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TOWARD A UNIFORM APPROACH TO MULTILEVEL DISTRIBUTORSHIPS

[H]asty and adventurous schemes are at first view flattering, in execution difficult, and in the issue disastrous.\(^1\)

The phenomenal growth and eventual collapse of the enterprises of Glenn Wesley Turner and William Penn Patrick\(^2\) during the 1960's should have surprised no one. They were only a recent example of an old and recurrent merchandising scheme,\(^3\) a variant of the chain letter device. Such operations, commonly called pyramid sales schemes, can temporarily succeed where a credulous public, willing to believe that it can get rich quickly for a small monetary investment and little or no expenditure of effort, exists in a legal system lacking a coordinated program for the prevention of such machinations. Pyramid sales schemes have been called "the No. 1 consumer fraud problem in the United States today."\(^4\) This article will describe the methods of operation of various types of pyramid sales schemes, distinguish them from legitimate multilevel marketing companies, survey the traditional federal administrative and state legislative approaches and the judicial response to the problem, and examine a recent state enactment and pending federal proposal designed to eliminate such activities in their incipiency.

\(^1\) LIVY, THE HISTORY OF ROME, Book XXXV, ch. 32.

\(^2\) At the zenith of its success, Glenn W. Turner Enterprises held seventy subsidiaries. His best known ventures are Koscot Interplanetary, Inc., a cosmetics firm, and Dare To Be Great, a series of self-improvement courses. Patrick's Holiday Magic, Inc., once controlled 406 subsidiaries selling such items as cosmetics, oil additives, food supplements, and cleaning supplies. By 1973, Koscot had filed for reorganization under the Bankruptcy Act, and the Holiday Magic empire had dwindled to thirty-two subsidiaries. NEWSWEEK, Sept. 3, 1973, at 76. See also TIME, July 16, 1973, at 51.

\(^3\) See, e.g., Twentieth Century Co. v. Quilling, 130 Wis. 318, 110 N.W. 174 (1907).

I. THE NATURE OF A PYRAMID SCHEME

A. Basic Design

Pyramid sales schemes, also known as multilevel, endless chain, or chain distributor schemes, are investment programs employing a multiple-tiered distribution method (typically consisting of salesman, supervisor or retail franchiser, distributor or wholesale franchiser, and manufacturer) for the sale of supervisory positions. Although pyramid sales firms deal in a product or service, opportunities for profit or promotion are not based upon sales volume or legitimate recruiting efforts, but upon success in selling the right to sell the investment program to others. Instead of the bona fide sales of merchandise or services, the chief business purpose of such an operation is the sale of distributorships with the right to sell new distributorship opportunities to others continually until an unlimited number of people are pyramided into the scheme.

Pyramid sales schemes are readily distinguishable from franchising, one of this country's most important national merchandising techniques. In a pyramid operation, the investor's pecuniary benefit derives primarily from his success in inducing additional persons to participate in the plan, whereas the success of a franchisee depends primarily upon the retail sales of products or services to the consuming public. In a franchise or subfranchise the purpose of direct selling recruitment is

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5 They are usually high markup items such as health or beauty aids, cleaning agents, or automobile additives. Statement of Warren Spannaus, *Hearings*, at 28. "The products are usually worthless or worth very little, and nonexistent . . . ." Testimony of Sen. Walter F. Mondale, *Hearings, supra* note 4, at 18.

6 See *New York Dep’t of Law, Memorandum in Support of Senate 1645, Assembly 2337 (1973)* at 1.

7 Franchising is defined in *REPORT OF THE SENATE COMM. ON COMMERCE, PYRAMID SALES ACT*, REP. NO. 1114, 93d Cong., 2d Sess. 5 (1974) [hereinafter cited as *Senate Report*]:

Franchising is a method of distribution whereby one party, the franchisor, contracts with or licenses another party, the franchisee, to distribute goods and services pursuant to a uniform and standardized method of doing business. Franchise systems usually include a trademark or service mark (the principal ingredient in the system which is licensed); a territory in which the franchisee operates; an initial payment, periodic royalty payments, or both (paid by the franchisee to the franchisor for the right to operate under the system); and the name which the franchisor has developed.


8 The United States has over 500,000 franchised outlets with an annual sales volume exceeding $90 billion. *New York Dep’t of Law, Memorandum re Senate 880, Assembly 759, A.G. Prog. No. 72, Jan. 3, 1973*, at 1. It is officially estimated that between one-quarter and one-third of all goods and services sold at retail in the United States are distributed through franchising. Statement of Philip Zeidman, *Hearings, supra* note 4, at 40, 48.

9 Subfranchising is a system under which a person is given the opportunity both to develop in his own name and to recruit others to develop areas for themselves. In multiple franchising, an individual or company receives rights to develop a specific area with numerous franchise units. Most franchisors use at least one of these arrangements. Statement of Philip Zeidman, *Hearings, supra* note 4, at 41.
to procure sales personnel for the product or service; in a pyramid sales
scheme, the purpose is to recruit investments from individuals in return
for the opportunity to sell more of such investments without regard
to the sale of products or services. It is not the act of recruitment which
makes pyramid schemes suspect but the method of recruiting through
unrealistic promises and mandatory investment.\textsuperscript{10}

\textbf{B. Variations}

The most common types of pyramid sales schemes employ an
approach incorporating either a multilevel distributorship or a referral
sales or founder-member contract plan. In the multilevel distributor-
ship, the attainment of promotions and the acquisition of return on
investments are dependent upon the recruitment of other investors
through the sale of distributorships.\textsuperscript{11} Referral sales schemes generally
involve the sale of goods at inflated prices to purchasers who are
promised commissions for the solicitation of other purchasers.\textsuperscript{12} A
founder-member, or customer referral, scheme entails the purchase of
goods at inflated prices with the expectation that the profit will be used
by the vendor to finance the construction of a local discount store of
which the purchaser will be considered a “founding member.” This
designation authorizes him to distribute “authorized buyer” or
“founder-member” cards to his friends and to receive commissions on
sales made to them at the outlet.\textsuperscript{13}

As public awareness of such schemes has increased, new variations
have developed. One of these is the “front-end loading” scheme, in
which an investor is required to purchase a large supply of the com-
pany’s products in order to become a distributor and receive a per-
centage of the purchase price of similar merchandise which is bought
by new “distributors” recruited by him. These products are ordinarily
relegated to storage since the real profit is to be made on the kickbacks
paid by the company for the sales it makes to the distributor’s
recruits.\textsuperscript{14} Another variation is the “sliding volume discount schedule,”

\textsuperscript{10} See Statement of J. Robert Brouse, President of Direct Selling Association, \textit{Hearings, supra} note 4, at 67.


