



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

Division of Enforcement  
Bureau of Consumer Protection

Robert M. Frisby  
Assistant Director

February 19, 2008

Mr. Bill Gould  
20625 Cooke Drive  
Reno, NV 89521

Dear Mr. Gould:

The Division of Enforcement has reviewed your letters of April 27, 2007, and January 25, 2008, requesting a staff advisory opinion regarding whether your proposed direct sales program "is in compliance with your organization and does not lend itself to being defined as multi-level marketing, pyramid scheme or endless-chain scheme." I apologize for the delay in responding to your inquiry.

We have analyzed your proposed direct sales program to determine whether it would violate Section 5 of the Federal Trade Commission Act as it applies to the marketing of multi-level marketing programs and pyramid schemes, as well as the "Order Preliminarily Approving Stipulated Final Judgment and Class Action Settlement and Setting Fairness Hearing" entered by the Court in *FTC v. Equinox Int'l Corp.*, No CV-S-99-0969 (D. Nev. Apr. 20, 2000). As you know, you are a defendant in this action and subject to the Order entered therein. Part III of the Order prohibits you from, among other things, engaging or participating in any multi-level marketing program or pyramid scheme as the Order defines those terms.

Based on our review of your proposed direct sales program, we cannot at this time reach a definitive conclusion regarding whether the program would constitute either a multi-level marketing program or a pyramid scheme as defined in the above Order. For that reason, we cannot opine whether the program would comply with the above Order. Nor can we opine that the program would not violate Section 5 of the FTC Act as the FTC has applied it to the marketing of such programs and schemes. This is so because whether the program constitutes a multi-level marketing program would depend in large measure on how it is actually implemented. Similarly, whether the program would constitute a pyramid scheme in actual practice would depend on a multitude of factors.

Several features of your proposed program raise concerns regarding whether, as actually implemented, it would constitute a multi-level marketing program or a pyramid scheme as defined in the Order. Such features include the potential *de facto* cost of participation in the program, and incentives to recruit other participants into a downline. In addition, certain parts of

your description of your proposed program seem contradictory, which makes us unsure of how you will implement your program.

As you know, one feature of a multi-level marketing program or pyramid scheme as defined in the Order is that participants must pay the promoter to participate in the program. Although your program states that there are no sign up fees to be involved, it also notes that participants can incur expenses for sales tools like business cards, training materials, and presentation aids. Presumably participants would obtain such items by purchasing them from the promoter or someone affiliated with the promoter. It is also unclear whether participants would incur any training fees or expenses. Depending on how the program is actually implemented, such expenses for training or for items purchased from the promoter or someone affiliated with the promoter could become *de facto* requirements to participate in the program.

In addition, several features of the program as actually implemented could induce participants to focus on recruitment rather than retail sales. You state, for example, that supervisory personnel must "document their ability to properly train and develop other sales people by training a minimum of two trainees." It appears that, for these trainees to become supervisory personnel, they will each have to recruit and train two more trainees, and so on, creating an incentive for endless recruitment.

Your letter of January 25, 2008, states that "[t]here are only two positions under the company," qualified supervisors and trainees, that "[o]nce a trainee qualifies as a supervisor, they move away from their supervisor and connect directly with the company," and that "[t]here is no third position or level." These statements do not appear to leave room in the organizational structure for a "sales team" as described in your description under Profit Sharing that "additional profit sharing equal to 5% of the total monthly sales generated by those they have trained directly and their sales team." This reference to a sales team appears to indicate that a participant has an incentive to recruit and train another participant who then acquires a sales team, i.e., a downline, so that the original participant can then profit from the sales of the sales team/downline. This concern is heightened by the program's description of a variety of classes beyond qualified supervisors and trainees, including "certified supervisor," "supervisory personnel," "direct sales personnel," "sales personnel," "certified sales people," "sales team," and "end users" without defining the classes or indicating clearly how they relate to each other.

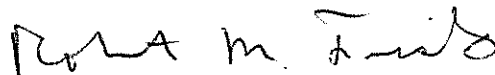
The staff does not represent you personally and cannot offer legal advice. Determining whether a direct sales program constitutes a multi-level marketing program or a pyramid scheme often requires a factual inquiry into the program itself, the way it is implemented, and the context surrounding it. Therefore, as stated earlier, we cannot opine that your program would

comply with the above Order or the FTC Act.<sup>1</sup> We suggest that you seek legal advice regarding the legality of the direct sales program you have proposed before beginning the program.

