

duplicate, and receiving from the person a written acknowledgement that the person has read the disclosure. The information shall be disclosed in not less than 10-point type (unless otherwise noted), of a color or shade that readily contrasts with the background of the notice, and segregated from all other information. This disclosure shall be sent in an envelope that contains no other enclosures except for a return envelope, if the seller or telemarketer wishes to include such an envelope. This disclosure must contain the following information:

- (A) The seller's legal name and telephone number, and the complete street address of the seller's principal place of business;
- (B) If the seller has been in operation under any other name(s), each such name and the length of time the seller has operated under each name;
- (C) The complete cost to make the investment and a detailed list of all present charges and any anticipated future charges;
- (D) 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;
- (E) The length of time the seller has been in business and has offered the particular investment opportunity;
- (F) 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;
- (G) 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 the written disclosure acknowledgement required pursuant to § 310.4(e)(2); and
- (H) The statement: "I have read and understand this disclosure," in at least 12-point bold face type immediately preceding a signature block.

(ii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets, the following additional information must be included in the written disclosure set forth in § 310.4(e)(2)(i):

- (A) The percentage markup that the seller places on the item above its own cost in acquiring the item; and
- (B) An estimate of the value that persons are likely to receive if they were

to liquidate the asset through a market sale immediately following the purchase. All such estimates must be substantiated by competent and reliable evidence.

(iii) If a seller or telemarketer offers for sale any investment opportunity involving tangible assets sold on credit or leverage, the following additional information, as well as the information set forth in § 310.4(e)(2)(ii), must be included in the written disclosure set forth in § 310.4(e)(2)(i):

- (A) 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;
- (B) 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
- (C) A statement that all such investment opportunities are extremely risky.

(iv) 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):

- (A) All material terms and limitations of any government-issued license(s) that serve as the basis for the investment opportunity, including but not limited to whether and to whom the license or licenses have been issued;
- (B) 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
- (C) The percentage of the person's payment that will be used to capitalize any business derived from such license(s).

(f) Distribution of lists. It is an abusive telemarketing act or practice and a violation of this Rule for any person who is 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, 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.

§ 310.5 Recordkeeping requirements.

(a) Any seller or telemarketer shall keep, for a period of 24 months from the date the record is produced, the following records relating to its telemarketing activities:

(1) All advertising, brochures, telemarketing scripts, and promotional materials;

(2) The name and address of each prize recipient and the prize awarded;

(3) The name and address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, home address and telephone number, and job title(s) for all current and former employees directly involved in telephone sales; and

(5) Any written notices, disclosures, and acknowledgements required to be provided or received under this Rule.

(b) Failure to keep all records required by § 310.5(a) shall be a violation of this Rule. The seller and telemarketer calling on behalf of the seller are not required to keep duplicative records if the seller and telemarketer have entered into a written agreement allocating responsibility for the recordkeeping required by this Section. When a seller and telemarketer have entered into such an agreement, the terms of that agreement shall govern. If the agreement is unclear as to whom must maintain any required record(s), the seller shall be responsible for keeping such record(s).

(c) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that seller or telemarketer shall maintain all records as required under this Section. In the event of any sale, assignment, succession, or other change in ownership of the seller's or telemarketer's business, the successor business shall maintain all records required under this Section.

§ 310.6 Exemptions.

The following acts or practices are exempt from this Rule:

(a) The solicitation of sales by any person who engages in fewer than ten (10) sales each year through the use of the telephone;

(b) Telephonic contacts between businesses, except such contacts involving the sale of office or cleaning supplies or the inducement of payment for any charitable service promoted in conjunction with an offer of a prize, chance to win a prize, or the opportunity to purchase any goods or services; and

(c) A 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; provided, however, that this exemption does not apply to such