

AUGUST 29, 2016



HERBALIFE / FTC

**APPLICATION RE:
INDEPENDENT COMPLIANCE AUDITOR**

RE: STIPULATION TO ENTRY OF ORDER FOR PERMANENT
INJUNCTION AND MONETARY JUDGMENT

Solving Uncertainty



August 29, 2016

Janet Ammerman
Brad Winter
Attorney- Division of Marketing Practices
Bureau of Consumer Protection
Federal Trade Commission
600 Pennsylvania Ave. NW
Mailstop: CC-8528
Washington, D.C. 20580

Re: Independent Compliance Auditor – Herbalife Litigation

Dear Ms. Ammerman and Mr. Winter,

Thank you for providing Ankura Consulting Group, LLC (“Ankura”) with the opportunity to submit our proposal and qualifications to the Federal Trade Com

I. Executive Summary

Ankura is uniquely positioned to effectively and efficiently carry out the various responsibilities contemplated in the Scope of Work. With decades of experience in Risk, Resilience & Geopolitical, Regulatory & Contractual Compliance, Investigations & Accounting Advisory, Litigation & Disputes, and Turnaround & Restructuring, Ankura has the resources and professionals to coordinate an integrated approach related to the responsibilities of the ICA as contemplated in the Stipulation. A snap-shot of our practice groups is as follows:

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For the purposes of this engagement, Ankura would rely primarily on professionals from its Investigations & Accounting Advisory practice group. Professionals from this group would ensure that the Herbalife business model is reformed in a way that ensures compliance with the elements of the Stipulation. Our professionals will provide a cross-section of government/regulatory experience, auditing/accounting experience and data analytics expertise. As explained in further detail in the “Proposed Activities” section of this proposal, we plan to exercise each of these skills in a coordinated, seamless manner to achieve the goals of the ICA for the FTC and Herbalife.

A further discussion of the Investigations & Accounting Advisory practice group is as follows:

€ **Investigations & Accounting Advisory**

Ankura’s Investigations & Accounting Advisory practice assists clients with complex problems. Our exceptional professionals have a wide range of experience with backgrounds in forensic and technical accounting, auditing, corporate finance,

II. Personnel & Qualifications

Ankura is one of the most experienced firms with respect to monitoring and independent oversight of court settlements. Ankura professionals have provided services related to monitor, receiver, or trustee engagements for some of the largest actions brought by governmental entities over the last decade. As a result, we have a team of highly experienced personnel with in-depth knowledge of every aspect of the monitoring process. The proposed team brings the expertise and experience required to execute in the ICA role. Furthermore, the proposed team members have worked together on multiple similarly large matters over the past decade. This ensures a coordinated approach employing the best resources to handle different areas of the engagement. The collaboration across the team will drive efficiency and effectiveness through the already established understanding of each team member's skills and experience.

Our Co-President, Philip Daddona, will lead the engagement as the ICA. As further described below, Philip Daddona led a Receivership project (Michael Kenwood) which was one of the largest white-collar matters in Connecticut's history. The proposed ICA support teams will include individuals that worked on that Receivership. In additi

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€ Compliance Team

The Compliance team will assist the ICA with legal policy and report drafting. In addition, the Compliance and Audit teams will work together to develop testing protocols to meet the needs of the scope of work items. The Compliance team is comprised of individuals with both legal and forensic accounting/compliance experience and credentials. The forensic/compliance background is important to evaluate, with a keen eye, the systems, processes and procedures set in motion by Herbalife to conform to the elements of the Stipulation. The legal team members are experienced report drafters and are adept at mining through fine print and detailed components of any arrangement. The team will look for any unintended shortcomings and loopholes in the processes and procedures developed by Herbalife and will work with Herbalife to remedy any compliance concerns.

