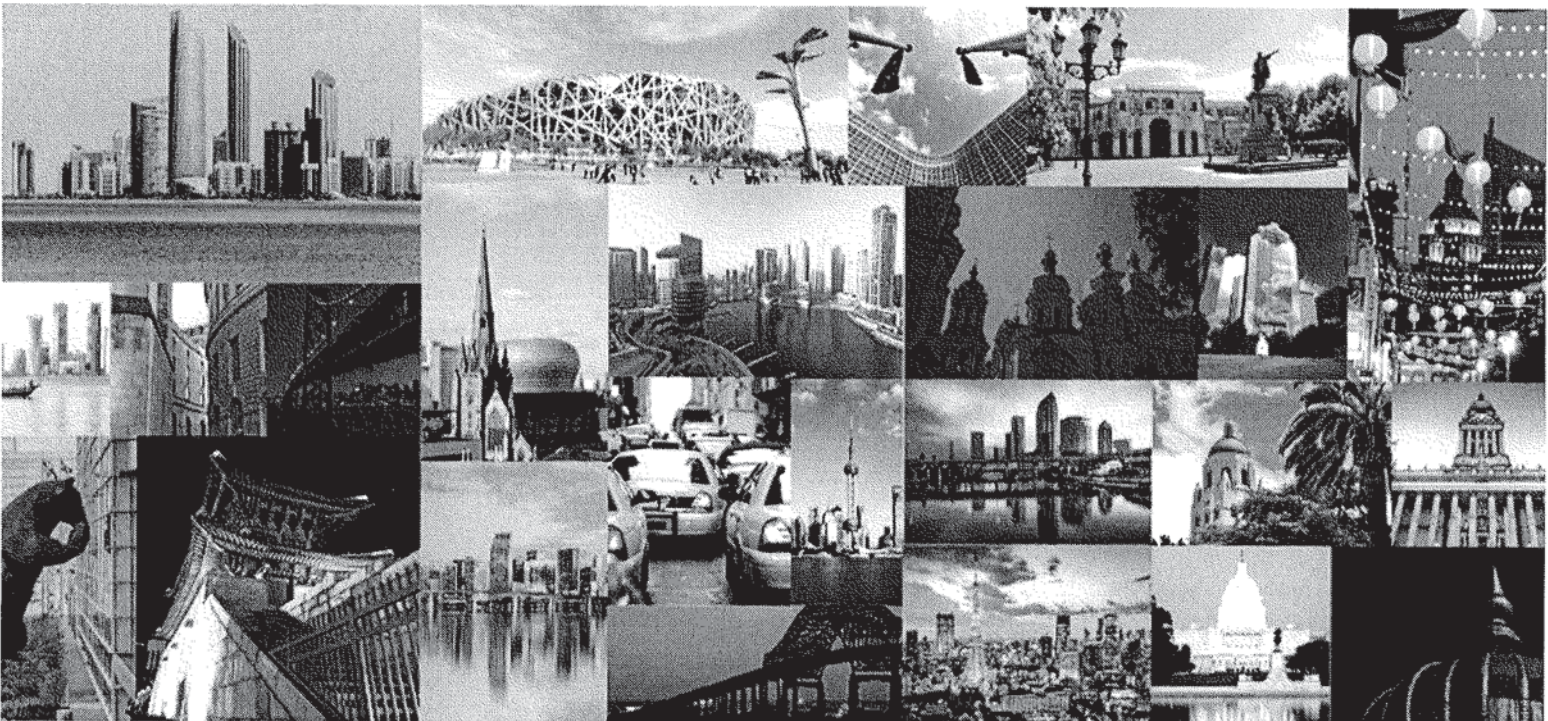


RESPONSE TO REQUEST FOR APPLICATIONS TO SERVE AS
INDEPENDENT COMPLIANCE AUDITOR FOR HERBALIFE IN
CONNECTION WITH THE STIPULATED ORDER FOR
PERMANENT INJUNCTION AND MONETARY JUDGMENT

August 29, 2016



A. Executive Summary

A multi-disciplinary team whose members include: (1) a former Assistant U.S. Attorney in the District of New Jersey, the former chief of the Appellate Section of the Criminal Division of the Department of Justice (“DOJ”), and the current head of the Government Investigations and White Collar Practice Group at Squire Patton Boggs (U.S.) LLP (“Squire”), Samuel Rosenthal; (2) former Inspector General of the U.S. Departments of State and Homeland Security, and current Squire Partner Clark Ervin, who is presently serving as a Monitor for two federal agencies, DOJ and the Department of Education; (3) an expert in marketing, advertising, and consumer surveys, Dr. Thomas Maronick; (4) the founder and managing partner of Forensic Risk Alliance (“FRA”), a firm with substantial expertise in forensic analysis and data management, Frances McLeod; and (5) an economist with extensive Federal Trade Commission (“FTC”) experience, with a particular emphasis on consumer marketing, Dr. Hal Singer, is pleased to respond to the Request for Applications (“RFA”) for the position of Independent Compliance Auditor (“ICA”) with respect to the Stipulated Order for Permanent Injunction and Monetary Judgment concerning Herbalife (the “Order”).