In accordance with Section 1.3(c) of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.3(c) (1997), this informal staff opinion has not been reviewed or approved by the Commission or by an individual Commissioner, and is given without prejudice to the right of the Commission later to rescind the advice and, where appropriate, to commence a law enforcement action. In addition, the views expressed in this letter are restricted to the facts described above. Finally, this office retains the right to reconsider its advice, and with notice to the requesting party, rescind or revoke its opinion if the response is used for improper purposes, or if it would be in the public interest to do so.

Pursuant to Section 1.4 of the Commission's Rules of Practice and Procedure, 16 C.F.R. § 1.4, this response along with your request for advice will be placed on the public record, subject to any limitations on public disclosure arising from statutory restrictions, the Commission's rules, and the public interest. If you wish to request confidential treatment of any of the information you submitted in connection with your request for an advisory opinion, please submit a separate request stating the reasons why you believe such information is entitled to confidential treatment.

Sincerely,



Robert M. Frisby  
Assistant Director

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<sup>1</sup> We did not analyze whether your program would comply with statutes other than the FTC Act or any of the regulations enforced by the FTC.



Bill Gould  
20625 Cooke Drive  
Reno, NV 89521

January 25, 2008

Mr. Peter J. Vander Nat  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

Re: Request for an advisory opinion relating to a direct sales program as it relates to the Federal Trade Commission definitions regarding multi-level marketing.

Dear Mr. Vander Nat;

Hopefully you will remember me, I owned Equinox International, which you testified for as an expert witness in case #CV-S-99-0969-JBR-RLH. Prior to this case I had spent hundreds of thousands of dollars in attorney's fees and even employed in-house council to ensure we were compliant with all laws, regulations and requirements, both state and federal. I was stunned and traumatized when the F.T.C. charged my company with wrongdoing, as council had continually assured me that everything we were doing was in complete compliance with all agency regulations.

I have spent several years researching and developing a new business. This new business will be invaluable to millions of businesses across America. Due to the current and near future economic outlook, now would be a perfect time to launch this program. I have been waiting more than nine months now, as I sent my original correspondence to the attention of Donald Clark on April 27, 2007. While he assured me several months ago this issue had been forwarded to the proper department, I have been unable to receive any further information from him despite repeated unanswered e-mails and phone messages. I was looking through the court documents and remembered you now work with the F.T.C. and certainly would be one of those whose expertise would be involved in the determination that my new business concept was not MLM. I believe there is absolutely no way this could be misconstrued as an MLM, but I was also assured Equinox was in compliance in the past, only to discover the F.T.C. had a different opinion.

I am writing to you as I never again want to go through another devastating incident like the one I experienced as a result of believing and being assured by council that I was working

within the parameters of your agency, only to discover the opinion of the F.T.C. differed from the opinion of those whom I relied upon for their expertise.

Therefore, I would like to receive confirmation, directly from your organization, that my proposed business venture in direct sales is in compliance with your organization and does not lend itself to being defined as a multi-level marketing, pyramid scheme or endless-chain scheme.

I will describe my business model, marketing strategy and compensation plan, as well as why I, and my attorneys, feel this concept does not constitute a multi-level marketing, pyramid or endless-chain scheme. I understand that I am solely responsible for the facts and content of this correspondence as you will be relying on the accuracy of the information I am providing as the basis for the rendering of your decision. I would however, like to reserve the right to possibly change the titles used to describe the level sales people achieve and the commission amounts they can earn at those levels, as these things may need to be adjusted in order to achieve maximum market potential. I will be happy to notify you in writing of any changes that I find become necessary. Rest assured, with these small exceptions, the facts contained within regarding my request and business plan will remain unchanged.

### BUSINESS MODEL

Several years ago my wife started working in the credit card industry. From time to time she has come to me with issues and problems merchants she had contacted were forced to deal with. It became readily apparent that many independent business owners are now facing almost insurmountable obstacles in today's business environment. The number of large corporations and their fierce competitiveness is unprecedented in the history of American business. Companies like Wal-Mart, Home Depot, Lowe's and Sports Authority, as well as major restaurant chains such as Friday's, Olive Garden and Outback Steak House, just to name a few, have sent countless independent business owners into bankruptcy. Their massive buying power allows these companies to buy and sell products for less and advertise more, while earning more profits than the small independent business owners. Additionally, their outstanding profitability affords these large companies the ability to hire experts in the fields of advertising, accounting, banking, insurance, computers, software, promotions, sales training and marketing. As a result, they usually have superior business plans and support systems in place and actually pay less for them, than their independently owned competitors.

