which was based on allegations in complaints filed in recent years by the Commission under Section 13(b) of the FTC Act,56 are no longer necessary because they are subsumed in the general prohibitions against misrepresentations set forth in Section 310.3(a)(2) of the revised proposed Rule. No inference should be drawn that these deletions in any way alter the Commission's view that the misrepresentations enumerated initially in proposed Sections 310.3(a)(2)(viii)-(xxiv) would violate the FTC Act as well as the revised proposed Rule. The Commission believes that this more concise regulatory approach effectuates Congress' legislative intent and addresses the concerns of many commenters, consumer groups,57 law enforcement,58 and industry59 alike, who asserted that a general standard of deception was necessary either in addition to or instead of the enumerated acts or practices.

Sections 310.3(a)(2)(i)-(ii) prohibit misrepresenting information required to be disclosed under Section 310.3(a)(1). The scope of Sections 310.3(a)(2)(i)-(ii) has been delineated more precisely than their counterparts in the initially proposed Rule Sections 310.3(a)(2)(i)-(iii). Revised Sections 310.3(a)(2)(i)-(ii) now include the limiting phrases "to purchase, receive, or use" and "that are the subject of a sales offer." The same clarifying phrases have been added to revised Section 310.3(a)(2)(iii), which specifies that misrepresenting "any material aspect of the performance, efficacy, nature, or central characteristics of goods or services that are the subject of the sales offer" violates this Rule. Commission case law and policy are clear that such information is material to a person's choice of or conduct regarding the purchase of goods or services. Similarly, representations as to a seller's refund, cancellation, exchange, or repurchase policies are material to a person's purchase decision. Section 310.3(a)(2)(iv) (identical to Section 310.3(a)(2)(v) of the initially proposed Rule) therefore prohibits misrepresenting the latter category of

information.
Section 310.3(a)(2)(v) of the revised proposed Rule prohibits misrepresenting "any material aspect of a prize promotion, including but not limited to the odds of winning, the nature or value of a prize, or that

payment is required to receive a prize." The Commission has enumerated specific examples of material aspects of a prize promotion based on misrepresentations that the Commission has alleged in complaints filed under Section 13(b) of the FTC Act. The Commission believes that treating prize promotions as a separate general category is warranted given the great number of deceptive prize promotions and the distinct characteristics associated with such promotions.60 Moreover, the legislative history clearly shows that Congress specifically intended that the Rule cover prizes or awards.61 Because there are certain aspects of a prize promotion that could be construed to be outside the scope of provisions narrowly limited to "the subject of a sales offer," the Commission believes that it is necessary to include revised Section 310.3(a)(2)(v). The prohibitions against prize promotion misrepresentations under Section 310.3(a)(2)(v) are in addition to the other prohibitions set forth in Section 310.3(a)(2).

Similarly, Section 310.3(a)(2)(vi) prohibits misrepresenting material aspects of an investment opportunity. The legislative history reflects Congress' recognition that deceptive investment opportunities account for a considerable percentage of deceptive telemarketing.62 Moreover, since 1991, deceptive investment scams account for approximately 43% of the Commission's telemarketing cases. The amount at risk for a consumer is generally far greater in investment scams than in deceptive schemes involving other types of consumer goods or services. Thus, investment opportunities are an area of heightened concern for consumers and the Commission. The revised proposed rule includes Section 310.3(a)(2)(vi), prohibiting misrepresentation of specified aspects of investment opportunities. This provision is included to obviate any possible construction that might exclude investment opportunities from the scope of Sections 310.3(a)(2)(i)-(iii). These general initial provisions are designed to embrace a limitless range of goods or services but are narrowly drawn to prohibit misrepresentations centered on purchase, receipt or use, or upon 'performance, efficacy, nature, or central characteristics," which are unlike investment-specific attributes such as risk, liquidity, earnings

potential, or profitability. The prohibitions on misrepresentations under Section 310.3(a)(2)(vi) are in addition to, not in lieu of, other provisions under Section 310.3(a)(2).

Finally, the Commission has included Section 310.3(a)(2)(vii) that prohibits misrepresenting "a seller's or telemarketer's affiliation with, or endorsement by, any government or third-party organization." The Commission believes that this Section is necessary based on its own experience in law enforcement actions against deceptive telemarketers as well as the information state law enforcement agencies provided. Based on the Commission's enforcement experience, deceptive telemarketers bolster their credibility by misrepresenting that they are endorsed by or affiliated with charitable, police, civic, or similar organizations. A separate category is required because these types of misrepresentations, again, could be construed as outside the apparent scope of Sections 310.3(a)(2)(i)-(iii). However, Section 310.3(a)(2)(vii) is in addition to, not in lieu of, other provisions under Section 310.3(a)(2).

The Commission has deleted Section 310.3(a)(3) relating to business ventures. The Commission, as stated in Section 310.2, believes it is more appropriate to consider business ventures in the context of the Commission's recentlyinitiated Franchise Rule review. This should not be construed to mean, however, that if a business venture is sold through telemarketing and does not meet the coverage requirements under the Franchise Rule as currently in effect, it is exempt under this Rule. Such a "business venture" will still be deemed to be covered under this Rule as a good or service and be subject to the Rule's disclosure requirements and prohibitions.

Revised Section 310.3(a)(3) generally prohibits "making a false or misleading statement to induce any person to pay for goods or services." This general provision subsumes Sections 310.3(a)(4) and (5) of the initially proposed Rule. Former Section 310.3(a)(4) required written authorization before taking any funds from a consumer's checking, savings, or similar account. Former Section 310.3(a)(5) required express authorization before "obtaining any amount of money from a person through any means." The revised Section, through more economical means, reflects how deceptive sellers and telemarketers gain access to consumers' money through false and misleading statements regardless of the payment system used. While addressing those deceptive practices, revised Section

⁵⁶ 15 U.S.C. 53(b).

⁵⁷ See, e.g., AARP at 10.

⁵⁸ See, e.g., USPS at 4.

⁵⁹ See, e.g., APAC at 2; ATA at 5; DMA at 19; Monex at 8–9.

 $^{^{60}\,\}mathrm{Almost}$ 32% of the 141 telemarketing cases brought by the Commission since 1991 related to deceptive prize promotions.

⁶¹ See Senate Report at 8.

⁶² See Senate Report at 8.