As the ICA and the leader of the auditing team, Mr. Rosenthal would draw on his own extensive investigative and monitoring experience. For example, Mr. Rosenthal is a member of the monitoring team that was selected by DOJ and the City of Ferguson, Missouri (“Ferguson”) to monitor Ferguson’s compliance with the terms of a consent decree concerning its police department and court system. He is also a member of the monitoring team that was approved by the Department of Education to monitor Zenith Education Group’s (“Zenith”) compliance with certain requirements imposed on Zenith by the department as a condition of its approval of the company’s acquisition of certain formerly for-profit career colleges from the now defunct entity, Corinthian Colleges (“Corinthian”). Corinthian was forced to close its doors after an investigation concluded that its marketing and advertising practices misled students as to the quality of the education they would receive, course completion rates, and job placement statistics. The monitoring team assesses the legality and accuracy of Zenith’s marketing and advertising practices. Mr. Rosenthal has more than 30 years of experience in federal litigation and white collar defense and appellate matters, and he has argued cases in every federal circuit court of appeals in the U.S. In addition, he has served as an Associate Independent Counsel to the U.S. Senate in connection with an investigation into leaks of confidential information from that body.

Mr. Ervin is the Monitor for the Ferguson consent decree, and he is also the Monitor for Zenith. He has also served on two other monitoring teams headed by other Squire partners. One monitorship, for DOJ and the Securities and Exchange Commission (“SEC”), concerned a global oilfield services company’s (Weatherford International) alleged violation of the Foreign Corrupt

Practices Act (“FCPA”), and the other, for a component of the Department of Transportation, concerns a global auto manufacturer’s (Fiat Chrysler Automobiles) auto parts recall practices and related vehicle safety issues. As noted above, he was a federal Inspector General, and, in that capacity, Mr. Ervin and his team of auditors at the State and Homeland Security Departments conducted scores of audits over his four-year tenure that assessed virtually every aspect of those agencies’ complex and varied programs and operations.

Additionally, we would draw upon the expertise of two other Squire partners who have substantial experience with FTC matters, Deborah Lodge and Alicia Batts. Ms. Lodge counsels clients on a wide variety of FTC matters. Ms. Batts likewise counsels clients on such matters, drawing on her experience as an Attorney Advisor to an FTC Commissioner. To ensure that we would conduct our work in the most cost-effective manner, we would draw upon our resources in Los Angeles, including Squire partner, Gabriel Colwell.

Dr. Maronick is presently serving on both the Zenith and Ferguson monitoring teams. He was the in-house marketing and advertising expert in the FTC’s Bureau of Consumer Protection for nearly two decades, and he has since served as a marketing and advertising expert witness in federal and state courts in California, Colorado, Florida, Illinois, New York, Michigan, Oklahoma, and Texas.

The team would include consultants who have substantial experience in data collection and analysis. FRA’s expertise on monitoring matters includes work on five of the largest FCPA monitorships in recent history (including Weatherford’s), a current engagement on a New York Department of Financial Services (“DFS”) monitorship of an international bank, and membership on the Ferguson monitoring team.

Finally, the team would include Dr. Hal J. Singer, an economist with extensive FTC and consumer marketing experience, who would bring significant expertise in statistical sampling and data analysis. Dr. Singer has testified numerous times before Congress, the courts, administrative law judges, and arbitrators in complex consumer protection cases, competition disputes, and antitrust proceedings.

We believe that, collectively, the team has all of the relevant experience and expertise to audit Herbalife’s compliance with the Order. (Please see Section E, Proposed Activities, for a brief description of how the team would complete the project.)

B. Personnel

The names of the individuals and/or subcontractor consultants who would comprise the team;

From Squire:

Samuel Rosenthal, the prospective ICA
Clark Ervin
Deborah Lodge
Alicia Batts
Gabriel Colwell

For FRA:

Frances McLeod
Greg Mason
Stacy Fresch
Phillip Desing
Joseph Cheriathundam

Individual Subcontractor Consultants:

Dr. Hal J. Singer
Dr. Thomas Maronick

A summary of the relevant background of each team member;

As noted above, Mr. Rosenthal would lead the team. He is the head of the Government Investigations Practice at Squire. Squire is the 14th largest law firm in the world, with approximately 1600 lawyers in 44 offices in 21 countries on five continents spanning the globe. Over the course of his three decades-long legal practice, he has handled numerous matters that are relevant to this one. Many of these matters have involved complex fact patterns, requiring the review and analysis of millions of pages of specialized and technical data. He would also be primarily responsible for presenting issues in court, as necessary. Mr. Rosenthal has argued in every federal circuit, and many district courts across the country. He has also received numerous awards, including one recently from the National Law Journal for being a “trendsetter” in regulatory and compliance matters. Mr. Rosenthal is currently a member of the Ferguson monitoring team.