- **Francesca Harker, JD.** Francesca Harker is an attorney with recent law firm experience at BakerHostetler. She has worked on a number of monitorships for the Department of Justice and the FTC, as well as receiverships for the Securities and Exchange Commission, and as counsel to the SIPA Trustee overseeing the liquidation of the Bernard L. Madoff Investment Securities LLC. Ms. Harker will lead the reporting effort for the ICA.
- **Jean-Michel Ferat, CPA, CFF.** Jean-Michel Ferat has over 18 years of experience in the specialized fields of reactive investigations and proactive compliance projects involving large amounts of data. He has applied his skills in a variety of cases involving financial statement fraud, corruption, kickbacks, collusive bidding rings, money laundering, embezzlement, asset misappropriation and terrorist financing. He has led or participated in investigations across the United States and in numerous international locations. Significant cases include: investigation into fraudulent claims filed against the BP Deepwater Horizon Fund (current), forensic accounting support on a 3 year FCPA monitorship under a DOJ DPA (current), investigation into \$300 million allegedly embezzled by officials of Kyrgyzstan (current) and investigation into the United Nations Oil-for-Food Programme in Iraq.
- **Erin Dunn, CPA, JD.** Erin Dunn has 6 years of experience working on a variety of forensic and litigation consulting engagements including corporate accounting investigations, business valuations, corporate monitorships, and bankruptcy matters. She has experience working on corporate monitorships and in that capacity she identified key risk areas and helped clients build compliance programs and bolster their internal control processes.

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background affords clients unique perspective and insights regarding financial and operational risks, processes, controls and remediation.

- **Javier Alvarez, CPA, CFE.** Javier Alvarez has more than 14 years of experience in auditing, forensic accounting and litigation consulting. He has extensive international experience with large-scale financial investigations and litigation assignments including Foreign Corrupt Practices Act (FCPA) related matters and Receiverships. He has also provided accounting and consulting services to clients across a wide range of industries. Mr. Alvarez has worked in audit with Deloitte and has extensive forensic accounting experience with FTI Consulting and Kroll.

III. Prior Experience and References

Michael Kenwood Receivership Advisory

In February 2011, John J. Carney, Esq. was appointed as the Receiver of the Michael Kenwood Group, a group of offshore hedge funds and related entities located in Stamford, CT. The Receiver retained a team of professionals led by Philip Daddona to

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Reference: BakerHostetler
Contact Person: John J. Carney, Partner
45 Rockefeller Plaza
New York, NY 10111
212-589-4255
jcarney@bakerlaw.com

Bernard L. Madoff Investment Securities Trustee Advisory

In the largest reported Ponzi scheme in U.S. history, Irving H. Picard, partner at BakerHostetler, was appointed as the Trustee under the Securities Investor Protection Act (SIPA) for the liquidation of Bernard L. Madoff Investment Securities (BLMIS). Members of the core ICA team have been intimately involved since 2008 assisting the SIPA Trustee with the necessary investigation, forensic accounting, and complex financial and enterprise data analytics. Martin Wilczynski oversaw the Madoff effort as the co-team leader. Chris Harvey led the data analytics component of work for the Trustee, that involved the accumulation of close to 30 years of books and records, detailed analysis of core computer systems and program code and designing systematic processes to analyze mass amounts of data. Brad Lohmeyer was instrumental in the technical execution of the data analytics work. Anthony Milazzo and Mark McGrath led the investigation of the BLMIS broker/dealer business that included numerous illicit transaction stemming from the investment advisor business that

operating effectiveness. Helped company implement and populate risk control self-assessments across key functional units. Seamlessly worked across integrated team of subject matter experts and data analytics team to ensure controls were in place and operating through the various proprietary systems as intended and that sufficient audit trail existed to support process improvements and system changes. Also, helped the company transition to and create an in-house internal audit function.

References: Relevant contact information available by request due to confidentiality issues

Cash Tracing Investigation

Retained by counsel representing a foreign national government to perform transactional testing and cash-tracing investigation in response to allegations of corruption made by a United Nations monitoring group. Jason Flemmons led the engagement, which given the dearth of electronic records entailed substantial reconstruction of transactions using documentary and other evidence. Mr. Flemmons oversaw the preparation of a written report summarizing the work performed on behalf of the foreign national government. Mr. Flemmons is a member of the Minnesota Bar and is a member of the International Board of Standards and Practices for Certified Financial Forensic Accountants (IBCFE).