\textsuperscript{14} An example of the operation of a front-end loading scheme is given in Statement of
Warren Spannaus, \textit{Hearings, supra} note 4, at 29:
For example, a person may be required to buy 20 cases of the company’s
in which the basic wholesale price established by the company is reduced for large quantity purchasers. This discount encourages the investor to buy from his sponsor rather than the company. The prospective distributor is then granted the right to purchase directly from the company, while his sponsor receives an override from the company on all sales made to him or his recruits.15 Both restraints effectuate a vertical monopolization of the marketing process.

Investors are lured into such schemes by promises that their financial success is assured through the operation of the “multiplier” effect, which in reality is the geometric expansion required to continue the chain. They are not told that such expansion assures success only to the first levels of investors and, because of market saturation, necessarily assures losses to later level participants.16 Because the gain realized by the early investors is dependent upon the inevitable loss suffered by later investors, the Securities and Exchange Commission has characterized as “patently fraudulent”17 the failure of pyramid sales promotions to inform prospective investors of the finite number of potential participants in an area. Likening pyramid practices to chain letter operations, a number of courts have concluded that they are “inherently deceptive”18 and “doomed to eventual failure”19 as a

cleaning solution at its supposed wholesale price of $4,000 to become a distributor. He then gets the right to recruit other persons and makes a 25% profit on the $4,000 which each recruit invests to buy the 20 case entry ticket into the scheme. The product sits in each distributor's cellar while he is out trying to find more recruits.

15 Id.

16 The process is described in Senate Report, supra note 7, at 3:
If each person recruits five people, then by the time the thirteenth level in the pyramid has been reached, the number of distributors will exceed the population of the United States:

<table>
<thead>
<tr>
<th>Level</th>
<th>Number of Distributors</th>
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<tbody>
<tr>
<td>1</td>
<td>1</td>
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<tr>
<td>2</td>
<td>5</td>
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<td>3</td>
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<td>4</td>
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<td>5</td>
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<td>6</td>
<td>3,125</td>
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<tr>
<td>7</td>
<td>15,625</td>
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<tr>
<td>8</td>
<td>78,125</td>
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<tr>
<td>9</td>
<td>390,625</td>
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<tr>
<td>10</td>
<td>1,953,125</td>
</tr>
<tr>
<td>11</td>
<td>9,765,625</td>
</tr>
<tr>
<td>12</td>
<td>48,828,125</td>
</tr>
<tr>
<td>13</td>
<td>244,140,625</td>
</tr>
</tbody>
</table>


matter of mathematical and economic certainty. In addition to being fraudulent, pyramid sales schemes divert capital from the production of goods and services.\textsuperscript{20}

\section*{C. Method of Operation}

Chain selling schemes are generally directed at members of the lower economic strata,\textsuperscript{21} upon whose financial need and naiveté the recruiters capitalize. Initial contact may be established through word-of-mouth invitations from distributor-investors ("the cold canvass") or by cryptic handbills or newspaper advertisements displaying an exaggerated "income potential" figure\textsuperscript{22} and inviting those interested to attend an "opportunity meeting," often held in a prominent and conveniently located hotel ("the curiosity approach"). At these meetings professional sales promoters, operating according to a carefully rehearsed program, state a pseudospontaneous revival type demonstration. An assortment of techniques, usually including an ostentatious display of cash and affluence by previous investors, testimonials, applause, cheering, chanting, and singing,\textsuperscript{23} are utilized in an effort to create an hysterical reaction suppressing the prospects' ordinary powers of reason and judgment.\textsuperscript{24} While the emphasis is upon eliciting a positive emotional response,\textsuperscript{25} ridicule is also injected into the


\textsuperscript{21} The "overwhelming majority" of complaints against Holiday Magic received by the New York Department of Consumer Affairs were from "poor blacks and Puerto Ricans who believed they were being offered the chance to make a fortune." Consumer Affairs Sues Holiday Magic for Engaging in Pyramid Sales Scheme, City of New York Dep't of Consumer Affairs News Release, Feb. 21, 1973, at 2 [hereinafter cited as News Release]. Young couples about to start a family and senior citizens seeking retirement security are particularly susceptible. Statement of Warren Spannus; \textit{Hearings}, supra note 4, at 20.

\textsuperscript{22} Dr. John R. Darling, a market and business administration consultant, testified that the $26,000 annual earnings projected in the "Golden Opportunity Meeting" training manual would require 72,000 directors in Kansas although Koscot claimed a quota of about 316 in that state. State \textit{ex rel.} Sanborn v. Koscot Interplanetary, Inc., 212 Kan. 668, 673, 512 P.2d 416, 421.

\textsuperscript{23} Koscot's theme song was "Money, money, money." Another favorite is "With a Little Bit of Luck" from \textit{My Fair Lady}. Statement of Warren Spannus, \textit{Hearings}, supra note 4, at 25.

\textsuperscript{24} See \textit{Senate Report}, supra note 7, at 3.

\textsuperscript{25} Holiday Magic's "Instructor General Manual," printed for the use of its operators, candidly states the purpose of such opportunity meetings:

Our objective is to bring our prospect to the point where he \textit{feels} excited at the end of the meeting—he \textit{feels} a ray of hope and an inkling that this may be his way out of his financial problems—he can think of only three things: himself, money, and Holiday Magic—he \textit{likes} the way \textit{he feels}, so his thoughts must be compatible—\textit{HIMSELF AND MONEY THROUGH HOLIDAY MAGIC}!

He \textit{feels}, he \textit{feels}, he \textit{feels}—herein lies the key. FEELING is an \textit{emotional} reaction. It is obvious that to achieve our objective with our prospect—good feelings associated about [sic] Holiday Magic—we will be dealing on an emotional basis constantly.

presentation to reinforce negative feelings, such as shame, which the prospective investors may have about themselves or their economic situation. Individuals who are not persuaded to enroll by the end of the meeting are treated to a cocktail party and supplemental pep talks intended to dull their physical and mental processes sufficiently that they succumb either that evening or early the next morning upon visitation by the distributor. If the prospect still refuses to sign an agreement, he is invited to a free tour of the company's headquarters where he will be surrounded by high-pressure promoters and isolated from other outsiders in a final effort to weaken his resistance.