Full bio: <http://www.squirepattonboggs.com/professionals/r/rosenthal-samuel>

Mr. Ervin would bring to the team experience as a federal Monitor and as a former Inspector General. In particular, he has served as the Inspector General of the U.S. Department of State (2001-2002), and, later, as the very first Inspector General of the U.S. Department of Homeland Security (2003-2004). A key part of Inspectors General's work is auditing, inspecting, or otherwise examining and assessing the programs and operations of the agencies they oversee; making recommendations for improvement; and then monitoring those agencies' compliance with the recommendations they agree to implement. As noted above, Mr. Ervin is presently serving as a federal Monitor for DOJ and the Department of Education, and he has served recently as a member of two other federal monitoring teams headed by other Squire partners. Full bio: <http://www.squirepattonboggs.com/professionals/e/ervin-clark-kent>

Deborah Lodge brings expertise in consumer protection, and counseling and advising clients on matters arising before the FTC. Her experience involving FTC and related enforcement actions includes representing a manufacturer of music accessories in investigation regarding "Made in USA" claims for its products; an online retailer in an FTC investigation relating to advertising and marketing practices regarding continuity programs; a communications platform provider in connection with an FTC investigation into telemarketing issues; a pest control device manufacturer in an FTC investigation relating to advertising practices; an online marketing platform in an FTC investigation and lawsuit alleging violation of consumer privacy and deceptive practices; a hotel chain in an FTC investigation relating to hotel industry advertising; a camera manufacturer in an FTC investigation relating to advertising; a health care company under investigation by the New York Attorney General Consumer Protection Division for its advertising, endorsement and online marketing practices; and a healthcare company in a National Advertising Division of Better Business Bureau proceeding. Full bio: <http://www.squirepattonboggs.com/professionals/l/lodge-deborah-m>

In addition to the above matters, Ms. Lodge has undertaken compliance work related to Section 5 of the FTC Act and other consumer protection laws, including regularly reviewing advertising and marketing materials, and websites, for various clients, including sellers of consumer products and services such as cosmetics, beauty care products, nutritional supplements, and business opportunities; assisting a lead generator and platform service provider with compliance with FTC regulations relating to advertising and marketing of educational opportunities; advising retailers, service providers, and consumer product manufacturers regarding social media issues relating to blogs, testimonials, website representations and related claims; and representing sellers of consumer products and services regarding marketing and e-commerce issues; advertising agencies with regard to testimonials, privacy claims, copyright fair use issues, and performance claims made in video representations and advertising; Internet marketing companies and online communications companies regarding the FTC Telemarketing Sales Rule, CAN-

SPAM and email marketing regulations, and Telephone Consumer Protection Act (TCPA); a large online retailer regarding numerous marketing issues, including “Made in USA” and country of origin labeling, Fair Packaging and Labeling, CAN-SPAM and email marketing, FTC Telemarketing Rule, TCPA, endorsements and testimonials, social media promotions, privacy and data security; airlines and consumer products companies regarding compliance with laws and regulations relating to sweepstakes and contests; and numerous online marketers and retailers regarding privacy policies and data collection and sharing activities.

Alicia Batts served as an Attorney Advisor to FTC Commissioner Mozelle Thompson, for whom she reviewed antitrust matters before the agency and made recommendations on enforcement and policy matters, including those relating to consumer protection issues. Her practice at Squire consists of representing clients in investigations by the FTC Bureau of Consumer Protection and the FTC Bureau of Competition.

Full bio: <http://www.squirepattonboggs.com/professionals/b/batts-alicia>

To the extent the team’s work would be facilitated by members based in Los Angeles, we would enlist a partner in Squire’s Los Angeles, Gabriel Colwell, who specializes in internal investigations and complex business litigation. Mr. Colwell has federal monitoring experience from having served on the Weatherford monitoring team. Prior to joining the firm, he served as a Special Assistant U.S. Attorney in the U.S. Attorney’s Office for the District of Hawaii and as a federal prosecutor in the U.S. Army JAG Corps. While at the U.S. Attorney’s Office, Gabriel directed investigations by the FBI, DEA, ATF, ICE, Defense Criminal Investigative Service, and the Major Procurement Fraud Unit of the Army Criminal Investigation Division to successfully prosecute fraud, money laundering, and various other criminal offenses.

Full bio: <http://www.squirepattonboggs.com/professionals/c/gabriel-colwell>

Frances McLeod is the Managing Partner of FRA. She has over 23 years of experience advising clients on sanctions, anti-corruption, fraud, internal control, asset tracing, and money laundering issues. She has been involved in all of FRA’s monitorship work, including the firm’s five DOJ monitorships. She is currently the lead FRA partner on the firm’s engagement by DFS on the monitorship of an international bank, and she is supporting the Ferguson monitoring team.

