

McGuireWoods LLP
201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146
Phone: 704.343.2000
Fax: 704.343.2300
www.mcguirewoods.com

Kenneth D. Bell
Direct: +1.704.373.4620

McGUIREWOODS

kbell@mcguirewoods.com

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Via email (ICA-application@ftc.gov) and US Mail

Janet Ammerman
Federal Trade Commission
Bureau of Consumer Protection
Division of Marketing Practices
600 Pennsylvania Avenue NW
CC-8528
Washington, DC 20580

Brad Winter
Federal Trade Commission
Bureau of Consumer Protection
Division of Enforcement
600 Pennsylvania Avenue NW
CC-9528
Washington, DC 20580

Re: Independent Compliance Auditor for Herbalife

Dear Ms. Ammerman and Mr. Winter:

I greatly appreciate the invitation to apply for appointment as the Independent Compliance Auditor (“ICA”) for Herbalife. It is a position for which I am well-suited personally and McGuireWoods LLP (“MW”) is equally equipped to support.

Qualifications and Experience

I was an assistant United States attorney for the Western District of North Carolina for eighteen years, the last ten years of which I served as First Assistant. I have been in private practice for the past thirteen years, focusing on white-collar criminal defense, government investigations, corporate compliance and internal investigations. The most recent recognition of my practice was to be named as the Charlotte “Lawyer of the Year” in Litigation – Regulatory Enforcement (SEC, Telecom, Energy) by *The Best Lawyers in America*. My firm bio is attached to this application.

During the last four years I have served as the federal court appointed receiver over Rex Venture Group LLC d/b/a ZeekRewards (RVG), believed to be the largest receivership as measured by number of victims (840,000) with losses totaling \$840 million.

McGuireWoods LLP

McGuireWoods has more than 1,000 lawyers in 23 offices, including two offices in Los Angeles, one of which, on South Grand Avenue, is located just over a mile from Herbalife headquarters on West Olympic Boulevard. Other firm locations include San Francisco, Charlotte, Atlanta, Austin, Baltimore, Charlottesville, Chicago, Dallas, Houston, Jacksonville, New York, Norfolk, Pittsburgh, Raleigh, Richmond, Tysons, Washington, Wilmington, as well as international locations in Brussels, London and Shanghai.

Our lawyers are consistently recognized for excellence in legal work and client service. The firm was recognized for the fifth consecutive year as one of the most recommended law firms serving Fortune 1000 companies in BTI's 2016 "Most Recommended Law Firms" report. Chambers and Partners named McGuireWoods a leading firm in 27 practice areas in its 2016 USA guide and recognized several partners in a range of practice areas in its 2016 Global, UK and EU guides. We were also ranked among the world's top 40 investigations firms in the first edition of the *GIR 100*, for our ability to carry out sophisticated cross-border government-led and internal investigations.

Prior Experience and References

For personal references I offer any of the United States District Court Judges before whom I have appeared for years, particularly WDNC Judges Hon. Frank D. Whitney, Chief Judge, Hon. Robert J. Conrad, Jr., Hon. Max O. Cogburn, Jr. and Hon. Graham C. Mullen. Contact information for the judges can be provided upon request.

We have extensive experience advising management on issues related to compliance, including interpreting government ethics laws and advising on conforming their conduct to those laws. We also develop and review compliance materials, including corporate codes of conduct, training materials and charters for implementing compliance efforts within an organization.

Our ranks include a number of former federal prosecutors and numerous others with substantial experience developing and implementing effective compliance programs and evaluating their effectiveness.

Unlike many firms whose understanding of the corporate environment begins and ends with the corporate legal team, McGuireWoods knows how to work effectively with other functions, including human resources, finance and information technology to promote effective compliance. We understand the importance of gaining support for compliance across the corporate culture.

Proposed Activities: Scope of Work, Staffing and Budgeting

The Request for Application summarizes the six broad business practices to be audited, as ordered by the Court. Each of these categories includes several components. The Court's order directs that the chosen ICA prepare, within ninety (90) days of the Effective Date, a first year budget and work plan. (Order p.21, ¶K.1.) No applicant will be able to reasonably project the necessary scope of work, staffing and budget until after selected.

The audit function will require a thorough understanding of Herbalife's business, information technology systems, past practices that gave rise to the Court order and proposed changes to practices and information collection and retention. During the 90-day window the ICA should meet, probably several times, with Commission staff and Herbalife management and legal counsel. Only after establishing a baseline understanding will the ICA be able to determine appropriate staffing (including appropriate subject matter expertise and experience levels) and prepare a budget. As the Court's order contemplates, staffing and budgeting should be a collaborative undertaking among the ICA, Commission and Herbalife.