Since it soon becomes evident to the new recruits that the extravagant promises of wealth made at the opportunity meetings are only available to the initial investors, pyramiders characteristically move from town to town and state to state as soon as they swindle the less sophisticated portion of the populace, leaving in their wake a saturated market and a host of disappointed investors. In many cases, these investors are persuaded to finance their participation through loans on the assurance that by the time the note comes due they will have ample earnings with which to honor it. The interest on these loans compounds the financial problem which they expected to solve by their participation in the scheme.

While most pyramids may be entered initially at modest rates, the

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26 News Release, supra note 21, at 2:
At the meetings, a great deal of psychological pressure is placed on the consumer to get him to enroll. . . . Speakers tell the crowds, "Unfortunately 95 percent of the people in this room tonight will probably never get anywhere in life because they won't make the effort to get out of their mediocre rut."

An extreme example of this technique was the practice of Sta-Power Industries, Inc., an affiliate of Holiday Magic ostensibly dealing in automotive additives, which collected fees from its distributors to attend "leadership training schools" at which they were beaten and subjected to bizarre physical abuses. Statement of Warren Spannaus, Hearings, supra note 4, at 33.


29 Pyramid promoters have been known to instruct prospective investors on the methods of applying for a loan, even to the point of recommending such techniques as buying a demolished new car from a junkyard and financing it through a banker who does not insist on personal inspection. In some instances, promoters have posed as legitimate dealers for the purpose of confirming the bank's inquiries regarding the investor's loan application. See Statement of Warren Spannaus, Hearings, supra note 4, at 20, 32. For a discussion of Dare To Be Great's advice to "fake it 'til you make it," see SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476, 480 (9th Cir. 1973).

cheaper positions appear to be offered as part of a "bait and switch" tactic\(^3\) in which pressure is exerted to divert investment toward the more expensive positions.\(^4\) Clearly, the complex network of commissions, finder's fees, discounts, overrides, and rebates which remunerate the distributors and prohibit the lower level participants from buying directly from the company is a strong incentive to move up the chain through additional investment.\(^5\) This rigidly integrated internal organization has made pyramid sales schemes vulnerable to attack on the ground of unduly restraining competition.\(^6\)

**II. LEGAL CONTROL OF PYRAMID SALES**

* A. Administrative Agencies

There is presently no federal law prohibiting pyramid sales schemes per se. However, the United States Department of Justice, the Securities and Exchange Commission, and the Federal Trade Commission have experienced varying degrees of success in prosecuting the more flagrant chain abuses under existing lottery,\(^7\) securities,\(^8\) and consumer fraud\(^9\) laws, respectively.

In prosecutions employing the lottery approach, the United States Department of Justice assumes the burden of proving the presence of three elements: consideration (the payments made by the investor), prize (the payment of commissions or rebates made by the company), and chance (the uncertainty whether recruits will be both available and willing to invest).\(^10\) The most elusive of these elements is chance.

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N.W.2d 624, 627 (Iowa 1971). In Kansas the price was $50. State *ex rel.* Sanborn *v.* Koscot Interplanetary, Inc., 212 Kan. 668, 671, 512 P.2d 416, 420.

\(^3\) *News Release, supra* note 21, at 2.

\(^4\) In New York, for example, Holiday Magic charged $4,500 to become a "Master" and an additional $4,000 to become a "General." *News Release, supra* note 21, at 2. Koscot supervisorships generally sold for $2,000, while distributorships cost $5,000. State *ex rel.* Turner *v.* Koscot Interplanetary, Inc., 191 N.W.2d 624 (Iowa 1971); State *ex rel.* Sanborn *v.* Koscot Interplanetary, Inc., 212 Kan. 668, 669, 512 P.2d 416, 420.

\(^5\) *See, e.g., State ex rel.* Sanborn *v.* Koscot Interplanetary, Inc., 212 Kan. 668, 671, 512 P.2d 416, 420:

A supervisor receives a 15% commission on the gross sales of all his beauty advisors and there is no limitation placed upon the number of such recruits he may bring into the company. A director receives a 10% commission on the gross sales of the supervisors he recruits and a 25% commission on the gross sales of all beauty advisors he recruits.


In *Zebelman v. United States*,\(^{41}\) the federal lottery statute\(^{42}\) was used to prosecute an automobile salesman who informed individuals by mail that after they purchased a car from him (consideration) they would become eligible to receive from him the sum of $100 (prize) for each person they referred to him who purchased a car and $50 (prize) for each new participant's successful referral. The court held that the promise and payment of the initial $100 prize did not establish the element of chance necessary for the existence of a lottery because it was within the control of the original purchaser. However, since the payment of the $50 prize was totally dependent upon the actions of the persons whose names were submitted, this second level recruitment was deemed to exceed ordinary business risk and constitute the chance element necessary to a lottery. This precedent is therefore not applicable to single-level plans.\(^{43}\) Its intricate proof requirements also prohibit reliance upon it as an effective deterrent for so mutable an abuse.\(^{44}\)

The federal mail fraud statute\(^{45}\) is applicable to cases in which fraudulent statements or misrepresentations are included in, or disclosure of material facts is omitted from, literature distributed through the United States Postal Service.\(^{46}\) However, this avenue of approach to pyramid sales schemes has not yet borne results.\(^{47}\) Since the use of the mails is not usually essential to the operation of pyramids and since the complexity of alleged mail fraud schemes and the number of witnesses necessary to prove the charges make investigations and prosecutions under the statute lengthy and expensive, this procedure is unlikely to be invoked unless the stakes are high enough.\(^{48}\) It is therefore, at best, only a partial remedy.