Dr. Hal Singer’s consulting experience spans several industries, with a focus on consumer protection and competition. He is an expert in statistical sampling and data analysis, and recently advised the Canadian Competition Bureau on a large vertical merger in the cable television industry. He has served as a consultant and expert witness for several prominent media and technology companies, including Apple, AT&T, Google, and the NFL Network. His relevant experience includes:

- Performing an econometric analysis of the effects of a merger in the retail contact lenses industry;
- Serving as an expert witness on behalf of Walmart in a consumer protection case involving the information contained on oil change stickers;
- Serving as an expert witness on behalf of Ford in a consumer protection case involving an allegedly defective infotainment system;
- Serving as a consulting expert on behalf of a beer wholesaler in a competition case involving allegedly secret discounts to preferred retailers; and
- Providing expert consultations on behalf of a heavy-duty truck maker in a competition case involving allegedly secret discounts to preferred truck dealers.

Dr. Thomas Maronick is the former Director of the Office of Impact Evaluation in the Bureau of Consumer Protection at the FTC, and the founder of his own consulting firm, Maronick Associates. As noted above, he was the in-house marketing and advertising expert for all divisions of the bureau for over 16 years. During his time at the FTC and since then, he has designed and implemented over 300 consumer surveys, using virtually every survey research methodology. His expertise includes false and deceptive advertising, deceptive marketing practices, and consumer perceptions of claims made in advertising, packaging, and direct marketing promotions. He has testified as an expert witness in federal and state litigation more than 30 times in the past decade. Dr. Maronick is also a Professor of Marketing at Towson University in Maryland.

- **The internal organization of the team including the areas of responsibility for each member;**

Mr. Rosenthal would serve as the ICA and lead the auditing team. In consultation with all relevant parties, Mr. Rosenthal would develop the work plan that the team would follow during the course of the engagement, and he would be primarily responsible for the execution of that plan. He would take the lead on producing reports regarding Herbalife's progress in implementing the terms of the Order. He would be responsible for testifying in proceedings, to the extent required.

Drawing upon their respective experiences as a federal prosecutor, a federal Inspector General and a federal Monitor, Messrs. Rosenthal and Ervin would take the lead on assessing Herbalife's compliance with the requirements of the Order and reporting on same to the FTC.

Ms. Lodge and Ms. Batts would draw on their FTC expertise to assist Messrs. Rosenthal and Ervin.

Ms. McLeod and her team at FRA would take the lead on data management and analysis. She would be assisted by a deep and broad bench of highly skilled professionals. Others who would assist Ms. McLeod include Greg Mason and Joe Cheriathundam, who would design and develop the database which would be the basis for much of the data analytics, testing and monitoring and also develop statistical analysis and benchmarking. Stacy Fresch would draw on her 20+ years of technical accounting and forensic investigative skills to work with FRA's data analytics team in assessing the financial reporting implications and internal controls in place in order to comply with the Order. She would also support Ms. McLeod in her role and contribute to the reporting and testifying in proceedings as necessary. Phil Desing would contribute to the overall design of FRA's role and in providing suggestions for remediation, if necessary, drawing on his experience as an investigator, but also as an in-house compliance professional at a corporation under monitorship.

Drs. Maronick and Singer would draw on their expertise in consumer protection and advertising related matters to assist Messrs. Rosenthal and Ervin in assessing Herbalife's compliance with the Order.

A description of all other current employment, projects, or other professional undertakings for each team member, noting the team member's time commitments for each.

Mr. Rosenthal is head of Squire's Government Investigations & White Collar practice group. He generally devotes in excess of 2,000 hours per year to the practice of law. He would be prepared to devote as much time as required to perform the ICA's duties, and does not anticipate any trials or other matters that would inhibit him in doing so. As the ICA, Mr. Rosenthal would anticipate spending more time on this engagement than any other team members, and, accordingly, would prioritize his overall commitments such that he could devote the time to this important engagement that it requires and deserves.

All of the FRA team members have sufficient time to devote to the project.

As for other team members, each of them would devote, at a minimum, the time to this engagement reflected in the notional budget provided.

C. Qualifications

Monitoring, auditing, evaluating, or otherwise reviewing performance organizations, including experience monitoring settlements, consent decrees, or court orders.

To avoid undue duplication, please see discussion above concerning the team's qualifications with respect to these matters.

- **Statistical and data analysis**
- **Information technology**
- **Data management**

A number of individuals on the team would perform the above functions.

Frances McLeod, FRA's managing partner, is a former investment banker. She has over 23 years of experience advising clients on fraud, anti-corruption, internal control, asset tracing, and money laundering issues. She has led FRA on countless forensic investigations providing technical advice related to financial misconduct and fraudulent behavior in multi-jurisdictional litigations. Frances has been involved in all of FRA's FCPA monitorship work, and is the lead partner on one of FRA's ongoing DFS bank monitorship-related matters, as well as the Ferguson monitorship.