My expectation is that staffing decisions and budget projections will follow the successful pattern we have developed during our RVG receivership. RVG was a multi-level marketing ("MLM") business that was determined by the SEC and federal court to be a massive Ponzi and pyramid scheme. As receiver, my team and I have developed in depth knowledge and understanding of MLM practices, pricing, marketing, compensation structures and regulatory requirements. We have marshalled over \$361 million and made distributions to qualified claimants at a rate of 60% of claims. The return rate to qualified claimants is expected to reach at least 75%. McGuireWoods and its consultant, FTI Consulting, have billed fees to the receivership of only approximately 5% of total recoveries over the first four years of the receivership. The cost efficiency and percentage of returns to qualified claimants may be unprecedented for a federal receivership.

As with the RVG receivership, I envision a relatively small core group of attorneys and paralegals being tasked with the majority of ICA responsibilities. Even though the RVG receivership is a massive undertaking, the core team at MW consists of three associates, two partners with split responsibilities, one senior counsel and a paralegal. Other timekeepers consist of MW professionals and paraprofessionals working in specialized capacities, such as bankruptcy, tax, employee benefits and information technology, who are consulted for limited purposes and who charge limited time to the receivership. This structure is purposeful, effective, and efficient for the receivership, as the attorneys most experienced in their field are conducting certain key portions of the receivership work.

In support of the Herbalife ICA, a very limited number of MW partners should be required to establish goals and procedures, and provide oversight and decision making. The

majority of work should be performed by firm associates of all experience levels and paralegals. A "bottom heavy" staffing model will control fees while accomplishing the compliance audit function. Preferably only one partner, in addition to me, would be assigned to this engagement. Depending upon the practice areas required to address all of the Court's directions it may be necessary to divide the work among several partners. For instance, the audit function may be best addressed by a corporate attorney as to some issues, a data privacy and security attorney for others, a labor and employment attorney, or a compliance and regulatory attorney for the balance. I do not now have a sufficient understanding of the scope of work to make specific recommendations. In any event, associates with the necessary experience will be able to execute most tasks.

Our normal practice is to engage in detailed discussions with our clients to develop agreed-upon work plans and cost estimates that fit the work required. This is important both to establish clear expectations and to preserve the independence of our work by ensuring that the budget is adequate to the scope of the work required. We would similarly work with the Commission and Herbalife in developing a work plan and budgets.

During my four years as RVG receiver my team and I have filed Quarterly Status Reports and Fee Applications with the Court, so we are experienced with submitting reports to the Court and operating within a budget; the Court has never denied or reduced a submitted fee application.

Conflicts

McGuireWoods is not aware of any conflicts of interest that would prevent us from serving as the Independent Compliance Auditor (ICA) for Herbalife. Jerry Kilgore, the former Attorney General of Virginia, is a Senior Advisor with McGuireWoods Consulting, a subsidiary of MW. Mr. Kilgore has been on a monthly retainer with Herbalife to deal with any inquiries from state Attorneys General. Mr. Kilgore has not undertaken any representations of Herbalife as a result of this retainer, and will resign his engagement with Herbalife in the event that I am selected as ICA. The Conflicts Clearinghouse section of MW is aware of this application and Mr. Kilgore's retainer and is satisfied that no ethical conflicts exist.

Estimated Costs





Conclusion

During the four years that I have been the RVG court appointed receiver I have considered the Court to be my client. Such would be my conduct if selected as Herbalife ICA. While I would necessarily work closely with the Commission and Herbalife, my duty of loyalty would be to the Court. I have many years of experience as a federal prosecutor and defense attorney. I bring no biases, prejudices or leanings for or against any party to this matter. Nonetheless, independence is not inconsistent with collaboration, to which I commit myself with the Commission and Herbalife.

Again, I greatly appreciate the invitation to apply for the ICA position, and the parties' consideration of this application. I would be pleased to discuss this application with the Commission and Herbalife during the selection process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Kenneth D. Bell', is written above the typed name.

Kenneth D. Bell, Partner
McGuireWoods LLP

PROFESSIONAL PROFILE



Kenneth D. Bell

Partner

+1 704 373 4620
+1 704 373 8836
kbell@mcguirewoods.com

201 North Tryon Street
Suite 3000
Charlotte, NC 28202-2146

PRACTICES

Government Investigations and
White Collar Litigation
Healthcare Law
Financial Services Litigation
Class Action
White Collar Defense
Data Privacy and Security

INDUSTRIES

Construction
Energy
Financial Services
Healthcare
Life Sciences

Ken is a partner practicing in the area of government investigations and white collar litigation. He represents clients on a variety of matters involving white collar crimes and business-related investigations. As part of his practice, he routinely represents Fortune 500 companies facing federal and state grand jury investigations.