Independent business owners, while understanding many specific aspects of their particular businesses, often times have little knowledge or experience regarding advertising, marketing, wholesale product purchasing, banking, credit card processing, check services, gift and loyalty card programs, professional sales techniques, website development, web hosting, employee retention and benefit programs, security and alarm monitoring, tool re-imbusement programs, etc. Business owners are frequently unaware of the many alternatives available to them and what are competitive rates for these products and services. As a result, large companies can offer their customers more effective advertising and pricing while offering their employees higher pay and benefits, putting thousands of independent businesses out of business every year.

Many small business owners are also unaware of the many products and services available to them that are designed to increase their sales while also decreasing their expenses and costs. There are millions of independent businesses across America that could benefit from working with a company, which I am currently designing, that will offer more competitive alternatives to the products, services and methods they are currently using. Offering a wide variety of business support products and services to businesses nationwide will give us the opportunity to offer better group pricing, saving the owners money, as well as saving them valuable time, since their needs will be met through one entity rather than dealing with many separate companies.

I have found that millions of independently owned businesses across America now face the reality that they must work cooperatively with one another if they are to remain competitive with the major conglomerates. Cooperative advertising, marketing, purchasing and expert advice in other areas are becoming a necessity if the independently owned small businesses across the country are to survive and thrive, yet no one has developed an organization designed to fulfill these needs and capitalize on this market. The opportunity now exists for the creation of a central organization, a merchant alliance if you will, to coordinate these efforts and market these products and services to independent business owners. I intend to create this alliance.

### PREPARATION

I have spent limitless hours over the last seven years trying to figure out what went wrong in my last company and how I could have prevented the debacle from occurring. I now understand a large sales company must have checks and balances in place designed to control rogue sales personnel. The business model I have developed and the details described below have taken countless hours of thought. Every detail was designed to accomplish three main objectives:

1. All persons who achieve a minimum amount of success will be promoted to work directly with the company. The company will then be responsible for establishing a direct relationship and accountability with each person prior to their being able to train and supervise others. This system is designed to ensure control and compliance of all sales personnel.
2. We can offer a true equal opportunity, one that allows each person who chooses to get involved with the company to be immediately assigned to, and begin working directly with someone who has already proven their ability to be successful in this business. The immediate assistance and training that can be provided by an experienced person will increase the chances for the success of the new person by dramatically reducing the amount of wasted effort, improper conduct and confusion.
3. Sales personnel will receive just compensation for their efforts. This program does not allow someone to earn income as a result of merely enrolling others. Those who are responsible for establishing and managing the most business and earning the highest profits for the company will receive equivalent earnings based on their results.

## MARKETING STRATEGY

Direct sales personnel will market these products and services directly to business owners by approaching them in person, or by phone, and presenting the products and services either personally or with the aid of video presentations. The wide variety of products will allow our sales people to present the most obvious products or services that a particular business will benefit from initially and then add on other products and services as the business owners begin to realize the benefits of our affiliation. A company that specializes in a particular area, such as employee benefit programs, will supply each product and service we represent. Should there be an apparent need for a business solution which does not yet exist, we will work to design and develop the necessary products and programs. Our company will continue to develop and offer more innovative products and services, each designed to help the independent business owners be more successful and profitable. Our strategy will be for the sales people to develop long-term relationships with the business owners through education, communication and marketing support.

Our goal is to establish an independent business owner's network, or alliance, which will coordinate mutual support for all members. By nationalizing the membership, all independent business owners will have the opportunity to mutually support and promote each other's businesses, while contributing and benefiting from the massive advertising and buying power all members mutually can achieve. Obviously it will take many years to develop some of these programs, products and services. I have already arranged to launch this program, pending your response, with products that are currently available in the marketplace and plan to add additional programs as the business network grows.

## COMPENSATION PLAN

All sales personnel will be paid commission only. They will be eligible for increased commissions and profit sharing based on the number and size of accounts that they are personally responsible for establishing and maintaining. The pay structure will be a stair-step commission program, allowing the sales people to earn a higher commission percentage as their total sales volume increases. They will also have the opportunity to earn residual commissions, paid monthly, for ongoing contracted products and services which are billed monthly such as website hosting, alarm monitoring and the like, provided the individual responsible for establishing the account remains actively involved with the company.

My experience during the trial with my last company revealed that the vast majority of individuals who failed with the Equinox opportunity failed to comply with our company policies. They either never understood the program and hurt themselves by purchasing more products than they could sell, or did not completely understand what they were doing and passed their ignorance on to others who did the same. It became apparent that many of the representatives violated their signed contract with the company by purchasing more products than they were allowed to have in their possession under our agreement. They did this in a futile effort to earn checks on the production of others in their sales organization, while they were unable to successfully sell the products themselves. I now realize this was a result of the

fact that there was no system in place to insure direct communication from the company to the sales person in order to establish accountability.