Other members of the team would include Greg Mason, a partner and co-founder of FRA, who has more than 20 years of experience in database architecture and programming, software design, mass data analysis, and data mining for investigations, disputes, and litigation; Stacy Fresch, a partner in the Washington DC office of FRA with over 20 years of private and public sector experience providing advice on financial accounting and reporting matters and related auditing issues, and who served as an Assistant Chief Accountant in the SEC's Division of Enforcement; Phil Desing, who was a Special Agent for the FBI for over 26 years; and, Joseph Cheriathundam, who has over 20 years of data collection, validation, assimilation, analysis, delivery, and management experience. He has led the national data analytic activity for a mid-size forensic accounting firm and the regional data analytic activity for a Big Four accounting firm.

Finally, Dr. Hal Singer's expertise in statistical sampling and analysis would enhance the team's investigative capabilities and provide insight in reporting on Herbalife's remediation and compliance with the requirements of the Order. In particular, Dr. Singer will focus on areas such as Herbalife's calculations of profitable retail sales, as well as complex calculations regarding

preferred customers and rewardable personal consumption, and multi-level compensation practices.

- **Completing projects within anticipated deadlines and budget**

The most relevant projects referenced above are the various monitorships described. All of them have been completed, or, for the ongoing ones, are being conducted, in a timely fashion and within the confines of the applicable budget. The team is comfortable compiling and analyzing data under tight deadlines, as is often the case in complex litigation matters. With respect to the budget, we have spent considerable time analyzing the various tasks to be completed, and we are confident that it represents a realistic and achievable budget for the project.

- **Preparing for and participating in court proceedings**

Please see above discussion of Mr. Rosenthal's 30-plus year career as a federal litigator and appellate advocate, both in government and in private practice. Likewise, as noted above, Mr. Colwell is a seasoned litigator with both government and private practice experience.

- **Report writing**

Mr. Ervin would assist Mr. Rosenthal with drafting the various reports that are required. As Inspector General of two major federal agencies, Mr. Ervin and his teams of auditors, inspectors, and investigators wrote and edited scores of reports, all of which are available on the applicable agency websites. Mr. Ervin's current Squire practice also includes conducting internal investigations for clients. He completed one such investigation for the Cleveland Metropolitan School District earlier this year on the district's participation in a federal program, and co-authored the resulting report. That report is available at: http://www.cleveland.com/metro/index.ssf/2016/01/cleveland_schools_have_little_chance_of_collecting_857_million_in_botched_e-rate_rebates_lawyers_say.html. And, shortly, his reports as Monitor for Ferguson and Zenith will be posted for public review on applicable websites.

D. Prior Experience and References

In addition to other team members' monitoring and FTC expertise detailed above, FRA has extensive experience monitoring, auditing, evaluating and reviewing the performance of organizations subject to government settlements and consent decrees, and presenting its findings to government regulators. FRA's expertise in data analytics, information technology and data management lies at its core. With highly skilled and internationally experienced staff, FRA has delivered numerous data analytics solutions within anticipated deadlines and within budget.

(i) FRA Monitorship Experience

- 1) DFS-Appointed Independent Monitorship: FRA is currently engaged in providing forensic and compliance assessment support of the DFS- appointed independent monitor which is assessing an international bank's compliance with federal and New York state laws in particular as they relate to the Bank Secrecy Act and anti-money laundering practices. In addition, as part of the monitorship team, FRA is assessing the corporate governance and compliance structure, the timeliness and effectiveness of the bank's remediation, and reviewing the organization's current reporting structure and compliance culture.
- 2) Integrated Self-Service Solutions, Security Systems and Services Company: A NYSE-listed high tech manufacturing company entered into a deferred prosecution agreement with the DOJ and a cease and desist order with the SEC for violations of the FCPA's provisions. FRA was retained to assist the Monitor in the review and assessment of the effectiveness of the company's compliance function. The team evaluated the company's system of internal controls and books and records and made recommendations for improvement. Document review and interviews were conducted on-site in Latin America, Asia, Africa and Europe. FRA re-visited several global locations to evaluate the implementation, progress and operational effectiveness of the company's compliance program. Reports of FRA's observations on internal controls and related recommendations were presented to the SEC and DOJ at regular intervals throughout the monitorship.
- 3) Oil Services Company: FRA was retained by the DOJ-selected monitor of a Swiss oil services company that had entered into a plea agreement to FCPA charges and export control violations. FRA is providing forensic accounting support as part of the worldwide FCPA compliance review of the company, including the testing of internal controls. Compliance reviews of the company's operations have occurred in Asia, Africa, the Middle East, and Latin America.