Prior to joining McGuireWoods, Ken's public sector experience includes services as first assistant U.S. Attorney from 1993 to 2003, assistant U.S. Attorney for the Western District of North Carolina from 1990 to 1993 and assistant U.S. Attorney for the Western District of North Carolina from 1983 to 1988. He was also the Republican Nominee for the U.S. House of Representatives, North Carolina Fifth Congressional District, in 1990.

EXPERIENCE

- Representation of a sitting Congressman in an ongoing investigation by the U.S. Attorney's Office.
- Appointed as receiver by the U.S. District Court, Western District of North Carolina, arising from a complaint by the Securities and Exchange Commission alleging a \$600 million Ponzi and Pyramid Scheme with more than a million potential claimants (2012).
- Representation of the former president of a professional organization operating in the defense, training, logistics, retail and intelligence spaces in connection with allegations of firearms registration violations.
- Representation of a manufacturer as part of an investigation into alleged environmental crimes under RCRA by the Department of Justice and EPA.
- Regularly advises companies regarding FCPA and UK Bribery Act compliance, including corporate risk assessments identifying the most significant compliance risk areas faced by the companies.
- Conducted numerous internal investigations of companies regarding allegations of FCPA violations and kickbacks.
- Representation of Speaker of the North Carolina House of Representatives during federal, state and regulatory investigations.
- Representation of a Fortune 500 company in federal grand jury investigation and civil securities litigation related to allegations of stock option backdating.
- Representation of a national property and casualty insurance

company in federal grand jury and civil investigations regarding federally insured program.

- Representation of a national home builder and mortgage company in class action civil litigation regarding sub-prime mortgage issues.
- Representation of a Big Four accounting firm during investigation by state agency of tax planning strategies.
- Conducted internal investigation for major financial institution regarding commission compensation practices.
- Representation of a principal of a hedge fund regarding a federal grand jury investigation.
- Representation of a national construction company during federal grand jury investigation of municipal water project.
- Representation of accountants and medical professionals before licensing boards.
- Representation of officers and directors of financial and commercial companies during federal grand jury investigations.
- Representation of major financial institutions, accounting firms and large corporations in matters of government and internal investigations.
- Counsel of record for more than 100 cases before the U.S. Circuit Court of Appeals for the 4th Circuit.
- Primary trial responsibility in more than 200 federal cases, with more than 75 jury trials.
- Government investigations regarding commercial and financial frauds, Foreign Corrupt Practices Act, money laundering, public corruption, healthcare fraud, RICO, tax, terrorism, and environmental crimes.

EDUCATION

- Wake Forest University School of Law, JD, 1983
- Wake Forest University, BA, 1980

ADMISSIONS

- District of Columbia
- North Carolina
- U.S. Court of Appeals for the 4th Circuit
- U.S. District Court for the Eastern District of North Carolina
- U.S. District Court for the Middle District of North Carolina
- U.S. District Court for the Western District of North Carolina

HONORS

- Named "Lawyer of the Year," Litigation-Securities, 2015; Litigation - Regulatory Enforcement (SEC, Telecom, Energy), Charlotte, *Best Lawyers*, 2017
- Selected for inclusion in *America's Leading Lawyers for Business*, Litigation: White Collar Crime and Government Investigations, North Carolina, *Chambers USA*, 2012-2016
- Selected for inclusion in *The Best Lawyers in America*, Commercial Litigation, Criminal Defense: White-Collar, Litigation-Environmental, Regulatory Enforcement (SEC, Telecom, Energy), Litigation - Securities, Woodward/White, Inc., 2007-2012, 2014-2017
- Named to "North Carolina Super Lawyers," Criminal Defense: White Collar, Criminal Defense, General Litigation, Super Lawyers, Thomson Reuters, 2007-2016
- Named "Lawyer of the Year," Criminal Defense: White Collar, Charlotte, *Best Lawyers*, 2010
- Named to "Legal Elite," *Business North Carolina*, 2009
- Recipient, U.S. Attorney General John Marshall Award for Trial of Litigation, 2003

EVENTS

- Moderator, "ACHE Continuing Education Session: New Governmental Focuses on Fraud and Abuse Enforcement," Healthcare Finance and Growth: 2013 Southeast Healthcare Provider Conference, September 2013
- Speaker, North Carolina Bar Association's White Collar Crime Spring Program, May 2009
- Speaker, "Challenges in Disclosing and Using Intelligence in Criminal Prosecutions," Canadian National Conference on Public Safety, November 2008
- Speaker, 27th Annual National Trial Advocacy College, January 2008

AFFILIATIONS

- Member, North Carolina State Bar Association
- Member, District of Columbia Bar Association