The SEC has recently announced its new interpretation\(^{49}\) of § 2(1) of the Securities Act of 1933.\(^{50}\) It takes the position that a security is involved wherever "the franchisee is not required to make significant

\(^{41}\) 339 F.2d 484 (10th Cir. 1964).
\(^{44}\) See note 95 and accompanying text infra.
\(^{46}\) See Blachly v. United States, 380 F.2d 665 (5th Cir. 1967); Fabian v. United States, 358 F.2d 187 (8th Cir. 1966), cert. denied, 385 U.S. 821 (1966).
\(^{48}\) See Letter from Assistant Attorney General W. Vincent Rakestraw, supra note 43, at 15. See also Hanrahan v. United States, 348 F.2d 363 (1965), in which resolution of an action brought under the mail fraud statute took nearly four years.
efforts in the operation of the franchise in order to obtain the promised return on his investment. While this ruling declares that an offering of an investment contract or participation in a profit sharing agreement by a pyramid operation must comply with the SEC’s requirement of full disclosure of relevant information, its scope is presently uncertain. It may not, for example, cover chain schemes which, by setting rates reasonably related to costs, appear to emphasize the distribution and sale of a product or service. Schemes not exempted, however, will be required to submit to the cost and scrutiny of registration before the SEC, to distribute prospectuses at opportunity meetings, to employ only qualified dealer-brokers as recruiters, to be adequately capitalized, to register under state securities laws, and to comply with other recordkeeping requirements. The employment of deceptive acts or practices in connection with the offer or sale of securities violates the antifraud provisions of the Securities Act, the Securities Exchange Act, and rules promulgated under the SEA.

The SEC position that pyramid sales schemes are securities has recently received judicial approval. The obstacle to SEC jurisdiction since 1946 seemed to lie in the Supreme Court’s definition of an investment contract in SEC v. W.J. Howey Co. The Howey test is “whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others.” Even though the Howey court admitted that the definition of a security “embodies a flexible rather than a static principle,” the application of the test to pyramid sales schemes would not appear to establish the existence of investment contracts because they do not necessarily involve total reliance upon the efforts of others. While more liberal approaches, such as the “risk capital test,” which finds a security wherever an

60 17 C.F.R. §§ 240.10b-5, 240.15c1-2.
62 Id. at 301.
63 Id. at 299.
investor’s money is risked in an enterprise in which he has no managerial control, and the “economic realities test,”\textsuperscript{66} which finds a security wherever an investor lacks “practical and actual control over the managerial decisions of the enterprise,”\textsuperscript{67} have been applied by some state courts in determinations under their security laws,\textsuperscript{68} no similar construction was made at the federal level until SEC v. Glenn W. Turner Enterprises.\textsuperscript{69}

Turner Enterprises breathed life into the dicta advocating flexibility in Howey\textsuperscript{70} and Tcherepnin v. Knight.\textsuperscript{71} In Turner Enterprises, three types of contracts for self-improvement courses sold by Dare To Be Great\textsuperscript{72} for $1000, $2000, and $5000 were held to be securities under the federal securities laws,\textsuperscript{73} even though purchasers were required to exert personal effort in recruiting and introducing prospective investors. Adopting a test which it characterized as “more realistic”\textsuperscript{74} than that of Howey, the court held that the investor was a buyer of a share of the proceeds of Dare To Be Great’s selling efforts, and that these efforts of its promoters, not the work exerted by the investor, were “the undeniably significant ones”\textsuperscript{75} affecting the success or failure of the enterprise.

This decision essentially changed the word “solely” in the Howey definition\textsuperscript{76} to “substantially.” That is, when the overall relationship between the investor and the company is considered, the contribution of some effort by the investor in a pyramid scheme does not alter his position as one of fundamental reliance or dependence upon the management decisions of the company. In articulating a distinction between managerial, nonmanagerial, and essential managerial efforts,

\textsuperscript{67} Id. at 649, 485 P.2d at 111 (1971).
\textsuperscript{70} 328 U.S. 293, 299 (1946). See note 64 and accompanying text supra.
\textsuperscript{71} 389 U.S. 332, 336 (1967):

[1]In searching for the meaning and scope of the word “security” in the Act, form should be disregarded for substance and the emphasis should be on economic reality.
\textsuperscript{72} See note 2 supra.
\textsuperscript{74} 474 F.2d 476, 482 (9th Cir. 1973).
\textsuperscript{75} Id.
\textsuperscript{76} See text accompanying note 63 supra.
the Turner Enterprises case made the Howey test of a security applicable to situations in which the investor is active as well as inactive. Although this liberalized interpretation provides prosecutors with a cause of action they heretofore did not have, the security approach is not a panacea since complaints alleging that pyramid sales schemes are technically securities are incapable of being processed with the celerity needed to protect potential investors.

Like the Securities and Exchange Commission, the Federal Trade Commission has achieved limited success in regulating pyramid schemes through the exercise of general powers. The FTC approach utilizes an adjudicatory, rather than a rulemaking, process which is simply not set up to resolve disputes expeditiously. The omission in the FTC Act of a procedure whereby victims of deceptive trade practices may obtain restitution has also seriously impaired the Act’s effectiveness. However, National Petroleum Refiners Ass’n v. FTC, a 1973 case, appears to have conferred upon the FTC the substantive regulatory powers common to other administrative agencies by construing its governing statute as authorizing the FTC “to promulgate rules defining the meaning of the statutory standards of the illegality the commission is empowered to prevent.” These rules may then be used by the agency in adjudicatory proceedings in which cease-and-desist orders are issued against violators of the statutory standard.

There are at least two other possible federal causes of action. Since the parent company usually tightly controls all phases of the marketing process, pyramid operations might be accused of vertical restraint of trade in violation of sections 1 and 2 of the Sherman Act. For example, in United States v. Arnold, Schwinn and Co., the Supreme Court distinguished situations in which the manufacturer’s retention of title to the merchandise and the risk of loss makes the dealer indistin-

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78 Senate Report, supra note 7, at 4.
79 Id.
81 The limitations of the FTC approach to consumer fraud were candidly expressed by Sen. Frank Moss in his recent criticism: “I sometimes feel the Federal Trade Commission’s procedures and practices are almost a license to steal with impunity.” Hearings, supra note 4, at 62.
82 482 F.2d 672 (D.C. Cir. 1973).
83 15 U.S.C. § 41 et seq. (1973). The controlling provision was 15 U.S.C. § 46(g) (1973) which provides: [The Commission shall have power] . . . [f]rom time to time to classify corporations and to make rules and regulations for the purpose of carrying out the provisions of sections 41 to 46 and 47 to 58 of this title.
84 482 F.2d 672, 698 (D.C. Cir. 1973).
guishable from its agent from those situations in which the distributor owns the merchandise. In the former case, price setting and the allocation of territories is not illegal unless the impact is unreasonably restrictive of competition. In the latter case, however, no limitations may be imposed upon the retailer's freedom to determine where and to whom to resell the goods. Most pyramid operations seem to fall into the latter category. Also, since the merchandising program is based on a promised return of investment virtually unattainable in practice, pyramid operations may violate § 5 of the FTC Act, which declares unfair methods of competition and unfair or deceptive acts or practices in commerce to be unlawful.