4) Global Energy Company: FRA was engaged to conduct a global compliance review, which will include monitoring and testing the company's system of internal controls. FRA has also begun to train internal auditors from the company in compliance testing.

5) International Oil Services Company: FRA conducted an extensive review of global operations, involving in-country data collection, key personnel interviews, and substantial data review and analysis. As part of FRA's work, they made recommendations for improvements in internal controls and trained the internal audit group on implementing an effective compliance and ethics program, while regularly reporting to the DOJ and SEC.

(ii) FRA Data Analytics Experience

1) Swiss Banks Claims Resolution Tribunal: FRA was appointed by the Claims Resolution Tribunal in Zurich, Switzerland to re-develop the system for evaluating and paying out claims made in connection with the USD 1.25 billion Swiss Banks Settlement. This required the development of complex name-matching algorithms, the presentation and programming of claim criteria, and the reporting to the Swiss Banks and the Special Master of methodology, audit trail, metrics, progress reports and valuation of claims paid. FRA handled the case effectively, despite the constraints of Swiss banking secrecy laws, the numerous different sets of banking data, the sensitivity of the settlement, and the nature of the claims.

2) Program for Former Slave and Forced Laborers: FRA was appointed by a New York based non-profit organization to develop systems which disbursed DEM 10 billion in restitution payments to Jewish claimants in the German slave and forced labor settlement. This involved building a system which evaluated tens of thousands of claims and paid qualifying claims, with direct reporting to the court appointed Special Master and the German Ministry of Finance. FRA was required to keep a complete audit trail and report quarterly to all stakeholders – U.S., Israeli, and the German governments, and authorized non-profits.

3) Multinational Antitrust Litigation: FRA assisted a large group of claimants from across the European Union in their action against an airlines cartel that overcharged clients on (among other things) freight costs in the context of major antitrust proceedings. FRA conducted extensive data reviews, as well as hosted and managed the claimants' database to undertake complex data analytics in support of damages quantification.

4) Independent Indian Money, Breach of Fiduciary Responsibility Dispute: FRA personnel performed data analytics and statistical analysis based on the standardization, conversion and analysis of over 140 million transaction records relating to the property income and oil revenue income of over 300,000 trust beneficiaries. The distribution to the beneficiaries followed several

years of litigation between the federal government and the Native American Rights Fund, which the government settled for \$1.5 billion.

5) European Logistics/Shipping Company: FRA assisted a European company with compliance visits to a number of high-risk jurisdictions, including India and Russia. Together with key compliance personnel and major law firm, FRA visited these jurisdictions, performing data analytics on financial transactions and systems and interviewing local management to assess compliance control risks. In addition, FRA assisted the client by developing a data-driven method to identify and control third-party vendors across its key business organizations.

6) UK Environment Agency: FRA was engaged by legal counsel to a property development group to perform data analytics in the context of a claim brought against it by the Environment Agency in the United Kingdom. FRA reviewed and analyzed a wide range of documents including for example, contracts, invoices, waste transfer notes, tip tickets, soil analyses, witness interview transcripts, and prepared calculations associated with waste types and volumes deposited at various sites over a number of years. FRA also reviewed alleged fraud perpetrated by the waste contractor, which manifested itself in the apparent invoicing of duplicate, erroneous and fake waste transfer notes. FRA was also instructed to provide an assessment of and report on the avoided cost calculation presented by the Environment Agency's consulting expert.

- **References**

Mr. Rosenthal:

- William S. Campbell, Former Chief Financial Officer, Amtrak (301)356-7481
- Nayan Patel, Chief Executive Officer, Your DC Hotels, (703) 881-1181

Mr. Ervin:

- Daniel Fisher, General Counsel and Corporate Secretary, ECMC Group (the company that owns Zenith Education Group), dfisher@ecmc.org, (651) 221-0566
- Richard N. Reback, Former General Counsel to the Inspector General of the State Department and to the Inspector General of the Homeland Security Department, richardreback@aol.com, (301) 656-5050

Ms. Lodge:

- Kenneth M. Zorn, Former General Counsel of Scientific Image Center Management, Inc., kmzorn@icloud.com; (248) 921-2799
- John J. Burke, General Counsel, D'Addario & Co., John.Burke@DADDARIO.com, (631) 439-3230

Ms. Batts:

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Dr. Hal Singer:

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Dr. Thomas Maronick:

- Paul Rubin, Partner, Ropes & Gray, paul.rubin@ropesgray.com, (202) 508-4709
- Dr. Judy Harris, Associate Dean, College of Business & Economics, Towson University, jharris@towson.edu, (410) 704-3428

E. Proposed Activities

We would anticipate engaging in the following activities to perform the Scope of Work.