My new concept assures these same shortcomings simply cannot occur. First and foremost, the complexity of performing a business analysis, examining account statements, mastering successful negotiation skills and the proper completion of contracts can be complicated and will automatically eliminate the unskilled and intellectually challenged. Notwithstanding, it remains imperative that the company establishes checks and balances to ensure that all sales people understand and comply with, not only our policies, but also state and federal regulations.

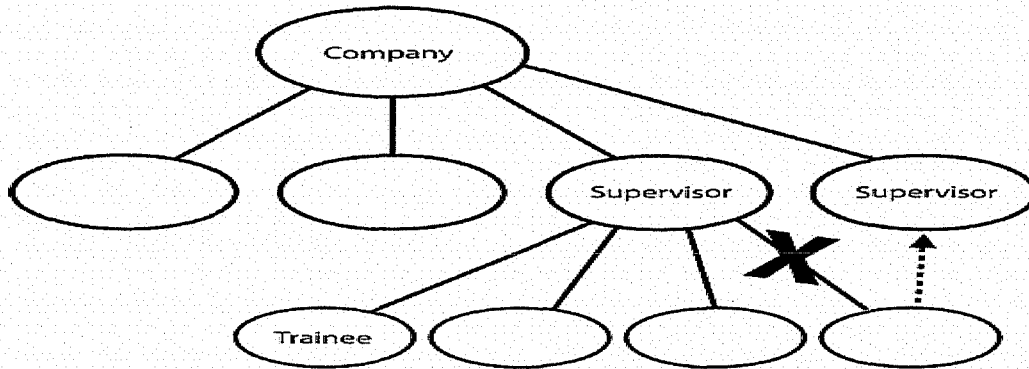
For these reasons, I have designed a three step "Certification" program that all supervisory personnel must complete. In order to qualify, an individual must first demonstrate their understanding and competence of the program, establishing accounts and selling equipment themselves and achieving a predetermined number of personal sales. Secondly, they will be required to pass a "Certification Test" demonstrating their comprehension of the company's policies, qualifications and requirements, along with state and federal regulations and knowledge of the various products, services and techniques necessary to achieve successful results dealing with independent business owners. Finally, they will be required to document their ability to properly train and develop other sales people by training a minimum of two trainees, while working under the watchful eye of their certified supervisor, who has also established their ability to successfully sell the products and services to business owners. These two trainees will then remain under the direction of the supervisor, subsequent to the promotion of the newly certified individual to the same supervisory level, who will now begin working directly with the company. Both of these systems are designed to uncover any bad habits, misconceptions or rogue attitudes.

As the company will obviously benefit from the expansion of the sales force by the efforts of the certified supervisory personnel whom elect to recruit and train other successful sales people, those who contribute to the growth of the company will be fairly compensated for their efforts. Certified supervisors will be paid the difference between the commissions and residuals the sales trainees they assist are eligible to earn and the commissions and residuals they are qualified to receive themselves. For example, if a sales trainee is qualified to earn 50% commission on a sale and the supervisor who works with them is qualified to earn 70%, the supervisor will be eligible to receive the difference of 20%. The same will hold true for the residual earnings. These commission spreads would be permanent, provided the account stays active and the sales personnel remain productive. The certified supervisory personnel will have the opportunity to earn commission splits on the sales, leases and residual incomes made by the new sales person, as well as on any accounts that they inherit from others resulting from inactivity or termination.

There are only two positions under the company, qualified supervisors, who are responsible for their own accounts, as well as assisting trainees establish accounts themselves. Once a trainee qualifies as a supervisor, they move away from their supervisor and connect directly with the company, as outlined in the diagram below. There is no third position or level. This is



essentially the same relationship between a sales manager and sales person working at a car dealership or broker and agent in the real estate or insurance business.



### TRAINING BONUS

The most productive certified sales people will also earn the opportunity to participate in two incentive programs. The training bonus will reward certified sales people who recruit and successfully train other certified sales people. Since they will essentially be working as sales managers, training, supervising and assisting sales people, they will be rewarded for their effort and results by receiving a portion of the profits the company is earning in the form of a 5% commission, based on the profits of the sales produced by those they personally are responsible for training and assisting, provided they are qualified by producing a predetermined number of personal account either on a monthly or yearly basis.

### PROFIT SHARING

The most successful members of the sales organization will also have the opportunity to participate in a profit sharing program and receive profit sharing equivalent to the total sales they are personally responsible for developing. Those who train and develop others who achieve the best results will be eligible to receive additional profit sharing equal to 5% of the total monthly sales generated by those they have trained directly and their sales team.

