

seller has received from the person a written disclosure acknowledgement; and (10) the statement: "I have read and understand this disclosure." This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

For investment opportunities, the following information must be included in the written disclosure: (1) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business; (2) if the seller has been in operation under any other name(s), each such name and the length of time the seller operated under that name; (3) the complete cost to make the investment and a detailed list of all present charges and any anticipated future charges; (4) a description of all known risks associated with the investment opportunity, including the possibility that additional payments might be required for a person purchasing the investment opportunity to retain that person's interest in the investment opportunity, to realize the projected or stated returns of the investment opportunity, to prevent total loss of the investment opportunity, or for any other reason; (5) the length of time the seller has been in business and has offered the particular investment opportunity; (6) a statement disclosing whether or not the seller is licensed and, if so, with whom, the type of license, and the length of time the seller has held such license; (7) a statement that it is a violation of this rule for the seller to effect an investment transaction unless the seller has received from the person a written disclosure acknowledgement; and (8) the statement: "I have read and understand this disclosure." This final statement must be in at least 12-point bold face type, immediately preceding a signature block.

Additional written disclosures, provided in duplicate, are required for certain types of investment opportunities. If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, § 310.4(e)(2)(ii) of the proposed rule requires the following additional information to be included in the written investment disclosure: (1) The percentage markup that the seller places on the item above its own cost in acquiring the item; and (2) an estimate of the value that persons would be likely to receive if they were to liquidate the asset through a market sale immediately following the purchase. The proposed rule makes clear that all such estimates must be substantiated by competent and reliable evidence.

If sellers or telemarketers offer for sale any investment opportunity involving tangible assets sold on credit or leverage, they must include in the written disclosure all of the information set forth in §§ 310.4(e)(2)(i) and (ii) of the proposed rule, as well as the following: (1) The percentage of a person's down payment that would be devoted to fees and costs by the end of the first six months after the investment is made; (2) the percentage of a person's down payment that would be devoted to fees and costs by the end of the first year after the investment is made; and (3) a statement that all such investment opportunities are extremely risky.

Finally, if a seller or telemarketer offers for sale any investment opportunity involving the acquisition of government-issued licenses or interests in businesses derived from the possession of such licenses, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i) of the proposed rule: (1) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including whether and to whom the license or licenses have been issued; (2) the percentage of the person's payment that will be used to acquire any applicable license(s) from the licensee(s) or from any person or entity not affiliated in any way with the seller; and (3) the percentage of the person's payment that will be used to capitalize any business derived from such license(s).

6. Distribution of Lists

The final abusive practice set forth in § 310.4 of the proposed rule involves the distribution of lists of customer contacts. Section 310.4(f) states that it is an abusive telemarketing act or practice, and a violation of the rule, for any person, subject to any federal court order resolving a case in which the complaint alleged a violation of § 310.3, 310.4(a), or 310.4(e) of this rule,³⁵ and the court did not dismiss or strike all such allegations from the case, to sell, rent, publish, or distribute any list of customer contacts from that person. In other words, any such person will be prohibited from circulating its customer contact lists in any fashion.

³⁵ The enumerated sections cover all of the prohibited deceptive telemarketing acts or practices, the eight general abusive telemarketing acts or practices, and the written disclosures and acknowledgements required for prize promotions and investment opportunities.

Section 310.5 Recordkeeping Requirements

Section 310.5 of the proposed rule requires any seller or telemarketer to keep, for 24 months from the date the record is produced, certain records relating to its telemarketing activities. Failure to keep those records shall be considered a violation of the rule. The seller and its telemarketer are not required to keep duplicative records, if they have entered into a written agreement allocating responsibility for the recordkeeping requirements of the proposed rule. The terms of any such agreement shall govern, unless those terms are unclear as to whom must maintain any required records. In that case, the responsibility for recordkeeping shall fall on the seller.

Section 310.5(c) of the proposed rule sets forth the parties responsible for maintaining records at the end of, or after a change in ownership of, the seller's or telemarketer's business. In the event of dissolution or termination of such business, the principal of the seller or telemarketer is required to maintain these records. On the other hand, in the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business is required to maintain the records.

Section 310.6 Exemptions

Certain acts or practices are exempt from the proposed rule. The first exemption, set forth in § 301.6(a), is for incidental telemarketing sales—that is, sales by any person who engages in fewer than ten sales each year through the use of the telephone. Second, telephonic contacts between businesses also are exempt, except for such contacts that involve the sale of office or cleaning supplies, or the inducement of payment for any charitable service promoted in conjunction with (1) an offer of a prize, (2) a chance to win a prize, or (3) the opportunity to purchase any goods or services. Finally, on § 310.6(c) of the proposed rule exempts any telephonic contact made solely by a person, when there has been no initial sales contact directed to that particular person, by telephone or otherwise, from the seller or telemarketer. However, this exemption does not apply to calls regarding employment services where the seller or telemarketer requests or receives payment prior to providing the promised services, business ventures, investment opportunities, prize promotions, or credit-related programs.

Given the definition of "telemarketing" in § 310.2(v) and the