- **Methods of obtaining information**

In order to assess Herbalife's efforts to comply with the requirements of the Order the auditing would identify (and then analyze and assess) sources of information to allow for a "top down" analysis – i.e., to identify and assess what compliance framework/program and underlying policies and procedures (and resource) have been established to ensure that remediation has taken place and that systems are in place to ensure compliance for the term of the engagement and beyond. The team would also identify (and then analyze and assess) sources of information to allow for a "bottom up" analysis – i.e., to allow for testing and monitoring of the compliance program to see whether the policies and procedures identified during the "top down" analysis are being adhered to, and whether they are effective. In addition, the "bottom up" analysis should identify gaps in either compliance controls, any circumvention of said controls, and provide evidence to support recommendations, if any, with respect to adjustments or enhancements of relevant policies and procedures.

Methods for obtaining data relating to Herbalife's Compliance Function¹ – so called "top down" analysis

Document and Data Collection

The auditing team would, in consultation with Herbalife, develop a document request list for documents including, inter alia:

- Policies and Procedures relating to compliance with the Order
- Materials and mechanisms for tracking training, and related schedules
- Accounting Manuals
- Internal Controls Matrices (to the extent these relate to requirements set out in the Order)

We would anticipate that documents and data to be collected would follow an initial set of interviews in which we would determine the most cost-effective, and yet comprehensive, way to obtain data that would need to be analyzed in order to ensure compliance with the Order.

Interviews with Key Personnel

¹ Specifically, compliance with the requirements set out in the Order and the structure, policies and procedures and underlying controls associated with ensuring such compliance is implemented. The "bottom up" analysis will focus on whether such implementation is effective and or whether there are gaps and or areas for improvement as evidenced by the results of such testing.

The auditing team would also conduct interviews with key personnel at Herbalife (for example, relevant compliance and legal team personnel, key members of the finance/accounting/financial control staff, internal audit etc.), with an emphasis on their role in testing for compliance with the Order. The auditing team would also conduct interviews with key HR staff, key sales personnel, as well as senior management members.

Our primary function at this stage would be to ensure transparency and accountability for systems that would have to be collected and analyzed. We would also use this set of interviews to make certain that we are reaching out to personnel who would be able to confirm that our data collection is complete.

Methods for obtaining data for transactional testing and monitoring – so called “bottom up” analysis

Data Mapping: FRA will identify all relevant data sources through a data mapping exercise and by conducting interviews with key Herbalife personnel responsible for managing data repositories. These will likely consist of electronic and potentially paper based data, to include ERP and CRM system data, and other repositories identified during discussions with Herbalife stakeholders, IT staff and relevant data custodians.

Extraction: FRA will perform data extraction from all relevant systems. This would include data from various sources that flow into the general ledger. On the vendor side, FRA would extract data from the vendor master list and detail from the Accounts Payable ledger to identify and analyze the activity in the entity’s obligation to pay for goods or services received. On the customer side, FRA would extract data from the Customer Master List, including flags to distinguish preferred customers, retail customers or business opportunity participants, as well as the Accounts Receivable ledger to identify and analyze the invoicing and cash collection activity. FRA will extract data from the product list inventory and analyze inventory activity concurrently with the data from the customer side to gain an understanding of what is sold, to whom, and the rationale for the sale. The FRA forensic team has particular expertise in identifying key ledgers and accounts that may be used to conceal accounting irregularities, and those that have high potential to be used to record fraudulent or mis-booked payments.

FRA will also perform random and targeted audits to include testing of Preferred Customers, Retail Customers Business Opportunity Participants, Participants recorded in HR documents, and Downline Relationships for all Business Opportunity Participants across time. This analysis should encompass data such as participant compensation details by category and date and average wholesale price by product.

Trial Balances, Income Statements, Balance Sheets, Bank Statements and other relevant Corporate Financial Reporting data will be used as an open source benchmark for control evidence on sales data. Other data sources, depending on the availability and completeness of the data repositories outlined above, may be audited, to include paper files, disparate electronic files (spreadsheets, emails etc.).

- **Methods of analyzing information;**

“Top Down” analysis of information

FRA would review and assess the policies and procedures that have been developed by Herbalife to ensure compliance with the Order and create a framework against which to develop some of the testing protocols to be undertaken as part of the “bottom up” analysis/testing and monitoring. This would include the review and analysis of any desk top procedures developed for relevant staff (compliance, accounting, IT etc.) and of any system controls and or reporting and or testing and monitoring that has been designed and implemented by Herbalife to ensure compliance with the Order. FRA would work with the ICA to make an assessment of the effectiveness of such policies and procedures in concept, identify any gaps or areas for improvement, and develop recommendations, as appropriate.

In addition, the auditing team would review training materials (for internal and external/business partner audiences) and assess the same and undertake analyses of the frequency and effectiveness and coverage of such training.