B. State Legislation

Three states allow pyramids to operate subject to regulation. Of these, South Dakota's comprehensive approach, providing for registration, distribution of prospectuses, voidability of contracts within thirty days, refund of consideration and return of merchandise, and the recovery of treble damages by deceived investors, appears best adapted to insuring informed and voluntary participation. Nevertheless, to regulate is to permit, and even regulations which compel procedural modifications may leave the substance of chain schemes intact. The experience of states adopting the regulatory approach has demonstrated that promoters will intentionally circumvent the restrictions by not fully complying with the registration and disclosure requirements. Even in South Dakota, compliance with the registration law has been unsatisfactory.

All other state legislation in this area has been prohibitory. Several states have proscribed all endless chain schemes per se. A slightly less

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90 Note, Pyramid Schemes: Dare to be Regulated, 61 GEO. L.J. 1257, 1263 (1973).
92 For example, HAWAII REV. STAT. § 480-3.3 (Supp. 1974) defines an endless chain scheme as any scheme for the disposal or distribution of property whereby a participant pays a valuable consideration for the chance to receive compensation for introducing one or more additional persons into participation in the scheme, or for the chance to receive compensation when a person introduced by the participant introduces a new participant. See also CAL. PENAL CODE § 327 (West 1970); WASH. Rev. Code § 19.102.020 (Supp. 1973); W. VA. CODE ANN. § 47-15-1 et seq. (Supp. 1974); WY. STAT. ANN. § 40-17.1 et seq. (Supp. 1973).
direct approach has been to define multilevel schemes as lotteries by statute.  

This makes it possible to prosecute them under state anti-lottery laws without the intricate definitional and evidentiary problems which actually proving the existence of a lottery would entail. This approach, however, does not adequately protect potential investors since no provisions provide for recovery by defrauded investors and the promoters are only minimally regulated.

Courts in some states having antilottery statutes without the specific inclusion of chain schemes have also refused to enforce contracts for the purchase of merchandise from referral sales operations, but usually only if the rates charged are clearly excessive. In *Sherwood & Roberts—Yakima, Inc. v. Leach,* a price of $1,187.28 was attached to a radio intercom and fire alarm system worth $225.32 and purchased on a conditional sale contract made pursuant to a promise of $100 commission per successful referral and on the assurance of the salesman that the commissions would at least reimburse the buyer for the purchase price. The court held this scheme to be a lottery since it was permeated with chance: the chance that the referrals would not be interested, that the salesman might make an inadequate presentation or not honor his promise to contact the referrals, that the referrals had already been referred by someone else, and that market saturation had occurred. The original agreement and subsequent agreements made in connection with it were held to be unenforceable. The lottery approach has been criticized for its reliance on ad hoc determinations of the legal status of particular schemes, the inhibitory effect it has on judicial activism because of its penal nature, the lack of satisfactory

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93 For example, *Fla. Stat. Ann.* § 849.091 (Supp. 1974) classifies as a lottery any group organized or brought together under any plan or device whereby fees or dues or anything of material value to be paid or given by members thereof are to be paid or given to any other member thereof, which plan or device includes any provision for the increase in such membership through a chain process of new members securing other new members and thereby advancing themselves in the group to a position where such members in turn receive fees, dues or things of material value from other members.


94 All fifty states restrict the operation of lotteries. For a compilation of state lottery statute citations, see 2 *Ga. L. Rev.* 122, 123 n.5 (1967).

95 See, e.g., *M. Lippincott Mortgage Inv. Co. v. Childress,* 204 So. 2d 919 (Fla. 1967). Some courts have held that referral sales schemes are not lotteries because they depend upon the skill of the purchaser and consequently lack the element of chance; see *Yoder v. So-Soft of Ohio, Inc.* 30 Ohio Op. 2d 566, 202 N.E.2d 329 (1963); *A. A. Murphy, Inc. v. Taylor,* 383 P.2d 648 (Okla. 1963); *Krehbiel v. State,* 378 P.2d 768 (Okla. 1963).

96 Note, *supra* note 90, at 1264.

97 67 Wash. 2d 630, 409 P.2d 160 (1965).

98 *Id.* at 635, 409 P.2d at 163.
compensation provisions, and its intellectual dishonesty in feigning gambling, rather than deceit, as the vice being attacked.\footnote{Comment, \textit{supra} note 20, at 149-50. \textit{See also} Caples Co. v. United States, 243 F.2d 232 (D.C. Cir. 1957).}

General consumer protection acts or unfair or deceptive trade practice (consumer fraud) acts provide the primary means of attack on pyramid sales schemes in at least fifteen states.\footnote{\textit{See, e.g.}, ARK. STAT. ANN. § 70-905 (Supp. 1974); ILL. ANN. STAT. ch. 121 1/2, § 262A (Smith-Hurd Supp. 1973); IOWA CODE § 713.24(2)(b) (Supp. 1974); KAN. STAT. ANN. § 50-623 (Supp. 1974); MICH. COMP. LAWS ANN. § 445.801 et seq. (Supp. 1975-76); MINN. STAT. ANN. § 325.75(2) (Supp. 1974); NEV. REV. STAT. § 598.120 (Supp. 1973); N.J. STAT. ANN. § 56:8-2 (Supp. 1974); PA. STAT. tit. 73, § 201-2(4)(xii) (1961); S.C. CODE ANN. § 66-71.2 (Supp. 1974); S.D. COMP. LAWS ANN. § 37-24-6(13) (Revision, 1972); TEX. BUS. & COM. CODE ANN. § 17.46(b)(18) (Supp. 1974-75); VT. STAT. ANN. tit. 9 § 2451(a) (Supp. 1974); VA. CODE ANN. § 59.1-1 et seq. (Supp. 1974); WIS. ADM. CODE AGRIC. 122.01 (1970).}