### DIRECT SALES PROGRAM

I, as well as my attorneys, believe this is a straightforward direct sales program, not to be misconstrued as a multi-level marketing, pyramid or endless-chain scheme. Below I have listed several reasons why this direct sales program does not contain aspects defining multi-level marketing, pyramid or endless-chain schemes.

1. There are no sign-up fees to get involved with this company. The only expenses which can be incurred would be for sales tools like business cards, training materials and presentation aids, all of which are not required to participate in the program. Aside from the business cards which are personalized, any sales tools which are current and in resalable condition can be returned for a full refund within 30 days, should anyone

involved change their mind. Reasonable exceptions to the 30 day limitation certainly will be granted.

2. There is no benefit or income earned for enrolling others. The mere act of enrolling others into the sales program offers no incentive and will produce no income. The only method of earning income in this sales company is to sell products and services directly to the end user; business owners.
3. The only commissions paid to any one will be as the result of products or services being sold directly to end-users. There are no products or services which can be purchased by, or sold to, any sales people involved in this company. This will be true with the exception of someone who happens to own their own business outside of the opportunity and decides to become end users of the services for the sole benefit of their other business.
4. All sales volume needed for promotions must be personal sales. Sales personnel will not be promoted based on the sales of those they enroll. They can however, earn residual income if they inherit the responsibility of managing accounts which were established by someone else, but were later transferred to them because the original sales person was either terminated for cause or chose to no longer take responsibility for managing that account. As an example; if I was a trainee and you were my certified supervisor and I established two business accounts before deciding to quit and pursue a different career, my accounts would then be assigned to you and you would begin receiving the monthly residual earnings in exchange for your efforts in managing the accounts and maintaining the relationship with those particular businesses.
5. There is no endless-chain pay plan. Those who decide to enroll other sales people into the business receive no monetary compensation or benefit from the enrollment. All new sales personnel will be assigned to work with an experienced and successful certified supervisor. All supervisory personnel are on the same level, working directly with the company, and are not stacked, chained, pyramided or part of any down-line. All sales persons will work with the experienced certified supervisor until they achieve the same level of success, at which time they are also transferred to work directly with the company and are not stacked, chained, pyramided or part of any down-line. This will create a direct relationship between the company and all those individuals who have proven their ability to succeed in the business, allowing the company to ensure proper conduct of the certified supervisory personnel and their influences on new trainees. This is the same manner in which real estate agents can, through sales and performance, earn the right to become brokers and work directly with the parent company while utilizing the efforts of new agents to help the company grow. In essence, the company works directly with all certified supervisory personnel who, in turn, work directly with all sales trainees in the same way a national retail sales company would have district managers overseeing store managers.
6. The only products a sales trainee or certified supervisor will be able to purchase from the company will be a company sales manual and possibly pertinent video

presentations. There are no commissions paid to anyone for the purchase of these sales tools. The sales tools are solely designed and made available to sales personnel in order to help them be more successful in their efforts of selling products and services to businesses, the purchase of which is not a requirement to work with the company and is strictly voluntary. These sales tools will be sold with a 30-day money back guarantee provided they are returned in resalable condition. Certified supervisors must sign a contract stating they understand they are not permitted to have or possess more than ten training manuals, designed for immediate availability to new trainees, at any time without having a documented reason and only after receiving written permission from the company. Any violation of this policy could result in termination.

7. There will be no products, services or licenses purchased or inventoried by sales personnel. There will be no other products or services that can be resold to other sales personnel. There are no sales of equipment or services made to sales personnel either from the company or from one another. No products can be stored or inventoried by sales personnel other than a limited amount of sales tools with a refund policy in place as defined above.
8. All products and services are sold, contracted and shipped directly to end users.
9. Any opportunity to attend sales training programs will be offered on a voluntary basis and will not be a requirement to work with the company. All participants will be notified of this policy and will be required to sign an agreement stating these facts prior to admittance to any such events.
10. All persons involved will be required to provide documentation before making any income claims. Any false, misleading or undocumented income claims will result in termination of the individuals responsible and all participants involved with the company will be notified of such violations and terminations.

### SUMMARY

I have spent the last several years meeting with business owners and discussing the problems they are encountering. I have been exploring alternatives and solutions while completing the market research necessary to create this company. Most of the business owners I have spoken with are very excited about the benefits they will gain as a result of becoming part of this merchant alliance program. No aspects of this business plan have been initiated as I understand that your agency will not comment regarding ongoing business entities. I am prepared to begin this business venture after I receive a response from your office and will continue to prepare for the initial launch as I await your reply.