“Bottom Up” analysis of information

Once data has been extracted from the various relevant systems and repositories, FRA will analyze it, focusing on Retail Sales, Preferred Customers, Rewardable Personal Consumption, and Multi-Level Compensation and acquired Business Locations, as outlined in the RFA, to test for compliance therewith and to allow for reporting. The process will involve standardizing collected data such that the various sources can be linked to provide meaningful analysis of sums, totals, patterns and gaps in data. The outline of that process is set out below:

- a) Standardize and convert data into format that can be analyzed efficiently and create a database structure to be populated with said data (using SQL Server);
- b) Link various data sources;
- c) Develop dynamic coding to perform reporting as referenced in the Order;
- d) Perform analysis on complete data set to develop a relevant biased transactional data sample and for further review and potential detailed follow up to refine said sample; and

- e) Perform on-site review of supporting documentation for isolated, biased data sample identified during analysis.

- **Methods of reporting information;**

“Top Down” Analysis Reporting

The auditing team will produce written reports detailing the data sources identified and reviewed, the methodology for review, an outline of the framework developed against which to benchmark compliance both in concept and in practice (such as will be tested for during the “bottom up” analysis). During the lifecycle of the audit, we would expect these reports to include recommendations for enhancements, as necessary, and then detail subsequent efforts and their efficacy as these recommendations are implemented.

“Bottom Up” Analysis Reporting

Reporting will be tailored to the requirements identified in the Order and will be based on data related to Retail Sales, Preferred Customers, Rewardable Personal Consumption, Multi-Level Compensation and acquired Business Locations. Initial reports will be based on current available information collected and analyzed. Depending on FTC and project requirements, reporting can be implemented on an ongoing basis, either by integrating current systems and analyzing live data, or through an automated analysis of data extracted periodically (e.g., quarterly).

Reports will be drafted consistent with FTC requirements, but for example, FRA would expect the transactional testing and monitoring reports to include:

- Summary and analysis data
 - Retail Sales
 - Summary of available information and any potential gaps
 - Profitability analysis
 - Analysis of profitability vs. product purchasing
 - Analysis of profitability monitoring
 - Preferred Customer Analysis
 - Preferred vs. non-preferred customer analysis
 - Analysis of discounting and other benefits
 - Preferred customer sales analysis
 - Personal Consumption
 - Calculation of rewardable personal consumption
 - Product purchase vs. rewardable personal consumption
 - Multi-Level Compensation

- Compensation in line with retail profitability analysis
- Participant type analysis
- Timeline analysis (focusing on specific “look-back” periods)
- Training analysis
- Purchasing entity analysis
- Analysis of third party fees (including “headhunter fees”)
- Annual calculations of sales (total net and rewardable sales)
- Leased or purchased business location analysis

The “bottom up” reports (per category listed above) would include details of the data sources extracted methodology of querying and analysis employed, supporting documentation reviewed and findings – for example, red flags or anomalies identified, and issue resolved or identified. The reports would also include, for examples, recommendations for calibrating controls, to the extent there has been a control failure, as well as quantifying and categorizing the nature of the anomaly and or failure. Collectively, the auditing team would develop recommendations for remediation of these, which would also be presented in the reports.

- **Frequency of Proposed Activities;**

We would expect that the assignment would be more intensive at the start of the engagement, as we would need to understand the systems, and internal controls currently in place. We would assume that there would be less need for onsite and direct employee interviews once we are able to ascertain that we have an adequate understanding of the systems and operation.

FRA would take primary responsibility for creating an integrated analytics tool to ensure flexibility and timeliness of reports. The analysis and timeframe of each report can be changed at any time throughout the process. Again, we expect the initial stages of the project to be more time and cost intensive as they will involve gaining an understanding of company data and infrastructure, and will be heavily focused on data identification, collection and standardization. However, the integrated analytics tool will reduce costs throughout the project, as the periodic analysis would be driven by standard extracts from electronic data systems and will deliver faster periodic reporting by selected analyses, and/or at quarter and annual intervals.

Our approach would set in place a process for revisiting and re-performing control audits to ensure that the focus of data analytics is appropriate and tailored to an ongoing basis.

- **Personnel responsible for the various activities described in the Scope of Work and the number of hours anticipated to be devoted to specific aspects of the project by month or quarter, including the number of hours that would be spent on site at Herbalife’s headquarters in Los Angeles**

Set out in the attached budget is a general timeline and task outline for initial and ongoing analysis along with estimated cost (and time required to be spent onsite at Herbalife's headquarters).

- **Coordination with Herbalife to arrange visits, on-site records reviews, and interviews**

The main point of contact between the team and Herbalife to arrange visits, on site reviews, and interviews would be Samuel Rosenthal. We would, however, anticipate using the firm's two West Coast offices in order to maximize our resources and reduce costs. Squire has offices in Los Angeles and San Francisco. Mr. Colwell would be our key team member available in Los Angeles to be onsite whenever necessary or helpful.

F. Potential Conflicts of Interest or Bias

We are unaware of any potential conflicts or bias.

G. Estimated Costs





Attachment