Many of these statutes delegate a broad array of investigatory and injunctive powers to the state attorney general to discover and prosecute instances of "deception, fraud, false pretense, false promise, misrepresentation,"\footnote{\textit{IOWA CODE} § 713.24(2)(a) (Supp. 1974).} or similar abuses. In \textit{State ex rel. Turner v. Koscot Interplanetary, Inc.},\footnote{\textit{191 N.W.2d 624 (Iowa 1971).}} an Iowa provision declaring the advertisement of sales featuring rebates contingent upon the procurement by the customer of additional purchasers or sales\footnote{\textit{IOWA CODE} § 713.24(2)(b) (Supp. 1974).} to be an "unlawful practice rendering any obligation incurred by the buyer in connection therewith, completely void and a nullity,"\footnote{\textit{191 N.W.2d at 630 (Iowa 1971).}} was upheld against challenges to its constitutionality. Responding to Koscot's contention that the Act infringed its constitutionally protected freedom to contract, the court held that reasonable and appropriate state legislation designed to protect the public's health, safety, morals, or welfare is constitutionally permissible and all contracts are subject to it.\footnote{\textit{UNIFORM CONSUMER CREDIT CODE} § 2.411 [Referral Sales]: With respect to a consumer credit sale or consumer lease the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or}
without any obligation of payment, or simply to rescind. However, legitimate referral-type commissions are not affected by this provision:

The evil this section is aimed at is the raising of expectations in a buyer of benefits to accrue to him from events which are to occur in the future. This provision has no effect on a seller’s agreement to reduce at the time of the sale the price of an item in exchange for the buyer’s giving the seller a list of prospective purchasers or assisting in other ways if the price reduction is not contingent on whether the purchasers do in fact buy or on whether other events occur in the future.108

A number of other states have achieved the same result by enacting specific legislation prohibiting conditional referral sales.109

The “Unconscionable Contract or Clause” section110 of the Uniform Commercial Code is a possible ground of attack in forty-nine states,111 the District of Columbia, and the Virgin Islands. In State ex rel. Lefkowitz v. ITM, Inc.,112 the Attorney General of New York successfully enjoined the operation of a referral sales arrangement whereby the home purchasers of color television sets, central vacuum cleaning systems, and electronic quartz broilers at prices ranging from two to six times the cost of each unit were guaranteed remuneration for supplying the company with twenty names of persons to whom the products could be presented. The court held the contracts to be unenforceable partly because “the unreasonableness and unfairness”113

lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

108 UNIFORM CONSUMER CREDIT CODE § 2.411, Comment 2.
109 See, e.g., Ohio Rev. Code Ann. § 1345.02(C) (Supp. 1973):

No supplier shall offer to a consumer or represent that a consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers, or otherwise helping the supplier to enter into other consumer transactions, if earning the benefit is contingent upon an event occurring after the consumer enters into the transaction.

110 UNIFORM COMMERCIAL CODE § 2-302 (1972):

(1) If the court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

111 The UCC has not been adopted in Louisiana.
113 Id. at 54, 275 N.Y.S.2d at 321.
of the agreements violated § 2-302(1) of the UCC.114 The court declared it unconscionable not to advise the consumer clearly, adequately, and "in language that the least educated person could understand"115 that (1) he is entering into a contract, (2) he is personally liable for the total contract price, and (3) he will be required to pay the stipulated periodic payments plus carrying charges and other expenses.

Pyramid sales schemes have also been subject to attack based upon the monopolistic nature of their marketing procedures. Their insistence upon the independent contractor status of their distributors for corporate veil purposes116 has helped to undermine their defense against charges of violating the Sherman Anti-Trust Act,117 especially in light of the Schwinn decision.118 In Kugler v. Koscot Interplanetary, Inc.,119 the company-imposed restrictions requiring the distributor and supervisor to buy only from their sponsor, the limitations on retail outlets to which a distributor could sell, and the constraints imposed by the company on advertising, product promotion, transfers of distributorships, and the prohibition of cooperation with other distributors were held to impose vertical restraints on trade violative of the New Jersey Antitrust Act.120

While these statutes and strategies have in most cases resulted in successful prosecutions, their effectiveness has been impaired by delays resulting from the remedial variations and jurisdictional questions implicit in a state-by-state approach.121 Since a prohibition on the purchase of merchandise with the expectation of receiving a rebate based on the salesman's success is distinguishable from the purchase of a distributorship with personal rights to recruit, the emphasis upon referral sales makes much of this legislation inapplicable to multilevel distributorships, a possibly more outrageous type of pyramid abuse because they leave the investor without even the merchandise he would receive in a referral sale.

A standard defense raised by alleged pyramid sales promoters has been the independent-contractor status of the distributors and opportunity meeting leaders. Although such independence is routinely

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114 The contracts were also held to violate 5 N.Y. Exec. Law § 63(12) (McKinney 1972), which directs the Attorney General, in the name of the people of the State, to petition a State Supreme Court for appropriate relief from fraudulent or illegal acts, including "unconscionable contract provisions." 52 Misc. 2d at 54, 275 N.Y.S.2d at 321 (1966).
115 52 Misc. 2d at 62, 275 N.Y.S.2d at 329.
116 See note 86 and accompanying text supra.
121 See Note, supra note 90, at 1265. See also part IV infra.
asserted in the signed agreements, this claim has ordinarily been rejected. The courts, looking to the substance rather than the form of the contracts, have been able to find an agency relationship and at least some authorization for the deceptive representations made. For example, Koscot instructed its recruiters to follow meticulously the directions in the company-issued "Distributor's Training Manual." The corporate veil has been pierced in a similar manner. In State ex rel. Sanborn v. Koscot Interplanetary, Inc., the Kansas court held that Glenn Turner, who was chairman of the board and organizer of Koscot, could be held personally liable for fraud or misrepresentation perpetrated by agents of the company since he personally devised the merchandising philosophy found in the company's operational manual.

