

includes the level of earnings for the business venture, the extent or nature of the market for the goods or services to be sold, and the nature or availability of any territory. Thus, a seller of business ventures could not falsely inflate the sales levels of previous owners, or incorrectly claim that a purchaser would obtain exclusive rights to market goods or services in a certain territory. The proposed rule also prohibits misrepresentations about (1) the existence, availability, or provision of retail outlets or accounts; (2) the locations or sites for vending machines, rack displays, or any other sales display; or (3) the nature or availability of any services offered to secure any such outlets, accounts, locations, sites or displays. Also prohibited are misrepresentations that any person owns or operates a business venture purchased from the seller, or that a person can give an accurate, independent description of his or her experience as an owner or operator of such a business venture. These provisions prohibit, for example, false claims that a skill—a phony reference that is paid to tout a business opportunity he does not own or operate—has actually purchased a business venture, or false claims about any person's experience as a business venture owner.

Under § 310.3(a)(4) of the proposed rule, it is a prohibited deceptive telemarketing act or practice for a seller or telemarketer to obtain or submit for payment from a person's checking, savings, share, or similar account, a check, draft, or other form of negotiable paper without that person's express written authorization. For example, a telemarketer cannot submit an unsigned draft on a consumer's bank account without that consumer's prior written authorization. Similarly, § 310.3(a)(5) of the proposed rule prohibits the collection of any amount of money from a person through any means, unless such amount is expressly authorized by the person. This section is intended to cover other forms of payment, in addition to unsigned drafts, and to prohibit misrepresentations of the amount collected. For example, if a consumer pays for goods or services by credit card, no amount may be charged to the consumer's account unless the consumer authorizes that charge. This authorization does not have to be in writing, however.

2. Assisting and Facilitating

Section 310.3(b)(1) of the proposed rule sets forth a general prohibition against assisting or facilitating deceptive telemarketing acts or practices. This

section states that it is a deceptive telemarketing act or practice, and a violation of the rule, for a person to provide substantial assistance or support to any seller or telemarketer when that person knows or should know that the seller or telemarketer is engaged in any act or practice that violates the rule.

Section 310.3(b)(2) of the proposed rule lists five specific types of conduct that provide substantial assistance or support to telemarketing. This list is not meant to limit, in any way, the general scope of § 310.3(b)(1) concerning assisting or facilitating deceptive telemarketing acts or practices.²³ Assistors who engage in these activities will violate the rule if they know, or should know, that the person they are assisting is engaged in an act or practice that violates the rule.

The five types of assisting and facilitating activities listed in the proposed rule are as follows: First, providing lists of customer contacts to a seller or telemarketer (e.g., serving as a list broker); second, receiving consideration in exchange for providing a testimonial, endorsement, certification, appraisal, or financing, or for serving as a reference, with respect to any business venture or investment opportunity (e.g., acting as a paid skill or an art appraiser, or providing financing for a business opportunity); third, securing retail outlets or accounts for the sale of goods or services, or locations or sites for vending machines, rack displays, or any other sales displays, used in connection with any business venture (e.g., operating as a locating company); fourth, furnishing any certificate or coupon which may later be exchanged for goods or services (e.g., producing generic vacation certificates used in prize promotion scams); and fifth, providing any script, advertising, brochure, promotional material, or direct marketing piece to be used in telemarketing.

3. Credit Card Laundering

Section 310.3(c) of the proposed rule prohibits credit card laundering, or the practice of depositing into the credit card system a sales draft that is not the result of a credit card transaction between the cardholder and a merchant.²⁴ For example, credit card laundering involves a merchant with access to the credit card system

²³ Thus, practices not included on this list could still be found to provide substantial assistance or support to telemarketing.

²⁴ As defined in § 310.2(m), a merchant is the person who is under a contractual agreement with an acquirer to honor or accept, transmit, or process credit cards in payment for goods or services.

deceiving an acquirer by submitting for payment credit card transactions that are not the merchant's own. This deception is crucial for telemarketers engaged in fraud, since such telemarketers find it difficult, if not impossible, to obtain merchant accounts to process their credit card transactions. Credit card laundering facilitates deceptive telemarketing acts or practices by providing fraudulent telemarketers with ready access to cash through the credit card system.

This Section of the proposed rule is divided into three parts. Section 310.3(c)(1) of the proposed rule deals with merchants who engage in credit card laundering. Under this section, it is a deceptive telemarketing act or practice, and a violation of the rule, for a merchant to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant. It is also a deceptive act or practice for a merchant to cause another person to present to or deposit into the credit card system for payment such a credit card sales draft.

Section 310.3(c)(2) of the proposed rule deals with telemarketers, brokers, or others who employ merchants to engage in credit card laundering. This section states that it is a deceptive telemarketing act or practice, and a violation of the proposed rule, for any person to employ, solicit, or otherwise cause a merchant or an employee, representative, or agent of a merchant, to present to or deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant.

Finally, § 310.3(c)(3) prohibits joint ventures or other business relationships between a merchant and a telemarketer for the purpose of engaging in credit card laundering. Specifically, this section prohibits any person from obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement.

Section 310.4 Abusive Telemarketing Acts or Practices

Section 310.4 of the proposed rule begins with a list of specific abusive conduct that is prohibited. This section also prohibits repeated telemarketing calls and calls to persons who have stated that they do not wish to receive such calls. In addition, this section sets