I feel it is necessary to know that your agency agrees this is simply a direct sales program before moving forward. Alternatively, I would also appreciate being notified if there are any aspects of this program you feel may be defined otherwise, so that I can make any necessary changes to ensure complete compliance prior to the launch of the company.

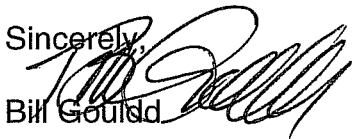
As unfortunate as it may be, I have learned the hard way that agencies like the Federal Trade Commission, on occasion, have a different perspective regarding these issues than even highly respected law firms. This is why I am most interested in understanding your perspective, as the opinion of your agency is certainly of utmost importance. I am willing to do anything in my power to assure you my intentions are honorable. My past experience with your agency was far too costly; both emotionally and financially, to ever want to encounter a similar experience. I am willing to do whatever it takes to work within your requirements, I am simply asking for an advisory opinion so I know I am in complete compliance. I do not want to be involved in anything that could be misconstrued as multi-level marketing or a pyramid scheme and will continue to make every attempt to ensure I comply with all federal, state and local laws.

I realize you and your offices are extremely busy and I certainly respect and appreciate your time and response in this matter. If I can be of any assistance to answer any questions or provide more information I can be reached by phone at (775) 786-2455, or by e-mail at BG1RHINO@AOL.COM. You can rest assured I will work relentlessly to make certain all those who choose to work with this company will have a realistic opportunity to be successful in this business-to-business enterprise; confirming every aspect of this endeavor is in compliance with your agency is an important part of this objective.

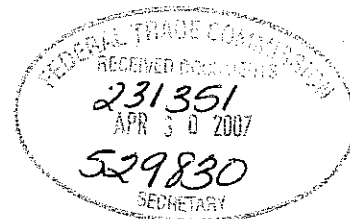
Thank you for your time and consideration in these matters.

Sincerely,

Bill Gould

A handwritten signature in black ink, appearing to read "Bill Gould", written over the printed name.

ORIGINAL



→ L. Friedman



BILL GOULDD  
20625 Cooke Drive  
Reno, NV 89521

April 27, 2007

Mr. Donald S. Clark  
Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue, N.W.  
Washington, D.C. 20580

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### PREPARATION

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3. Sales personnel will receive just compensation for their efforts. This program does not allow someone to earn income as a result of merely enrolling others. Those who are responsible for establishing and managing the most business and earning the highest profits for the company will receive equivalent earnings based on their results.

### MARKETING STRATEGY

Direct sales personnel will market these products and services to business owners by approaching them in person, or by phone, and presenting the products and services either personally or with the aid of on-line video presentations. The wide variety of products will allow our sales people to present the most obvious products or services that a particular business will benefit from initially and then add on other products and services as the business owners begin to realize the benefits of our affiliation. A company that specializes in a particular area, such as employee benefit programs, will supply each product and service we represent. Should there be an apparent need for a business solution which does not yet exist, we will work to design and develop the necessary products and programs. Our company will continue

to develop and offer more innovative products and services, each designed to help the independent business owners be more successful and profitable. Our strategy will be for the sales people to develop long-term relationships with the business owners through education, communication and marketing support.

Our goal is to establish an independent business owner's network, or alliance, which will coordinate mutual support for all members. By nationalizing the membership, all independent business owners will have the opportunity to mutually support and promote each other's businesses, while contributing and benefiting from the massive advertising and buying power all members mutually can achieve. Obviously it will take many years to develop some of these programs, products and services. I have already arranged to launch this program, pending your response, with products that are currently available in the marketplace and plan to add additional programs as the business network grows.

### COMPENSATION PLAN

All sales personnel will be paid commission only. They will be eligible for increased commissions and profit sharing based on the number and size of accounts that they are personally responsible for establishing and maintaining. The pay structure will be a stair-step commission program, allowing the sales people to earn a higher commission percentage as their total sales volume increases. They will also have the opportunity to earn residual commissions, paid monthly, for ongoing contracted products and services which are billed monthly such as website hosting, alarm monitoring and the like, provided the individual responsible for establishing the account remains actively involved with the company.

My experience during the trial revealed that the vast majority of individuals who failed with the Equinox opportunity failed to comply with our company policies. They either never understood the program and hurt themselves through ignorance, or did not completely understand what they were doing and passed their ignorance on to others who did the same. It became apparent that many of the representatives violated their signed contract with the company by purchasing more products than they were allowed to have in their possession under our agreement. They did this in a futile effort to earn checks on the production of others in their sales organization, while they were unable to successfully sell the products themselves. This was a result of the fact that there was no system in place to insure direct communication from the company to the sales person in order to establish direct accountability.