World Trade Center

Philip Daddona, while at KPMG, was the overall monitor, leading a team which served as the extension of staff for New York City for financial oversight for the debris removal after the terrorist attacks of September 11, 2001. The City recognized very early on that it needed to control and completely document debris removal costs to avoid a second, financial disaster. He designed and oversaw the implementation of the financial controls which ultimately resulted in no reimbursement disallowances by FEMA for work performed. He assembled a team of outstanding professionals, each with discrete responsibilities, to execute the project requirements. The team provided field personnel to observe and verify the use of labor, equipment and materials at the site. The data accumulated was analyzed and verified through data bases constructed in our offices.

In addition, the team participated in regular meetings with NYC Department of Interior and the four integrity monitors assigned to the contractors. We reviewed the findings of the monitors including “cost savings charts,” all of the supporting detail and source documentation accumulated by the monitors, and reconciled that to our findings. We also incorporated the findings of DOI, as deemed appropriate, into the database, in essence creating one overall repository of all of the financial and integrity related information. Ultimately, we produced a complete digital record for all of the financial information which was forwarded to FEMA.

Reference: New York City Department of Design and Construction
Contact: Deputy Commissioner Eric McFarlane (retired)

Current engagement related to FTC:

Volkswagen Clean Diesel Independent Claim Supervisor

On July 26, 2016, the District Court for the Northern District of California appointed Ankura Consulting Group, LLC as the Independent Claim Supervisor, responsible for monitoring Volkswagen’s comd M M

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€ Understand policies and other evidence of data quality standards and controls and change management for pertinent systems

2. Develop formal request for further information based on initial meetings with Herbalife personnel.

Develop Plan to Execute

Based on information gained and Ankura's collective experience, we will work with Herbalife and the FTC to design a comprehensive plan with detailed steps to address areas outlined in the scope of work items. This plan would include details to prioritize specific areas of focus, the roles assumed by the different Ankura teams, the resources required to execute the plan and a formalized budget in order to manage the engagement over time. It will be essent

Execution

The ICA wi _

Detailed Scope of Work

The proposed activities following this general work flow process are provided in detail, by each scope of work item, below (these procedures are subject to change as we gain a deeper understanding of the changes Herbalife has made to its business operations):

Retail Sales

Is Herbalife collecting all required retail sales information? [Order § I.C]

- € Understand from IT and business users how retail sales data is accumulated, maintained and reported.
- € Evaluate the completeness and accuracy of the data with regard to the requirements of the Stipulation.
- € Identify issues, anomalies, or opportunities to improve the data to meet the requirements of the Stipulation.
- € Develop an approach to either gain real-time access to relevant data or build automated and systematic process to facilitate transfer of relevant data.
- € Develop validation process to systematically test retail sales data to ensure ongoing compliance.
- € Define audit procedures surrounding the collection and reporting of sales information to be executed on a regular basis. This would include consideration of material changes in the business or systems.

Is Herbalife accurately calculating profitable retail sales in a downline? [Order § I.A.1]

- € Understand and formally define the business rules governing the profit calculations to verify they are in line with the requirements of the Stipulation.
- € Analyze the system configurations in terms of defining the application of downline characterizations and calculations.
- € Analyze the relevant system processes used to calculate profits to determine whether the system is set up to perform the calculations appropriately.

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- € Test and validate the reported results to ensure compliance with the requirements of the Stipulation.
 - € Identification of higher risk areas that should be focused on by the Compliance and Audit teams.
 - € Data Analytics to build data validation tests to ensure completeness and accuracy of any data updates.

Is Herbalife adhering to the requirement that a participant's claimed profitable retail sales cannot exceed that participant's total product purchases minus his or her product designated for personal consumption? [Order § I.D.3]

- € Understand how the Herbalife system captures the elements of this calculation and/or already performs this calculation.
- € Develop a data-driven process to calculate that a participant's claimed profitable retail sales does not exceed product purchases (less personal consumption). This process would be automated to identify any issues requiring further review.
- € Understand how the business and system defines and tracks product purchases for personal consumptions.
- € Build predictive model to identify trends in personal consumption to develop acceptable thresholds to identify instances requiring further review.
- € Understand how the business and system defines and tracks product purchases for personal consumptions.
- € Build a predictive model to identify trends in personal consumption to develop acceptable thresholds to identify instances requiring further review.