Alternative defense pleadings and strategies have generally been equally unavailing. The use of state quota systems to prevent market saturation has been dismissed as a defense, since such limitations are not effective in a narrow geographical area. The contention that the income projections contained in the literature distributed to potential investors should be tolerated as mere advertising puffery, commonplace in modern business, has also been rejected. Defendants have

123 212 Kan. 668, 512 P.2d 416.
124 Id. at 679-80, 512 P.2d at 425. A similar conclusion was reached in Kugler.
125 Responding to Koscot's claim that its distributorships in New Jersey were limited to one for every 7,000 residents, the court declared:

The imposition of a quota was illusory. Not only did the quota fail to obviate the vice of market saturation, but it had a potential for inducing purchases of distributorships. As to the first aspect, it is to be remembered that distributorships are not exclusive as to territory. According to [an expert witness] there is a strong tendency in such a case for the company to attract a substantial number of distributors in a given territory because each will recruit the people he knows best or with whom he comes in contact. . . . The effect is to bring about an undue concentration of distributors in particular areas and to make the sales more difficult. The quota does not change the situation materially. . . .

As to the second aspect of the quota, statements that there were a limited number of distributorships available had the tendency of making them more desirable and inducing quicker affirmative response in those to whom the promise of large incomes had been glowingly made. They were unaware of the pitfalls of market saturation.

126 Id. at 228, 293 A.2d at 688. The court in Kugler relied on the principle enunciated by the Supreme Court in FTC v. Standard Education Society, 302 U.S. 112, 116 (1937):

The fact that a false statement may be obviously false to those who are trained and experienced does not change its character, nor take away its power to deceive others less experienced. There is no duty resting upon a citizen to suspect the honesty of those with whom he transacts business. Laws are made to protect the trusting as well as the suspicious. The best element of business has long since decided that honesty should govern competitive enterprises, and that the rule of caveat emptor should not be relied upon to reward fraud and deception.
sometimes resorted to the use of tactics of a more aggressive nature. These include the instigation of countersuits against government agencies or officials for malicious prosecution,\textsuperscript{127} picketing, advertising, and challenging the competence or integrity of public officials.\textsuperscript{128}

### III. New Approaches to Control

#### A. New York Legislation

An example of a recent legislative enactment directed to the pyramid problem is § 359-fff of the Blue Sky Law of New York,\textsuperscript{129} which became effective on September 1, 1974. It follows by over two years New York City's prohibition of endless chain schemes\textsuperscript{130} and was drafted in response to demands for remedial legislation preventing a recurrence of abuses such as those alleged to have been committed by Holiday Magic, Inc.\textsuperscript{131} The Act is patterned after a Wisconsin regulation\textsuperscript{132} and a Washington statute.\textsuperscript{133}

The New York Act defines chain distributor schemes as sales devices granting, in exchange for an investment, a right to recruit for profit one or more persons who are also granted such a right upon the condition of making an investment.\textsuperscript{134} It effectively prohibits them by making it a crime to "promote, offer or grant participation"\textsuperscript{135} in such an operation, thereby limiting the number of investors to one. It also eliminates the use of quotas or other "conditions affecting eligibility"\textsuperscript{136} as a defense. In addition, chain distributor schemes are classified as securities.\textsuperscript{137} This invokes the sanctions of the state's General Business

\textsuperscript{127} For example, Glenn Turner unsuccessfully sued twenty-seven state attorneys general for conspiracy to violate his civil rights. Statement of Joel Weisberg, \textit{Hearings, supra} note 4, at 60.

\textsuperscript{128} See \textit{News Release, supra} note 21, at 1.

\textsuperscript{129} N.Y. GEN. BUS. LAW § 359-fff (McKinney Supp. 1974-75).

\textsuperscript{130} New York City Dep't of Consumer Affairs Consumer Protection Regulation 22, prohibiting the operation of endless chain schemes, became effective May 25, 1972.\textsuperscript{131} News Release, \textit{supra} note 21, at 1. See also note 1 supra.

\textsuperscript{132} Wis. Dep't of Agriculture Gen. Order 122.01 (April 1, 1970). Unfair trade practice: The promotional use of a chain distributor scheme in connection with the solicitation of business investments from members of the public is an unfair trade practice under section 100.20, Wis. Stats.

\textsuperscript{133} The regulation was upheld against a challenge which claimed that it was violative of the first amendment right of free speech, void for vagueness, a burden on interstate commerce, preempted by 15 U.S.C. § 45(a)(1), a deprivation of the constitutional right to work, an impairment of due process and the right to contract, and a denial of equal protection. Holiday Magic, Inc. \textit{v.} Warren, 357 F. Supp. 20 (E.D. Wis. 1973).

\textsuperscript{134} N.Y. GEN. BUS. LAW § 359-fff(2) (McKinney Supp. 1974-75).

\textsuperscript{135} \textit{Id.} § 359-fff(1).

\textsuperscript{136} \textit{Id.} § 359-fff(2).

\textsuperscript{137} \textit{Id.} § 359-fff(3).
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Code,\textsuperscript{138} authorizing the Attorney General to demand sworn statements and other information from persons involved in security sales which are or in his opinion may be fraudulent or deceptive.\textsuperscript{139} This latitude is extended to prohibit pyramid schemes by allowing the Attorney General to seek injunctions\textsuperscript{140} and prosecute\textsuperscript{141} them before any residents have been defrauded, thus short-cutting the traditional post facto prosecutions which would be the only available recourse if pyramid schemes were merely prohibited. This provision affords protection to the prospective investor who, because of the flight or judgment-proof status of the promoter, would probably not be able to recoup his loss if he had invested.

\textbf{B. Proposed Federal Legislation}

Because of the variations in state restrictions and remedies, as well as the essentially national nature of pyramid operations, the National Association of Attorneys General has urged the enactment of federal legislation protecting the public from interstate pyramid sales operations.\textsuperscript{142} S. 4043, introduced in the 92d Congress by Senator Walter Mondale, was revised and reintroduced in the 93d Congress as S. 1939, the “Pyramid Sales Act.” This bill passed the Senate on August 22, 1974,\textsuperscript{143} and was referred to the House Judiciary Committee, which took no action upon it by the end of the 93d Congress.\textsuperscript{144}

This proposal would amend 18 U.S.C. § 1341 \textit{et seq.} (Supp. 1974) by inserting therein § 1344, which would impose a fine of not more than $25,000 and/or imprisonment of up to five years upon persons knowingly selling, offering, or attempting to sell a participation in a pyramid sales scheme through “any means or instrumentality of transportation or communication in interstate or foreign commerce or by use of the mails.”\textsuperscript{145} A pyramid sales scheme is defined as any plan or operation which includes a means of increasing the participation therein whereby a participant pays a valuable consideration for the right to receive compensation either for the introduction of others into participation in the plan or for the introduction of others into the plan participation.