My new concept assures these same shortcomings simply cannot occur. First and foremost, the complexity of performing a business analysis, examining account statements, mastering successful negotiation skills and the proper completion of contracts can be complicated and will automatically eliminate the unskilled and intellectually challenged. Notwithstanding, it remains imperative that the company establishes checks and balances to ensure that all sales people understand and comply with not only our policies, but also state and federal regulations.

For these reasons, I have designed a three step "Certification" program that all supervisory personnel must complete. In order to qualify, an individual must first demonstrate their



understanding of the program and their ability to establish accounts and sell equipment themselves by achieving a predetermined number of personal sales. Secondly, they will be required to pass a "Certification Test" demonstrating their comprehension of the company's policies, qualifications and requirements, along with state and federal regulations and knowledge of the various products, services and techniques necessary to achieve successful results dealing with independent business owners. Finally, they will be required to document their ability to properly train and develop other sales people by training a minimum of two trainees, while working under the watchful eye of their certified supervisor, who is also successful at selling the products and services to business owners. These two trainees will then remain under the direction of the supervisor, subsequent to the promotion of the newly certified individual to the same supervisory level, who will now begin working directly with the company. Both of these systems are designed to uncover any bad habits, misconceptions or rogue attitudes.

As the company will obviously benefit from the expansion of the sales force by the efforts of the certified supervisory personnel whom elect to recruit and train other successful sales people, those who contribute to the growth of the company will be fairly compensated for their efforts. Certified supervisors will be paid the difference between the commissions and residuals the sales trainees they assist are eligible to earn and the commissions and residuals they are qualified to receive themselves. For example, if a sales trainee is qualified to earn 50% commission on a sale and the supervisor who works with them is qualified to earn 70%, the supervisor will be eligible to receive the difference of 20%. The same will hold true for the residual earnings. These commission spreads would be permanent, provided the account stays active and the sales personnel remain productive. The certified supervisory personnel will have the opportunity to earn commission splits on the sales, leases and residual incomes made by the new sales person, as well as on any accounts that they inherit from others resulting from inactivity or termination. This is essentially the same relationship between a sales manager and sales person working at a car dealership or broker and agent in the real estate or insurance business.

### TRAINING BONUS

The most productive certified sales people will also earn the opportunity to participate in two incentive programs. The training bonus will reward certified sales people who recruit and successfully train other certified sales people. Since they will essentially be working as sales managers, training, supervising and assisting sales people, they will be rewarded for their effort and results by receiving a portion of the profits the company is earning in the form of a 5% commission, based on the profits of the sales produced by those they personally are responsible for training and assisting.

### PROFIT SHARING

The most successful members of the sales organization will also have the opportunity to participate in a profit sharing program and receive profit sharing equivalent to the total sales they are personally responsible for developing. Those who train and develop others who

achieve the best results will be eligible to receive additional profit sharing equal to 5% of the total monthly sales generated by those they have trained directly and their sales team.

### DIRECT SALES PROGRAM

I, as well as my attorneys, believe this is a straight forward direct sales program, not to be misconstrued as a multi-level marketing, pyramid or endless-chain scheme. Below I have listed several reasons why this direct sales program does not contain aspects defining multi-level marketing, pyramid or endless-chain schemes.

1. There are no sign up fees to get involved with this company. The only expenses which can be incurred would be for sales tools like business cards, training materials and presentation aids, all of which are not required to participate in the program. Aside from the business cards which are personalized, any sales tools which are in current and in resalable condition can be returned for a full refund within 30 days, should anyone involved change their mind. Reasonable exceptions to the 30 day limitation certainly will be granted.
2. There is no benefit or income earned for enrolling others. The mere act of recruiting others into the sales program offers no incentive and will produce no income. The only method of earning income in this sales company is to sell products and services directly to end user business owners.
3. The only commissions paid to any one will be as the result of products or services being sold to retail, end-user accounts. There are no products or services which can be purchased by, or sold to, any sales people involved in this company. This will be true with the exception of someone who happens to own their own business outside of the opportunity and they decide to become end users of the services for the sole benefit of their other business.
4. All sales volume needed for promotions must be personal sales. Sales personnel will not be promoted based on the sales of those they enroll. They can however, earn residual income if they inherit the responsibility of managing accounts which were established by someone else, but was later transferred to them because the original sales person was either terminated for cause or chose to no longer take responsibility for managing that account. As an example; if I was a trainee and you were my certified supervisor and I established two business accounts before deciding to quit and pursue a different career, my accounts would then be assigned to you and you would begin receiving the monthly residual earnings in exchange for your efforts in managing the accounts and maintaining the relationship with those particular businesses.
5. There is no endless-chain pay plan. Those who decide to enroll other sales people into the business receive no monetary compensation or benefit from the enrollment. All new sales personnel will be assigned to work with an experienced and successful certified supervisor. All supervisory personnel are on the same level, working directly with the company, and are not stacked, chained, pyramided or part of any down-line. All sales