Is Herbalife adequately monitoring profitable retail sales to ensure that they are genuine and in fact occurred as reported? [Order § I.D.1&2]

- € Develop systematic test that required data has been collected and is legitimate (i.e., not "dummy data") including building predictive models to assist in case-selection for "random and targeted audits."
- € Evaluate Herbalife's monitoring of profitable retail sales (including any audits it may conduct) to determine if the process is designed to detect if data is not genuine.
- € Perform targeted tests, informed by predictive models, to ensure that retail sales are genuine and in fact occurred as reported.

Preferred Customers

Is Herbalife correctly differentiating between preferred customers and business opportunity participants, including by:

- *reclassifying preferred customers and business opportunity participants only upon their own written request or application made directly to Herbalife, and*
- *ensuring that preferred customers neither sell goods or services, nor recruit others into the program, nor receive multi-level compensation? [Order § I.B & Def. I]*

- € Understand how classification is determined, reasons for change in status, approvals required, and ultimately how this affects the reporting of data.
- € Understand how the system differentiates between preferred customers and business opportunity participants.
- € Test a cross-section of new preferred customers and business opportunity participants to determine if appropriate written request was received upon classification transition.
- € Develop systematic process to identify any instances where preferred customers or business opportunity participants are reclassified. This population will be tested for further compliance.
- € Develop systematic process for cross-checking preferred customers against payments of multi-level compensation to ensure that there are no matches (i.e., that preferred customers did not receive multi-level compensation).

Is Herbalife adhering to the requirement that a preferred customer who transitions to business opportunity participant may not receive or retain any benefit or status other than a continued discount on product for personal consumption? [Order § I.B.3]

- € Develop systematic process to identify transition from preferred customer to business opportunity participant
- € Test business opportunity participants who transitioned from pre

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Paying Multi-Level Compensation

Is Herbalife paying multi-level compensation on retail sales only when retail sales information has been collected and reflects that the sale was profitable? [Order § I.A & Def. M]

- € Obtain retail sales data, systemically calculate profitability of sales and compare paid compensation data to collected sales data.

Is Herbalife limiting the multi-level compensation paid for consumption by business opportunity participants in a downline based on the relevant volume of retail sales and preferred customer sales? [Order § I.A.1]

- € Systemically compare paid multi-level compensation to reported retail and preferred customer sales.
- € Review a sample of compensation payments to ensure that the payments are based upon relevant retail and preferred customer sales and are not related to any other types of activity (e.g., referral fees).

Is Herbalife paying multi-level compensation for rewardable transactions during the same period only, with the sole exception being a three-month “look-back” for new business opportunity participants during their first six months in that status? [Order § I.A.1]

- € Systemically assess whether paid multi-level compensation relates to rewardable transactions occurring in the same period.
- € Test, on a sample basis, the rewardable transactions to ensure

Is Herbalife adhering to the prohibition against varying multi-level compensation based on non-rewardable transactions? [Order § I.A.2]

- € Analyze rewardable transactions throughout the participants' downline to ensure that the total amount of a participant's multi-level compensation is not increased because of non-rewardable transactions in the participant's downline.
- € Test a sample of participants' downline to ensure that multi-level compensation is not increased because of non-rewardable transactions in the participants' downline.

Is Herbalife adhering to the prohibition against varying aspects of multi-level compensation based on the identity of the purchaser? [Order § I.A.3]

- € Test sample of paid compensation to ensure lack of variability as it relates to a preferred customer, to a retail customer, or to a business opportunity participant for personal consumption.

If business opportunity participants must meet any thresholds related to multi-level

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Annual U.S. Multi-Level Compensation

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End Note:

Ankura submits this request for application to serve as the ICA. It should be noted that our qualifications were also included along with the ICA application of Patomak Global Partners to provide our services as part of their potential retention.