\textsuperscript{138} N.Y. GEN. BUS. LAW §§ 352-59 (McKinney 1968).
\textsuperscript{139} Id. § 352(1).
\textsuperscript{140} Id. § 352(1).
\textsuperscript{141} Id. §§ 352(c)(3), (d); Id. § 358.
\textsuperscript{142} Senate Report, supra note 7, at 1-2. The adoption of such a proposal has also been supported by the SEC (Senate Report at 12), the FTC (Senate Report at 15), the Department of Justice (Senate Report at 19), the International Franchise Association (Hearings, supra note 4, at 40), and the Direct Selling Association (Hearings at 63).
\textsuperscript{143} S. 1939, 93d Cong., 2d Sess. (1974).
\textsuperscript{144} Letter from Sen. Walter F. Mondale to author, Feb. 6, 1975 (on file with the University of Michigan Journal of Law Reform).
\textsuperscript{145} S. 1939, supra note 143, § 3 (1974).
by the person introduced originally by the participant. By declaring pyramid operations illegal per se without regard to such classifications as “security,” “lottery,” or manner of promotion, the bill is intended to expedite litigation by eliminating the necessity of demonstrating the illegality of every individual marketing plan involving pyramid selling. Section 3 of the bill would charge the Department of Justice with the responsibility for the prosecution of criminal violations.

The bill would also increase the availability of civil remedies. Section 5 would declare any contract made in furtherance of a pyramid sales scheme to be void. It would additionally hold pyramid operators, recruiters, and sales personnel jointly and severally liable for treble damages, legal costs, and a reasonable attorney’s fee to any person they knowingly induce to participate. United States district courts would be granted original jurisdiction without reference to diversity of citizenship. States would be allowed to retain or expand existing laws prohibiting pyramid schemes, but any state legislation providing for a regulatory approach or other laws permitting acts or practices expressly forbidden by the federal statute would be preempted.

S. 1939 would concentrate enforcement power in the Attorney General. After serving notice and providing the opportunity for an adjudicatory hearing pursuant to 5 U.S.C. § 554, the Attorney General would be given the authority to assess fines of up to $10,000 per day for each violation not only of the Act but of orders or regulations issued thereunder. He would be directed to exercise this power at his discretion after consideration of “the nature, circumstances, extent, and gravity of the violation” and “the degree of culpability, any history of prior offenses, ability to pay,” and “effect on ability to do business” of the person involved. Section 4(c) would empower him to “compromise, modify, or remit, with or without conditions, any civil penalty” imposed under the section. Judicial review would be available by filing a notice of appeal in an appropriate United States court of appeals within thirty days from the date of the order.

Section 6 is also unique. It would authorize the Attorney General of the United States or the chief law enforcement officer or attorney general of any state in which a violation has allegedly occurred to seek an injunction in an appropriate United States district court against any person engaged in or “about to engage in” an act or practice constitut-

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146 Id. § 2(4).
148 S. 1939, supra note 143, § 7 (1974). This provision may be considered a weakness of the bill. See part IV infra.
149 Id. § 4(a).
ing a pyramid sales scheme. In allowing a state attorney general to enforce a federal law in federal court, this proposal would extend a power not granted by any other federal statute. 150

IV. CONCLUSION

While the response of state legislatures, attorneys general, and the courts to recent pyramid sales abuses has been encouraging, certain problems are inherent in a state-by-state approach. Even in the short interval between the initiation of a scheme of activities within a state and the legal response it generates, the public can sustain significant harm. 151 After a temporary restraining order is obtained, pyramid operators may continue to solicit business by moving to an adjoining state with weaker or nonexistent standards. In the absence of federal intervention, unless and until each state enacts adequate legislation to cope with this "state hopping" problem, fast-talking operators, occasionally changing their product, its name, or their corporate name, can continue to play forums off against each other. 152

Since fraudulent pyramid sales schemes superficially resemble and often designate themselves as franchises, duplicative or conflicting legislation may adversely affect legitimate franchising or other merchandising businesses whose success depends upon standard and uniform nationwide operations. These companies, particularly the smaller ones, may be unwilling or unable to incur the increased costs and risks of inadvertent noncompliance with a multitude of varying state laws. 153 Nor is the alternative of terminating franchise appointments and vertically integrating their activities realistically available to smaller companies. Widespread diversity of state consumer protection legislation, then, has a chilling effect on competition to the extent that legitimate franchises are discouraged from expanding, since it deprives consumers of the variety of choice and economic benefits flowing from competition among sellers as well as potential investors of an opportunity to become entrepreneurs. 154

150 Letter of W. Vincent Rakestraw, Senate Report, supra note 7, at 17.
151 In his testimony, Warren Spannaus cited an example of a pyramid accumulating $36,000 before a temporary restraining order was obtained:
[T]he tragedy is that although it may seem that $36,000 . . . could change hands in a week or two, although that may seem like a small amount of money, that is probably 7 to 10 persons whose lives have been ruined unnecessarily because of the failure of a Federal law to be in effect.
Hearings, supra note 4, at 27-28.
152 Statement of Sen. Walter F. Mondale, id. at 27.
153 See Statement of Philip Zeidman, id. at 49.
154 See Statement of Norman Axelrad, vice president for public affairs of MacDonald's Corporation, id. at 45.
Pyramid sales schemes are a national problem for which there is presently no satisfactory national solution. The federal administrative agencies examined are too restricted by outdated procedures, limited personnel, and lack of enforcement powers to deal efficiently or swiftly with illegal pyramid sales schemes. The pending federal "Pyramid Sales Act" legislation\textsuperscript{155} is the only extant proposal which provides both the uniformity of regulation desirable for the smooth, competitive functioning of legitimate franchising and direct sales operations and the flexibility of approach essential to state and federal law enforcement officers and aggrieved individuals seeking redress against illegal multilevel operations and their owners and promoters.

\textit{—Donald Daniels}

\textsuperscript{155} Sen. Mondale will reintroduce the "Pyramid Sales Act" in improved form in the 94th Congress. Letter from Sen. Walter F. Mondale to author, \textit{supra} note 144.