persons will work with the experienced certified supervisor until they achieve the same level of success, at which time they are also transferred to work directly with the company and are not stacked, chained, pyramided or part of any down-line. This will create a direct relationship between the company and all those individuals who have proven their ability to succeed in the business, allowing the company to ensure proper conduct of the certified supervisory personnel and their influences on new trainees. This is the same manner in which real estate agents can, through sales and performance, earn the right to become brokers and work directly with the parent company while utilizing the efforts of new agents to help their company grow. In essence, the company works directly with all certified supervisory personnel who, in turn, work directly with all sales trainees in the same way a national retail sales company would have district managers overseeing store managers.

6. The only products a sales trainee or certified supervisor will be able to purchase from the company will be a company sales manual and possibly pertinent video presentations. There are no commissions paid to anyone for the purchase of these sales tools. The sales tools are solely designed and made available to sales personnel in order to help them be more successful in their efforts of selling products and services to businesses, the purchase of which are not a requirement to work with the company and are strictly voluntary. These sales tools will be sold with a 30-day money back guarantee provided they are returned in resalable and current condition. We will obviously make announcements prior to, and make exceptions immediately following, any changes in the sales materials. Certified supervisors must sign a contract stating they understand they are not permitted to have or possess more than ten training manuals, designed for immediate availability to new trainees, at any time without having a documented reason and only after receiving written permission from the company. Any violation of this policy could result in termination.
7. There will be no products, services or licenses purchased or inventoried by sales personnel. There will be no other products or services that can be resold to other sales personnel. There are no sales of equipment or services made to sales personnel either from the company or from one another. No products can be stored or inventoried by sales personnel other than a limited amount of sales tools with a refund policy in place as defined above.
8. All products and services are sold, contracted and shipped directly to end users.
9. Any opportunity to attend sales training programs will be offered on a voluntary basis and will not be a requirement to work with the company. All participants will be notified of this policy and will be required to sign an agreement stating these facts prior to admittance to any such events.
10. All persons involved will be required to provide documentation before making any income claims. Any false, misleading or undocumented income claims will result in termination of the individuals responsible and all participants involved with the company will be notified of such violations and terminations.

## SUMMARY

I have spent the last several years meeting with business owners and discussing the problems they are encountering. I have been exploring alternatives and solutions while completing the market research necessary to create this company. Most of the business owners I have spoken with are very excited about the benefits they will gain as a result of becoming part of this merchant alliance program. No aspects of this business plan have been initiated as I understand that your agency will not comment regarding ongoing business entities. I am prepared to begin this business venture after I receive a response from your office and will continue to prepare for the initial launch as I await your reply.

I feel it is necessary to know that your agency agrees this is simply a direct sales program before moving forward. Alternatively, I would also appreciate being notified if there are any aspects of this program you feel may be defined otherwise, so that I can make any necessary changes to ensure complete compliance prior to the launch of the company.

As unfortunate as it may be, I have learned the hard way that agencies like the Federal Trade Commission, on occasion, have a different perspective regarding these issues than even highly respected law firms. This is why I am most interested in understanding your perspective, as the opinion of your agency is certainly of utmost importance. I am willing to do anything in my power to assure you my intentions are honorable. My past experience with your agency was far too costly; both emotionally and financially, to ever want to encounter another one. I am willing to do whatever it takes to work within your requirements, I am simply asking for an advisory opinion so I know we are in compliance. I do not want to be involved in anything that could be misconstrued as multi-level marketing or a pyramid scheme and will continue to make every attempt to ensure we comply with all federal, state and local laws.

I realize you and your offices are extremely busy and I certainly respect and appreciate your time and response in this matter. If I can be of any assistance to answer any questions or provide more information I can be reached by phone at (561) 702-1321, or by e-mail at [BG1RHINO@AOL.COM](mailto:BG1RHINO@AOL.COM). You can rest assured I will work relentlessly to make certain all those who choose to work with this company will have a realistic opportunity to be successful in this business-to-business enterprise. Confirming that every aspect of this endeavor is in complete compliance with your agency is an important aspect of this objective.

Thank you for your time and consideration in these matters.

Sincerely,

  
Bill Gotlidd

Cc: Phil Sechler  
Williams & Connolly

08/10/00