

amended, except as provided in Section 406(b) of said Act.

In addition, this Rule does not apply to any entity that is not "organized to carry on business for its own profit or that of its members."<sup>12</sup> Finally, this Rule does not apply to any entity engaged in the business of insurance to the extent that such business is regulated by State law.<sup>13</sup>

### Section 310.2 Definitions

The revised proposed Rule amends, adds, or deletes certain definitions. The following definitions were deleted: "business venture," "goods or services," "premium," and "verifiable retail sales price." The Commission amended the definitions of: "credit card," "credit card sales draft," "credit card system," "investment opportunity," "merchant," "merchant agreement," "prize," "prize promotion," "seller," "telemarketer," "telemarketing," and "telephone solicitation." A definition for the term "credit" was added. Each of these changes, as well as a discussion of the definition of the term "material," are discussed below.

1. *Business venture.* Section 310.2(a) of the initially proposed Rule defined the term "business venture" as any "business arrangement, however denominated, including \* \* \* 'a franchise' as \* \* \* defined in the Commission's Franchise Rule \* \* \*"<sup>14</sup> which consists of the payment of any consideration for: "(1) the right or means to offer, sell, or distribute goods or services (whether or not identified by a trademark, trade name, advertising, or other commercial symbol); and (2) the promise of more than nominal assistance \* \* \* in connection with or incidental to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business."<sup>15</sup> This definition came into play in Section 310.3(a)(3) of the initially proposed Rule, which prohibited sellers or telemarketers from misrepresenting important information in connection with the offer, offer for sale or sale of any business venture. In addition, the initially proposed rule, at Section 310.4(a)(8), prohibited certain abusive practices concerning the use of shills in the sale of business ventures.

The Commission's Franchise Rule contains requirements and prohibitions that apply to franchises and business opportunities. Subsequent to the

publication of the NPR in this proceeding, the Commission issued a request for comments on the Franchise Rule as part of its periodic regulatory review of Commission trade regulation rules and guides.<sup>16</sup> The Commission believes it is more appropriate to consider within the framework of that review process whether any new regulatory action is needed to address the sale of business ventures. Following this approach, the Commission ensures that any new regulatory requirement or prohibition applicable to franchises or business ventures will be codified in one regulation—the Franchise Rule—not spread out over two separate Rules. Accordingly, the definition of "business venture," as well as the Sections of the initially proposed Rule prohibiting misrepresentations and abusive practices described above, have been deleted from the revised proposed Rule.

2. *Credit-related definitions.* The initially proposed Rule defined various credit-related terms that are used primarily in Section 310.3(c) relating to credit card laundering. These terms include "acquirer," "cardholder," "credit card," "credit card sales draft," "credit card system," "merchant," and "merchant agreement." Very few commenters expressed concern about the foregoing proposed definitions, but some did suggest minor technical changes to reflect more accurately the credit card industry's terminology and practices.<sup>17</sup> Based on those comments, the Commission proposes the following changes.

The Commission proposes adding under Section 310.2(e) a definition of the term "credit" to mean "the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment." This definition has been added to clarify the scope of Section 310.3(c) relating to credit card laundering. It was apparent from several comments that clarification was necessary. Some commenters wanted to include all electronic payment systems under credit card laundering.<sup>18</sup> Based on the plain language of the statute and its legislative history,<sup>19</sup> however, Congress clearly meant to prohibit credit card laundering predicated upon the definition of "credit" used throughout the consumer credit statutes, and did not contemplate coverage of all electronic payment systems. Therefore, the proposed definition of "credit" tracks the statutory definition of

"credit" under the Truth in Lending Act ["TILA"],<sup>20</sup> conforming the scope of Section 310.3(c) to that intended by Congress.

Based on comments similar to those that prompted the addition of the definition of the term "credit," the Commission has modified the term "credit card" in Section 310.2(f) to make it consistent with the term as defined in the TILA, thereby explicitly limiting Section 310.3(c) to credit card laundering. The revised definition of "credit card" states: "Credit card means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit." The revised definition is identical to the statutory definition of "credit card" contained in the TILA.<sup>21</sup>

The Commission has revised Section 310.2(g) defining the term "credit card sales draft" to drop any reference to specific forms of records. The revised definition states: "Credit card sales draft means any record or evidence of a credit card transaction." This revision is designed to be flexible enough to anticipate future technological changes in how credit card transactions are handled. The modification is not intended to contract the range of recordkeeping formats that would be acceptable under the Rule.

The Commission also has modified the definition of the term "credit card system" in Section 310.2(h) to address concerns Visa and MasterCard raised that the initially proposed definition could be construed to cover any system put in place, including a system put in place by a deceptive telemarketer.<sup>22</sup> Visa and MasterCard suggested language that would preclude such an outcome by clarifying the intention to include only a credit card system to process credit card transactions involving credit cards issued or licensed by the credit card system operator. The Commission agrees with the observations and suggested language advanced by Visa and MasterCard. The revised proposed definition states: "Credit card system means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system."

In Sections 310.2 (l) and (m),<sup>23</sup> the Commission has revised the definitions of "merchant" and "merchant agreement." In the initially proposed Rule, these definitions used the phrase

<sup>12</sup> See 15 U.S.C. 44.

<sup>13</sup> See Section 2 of the McCarran-Ferguson Act, 15 U.S.C. 1012(b).

<sup>14</sup> The term "franchise" is defined in the FTC's "Franchise Rule," 16 CFR 436.2(a).

<sup>15</sup> 60 FR 8328.

<sup>16</sup> 60 FR 17656 (April 7, 1995).

<sup>17</sup> See generally MasterCard; NAA; USPS; NCL.

<sup>18</sup> See, e.g., MasterCard at 5.

<sup>19</sup> See generally House Report at 2; Senate Report at 2, 10.

<sup>20</sup> 15 U.S.C. 1603(e).

<sup>21</sup> 15 U.S.C. 1603(k).

<sup>22</sup> See MasterCard at 6.

<sup>23</sup> Initially proposed Rule Sections 310.2 (m) and (n), respectively.