

**UNITED STATES OF AMERICA  
BEFORE THE FEDERAL TRADE COMMISSION**

**COMMISSIONERS:**      **Lina M. Khan, Chair**  
                                 **Noah Joshua Phillips**  
                                 **Rohit Chopra**  
                                 **Rebecca Kelly Slaughter**  
                                 **Christine S. Wilson**

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**In the Matter of**

**CIVIL INVESTIGATIVE DEMANDS TO  
INNOVATIVE CAPITAL STRATEGIES;  
CONTRARIAN ACCOUNTING & BOOKKEEPING,  
LLC; CONTRARIAN FINANCIAL SERVICES, LLC;  
SMART MONEY ALLIANCE; BUSINESS CREDIT  
LITERACY INITIATIVE; INSTITUTE FOR  
IMPROVED MINORITY FINANCIAL LITERACY;  
AND STARS & STRIPES BUSINESS FINANCIAL  
LITERACY ALSO DOING BUSINESS AS STARS  
AND STRIPES FINANCIAL LITERACY**

**File No. 202 3164**

**DATED MAY 24, 2021.**

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**ORDER DENYING PETITIONS TO QUASH OR LIMIT  
CIVIL INVESTIGATIVE DEMANDS**

**By CHOPRA, Commissioner:**

Innovative Capital Strategies, Inc., along with six affiliated companies (collectively, “Petitioners”), petition the Commission to quash or limit Civil Investigative Demands (“CIDs”) issued to them on May 13, 2021.<sup>1</sup> The CIDs were issued to these seven companies in connection with the Commission’s investigation into whether these entities have engaged in violations of Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45, the Credit Repair Organization Act

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<sup>1</sup> CIDs were also issued to Contrarian Accounting & Bookkeeping, LLC, Contrarian Financial Services, LLC, Smart Money Alliance, Business Credit Literacy Initiative, Institute for Improved Minority Financial Literacy, and Stars & Stripes Business Financial Literacy also doing business as Stars and Stripes Financial Literacy. Each CID recipient has filed a petition to quash or limit the CIDs. These petitions are identical except that Petitioners Smart Money Alliance, Business Credit Literacy Initiative, Institute for Improved Minority Financial Literacy, and Stars & Stripes Business Financial Literacy also object to CID specifications concerning their non-profit status and all have included arguments against these requests in their motions to quash (Section IV in those Petitions). In addition, certain footnotes in the Petition issued by Contrarian Accounting and Bookkeeping, LLC, vary from those Petitions previously filed.

(“CROA”), 15 U.S.C. §§ 1679-1679j, and the Telemarketing Sales Rule (“TSR”), 16 C.F.R. Part 310.

Petitioners seek to quash or modify the CIDs and request that the Commission: (1) grant an extension of the return date and/or rolling production based on the volume of requests and current unavailability of certain information; (2) place limitations on definitions and requests which Petitioners claim are overly broad, unduly burdensome, and insufficiently definite; and (3) quash requests issued to four of the seven entities based on their non-profit status. For the reasons set forth below, the Commission denies the Petitions. The Commission encourages Petitioners to resume meet and confer conversations with attorneys in the Bureau of Consumer Protection, who have expressed their continued willingness to negotiate with Petitioners on the scope of and/or extensions to the CIDs.

## **I. Background**

These Petitions arise out of the Commission’s investigation of Petitioners’ practices surrounding their marketing to small businesses and entrepreneurs of funding, credit repair services, insurance policies, and business opportunities. The seven Petitioners are commonly-owned companies. On May 13, 2021, the Commission issued CIDs to each of the seven entities seeking information regarding their marketing of these products in potential violation of the FTC Act, CROA, and TSR. The CIDs seek information regarding the entities’ corporate structures and relationships to each other, their advertising and marketing efforts, substantiation for marketing claims, policies relating to customer interactions and legal compliance, and consumer contact information and records. The seven CIDs are substantively identical except that CIDs to four of the affiliated entities contain specifications concerning their non-profit status. The CIDs cover a period from January 1, 2018 until the date of full compliance with the CIDs. The return date for the CIDs was June 28, 2021.

The parties have met and conferred several times since the CIDs were issued. Pet. at 12.<sup>2</sup> Although Commission attorneys offered multiple accommodations to Petitioners, including those that would limit the scope of certain requests, allow rolling productions, and delay the return date if Petitioners would agree to enter into a tolling agreement, Petitioners have reached no firm agreement on any accommodation offered by Commission attorneys. Instead, Petitioners filed the instant Petitions.<sup>3</sup>

## **II. Analysis**

FTC compulsory process is proper “if the inquiry is within the authority of the agency, the demand is not too indefinite, and the information sought is reasonably relevant” to the

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<sup>2</sup> For the sake of clarity, each reference to “the Petitions” or “Pet.” in this order will refer to the pagination and content in the Motion to Quash or Limit submitted by the Institute for Improved Minority Financial Literacy, except where explicitly stated otherwise.

<sup>3</sup> On June 25, after filing their Petitions, five out of the seven Petitioners produced CID responses asserting a Fifth Amendment privilege to each and every CID request. Because they did not raise this objection in their Petitions, we do not consider it here.

investigation. *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). Petitioners have raised three objections to the CIDs. First, they claim that the original return dates for the CIDs are “unreasonable” because of the volume of requests and the fact that some of the records Petitioners need to respond to the requests are not currently in their possession.<sup>4</sup> Second, Petitioners argue that certain definitions and requests are overbroad, unduly burdensome, or insufficiently definite and should be quashed or modified. Third, four of the seven Petitioners argue that requests relating to their non-profit status is irrelevant and exceeds the Commission’s jurisdiction. We deny each of Petitioners’ requests and address each argument in turn.

#### **A. Petitioners Have Failed to Show That the CID Return Dates Are Unreasonable**

Petitioners first contend that the Commission’s return date of June 28, 2021, 45 days after the CIDs were issued, is unreasonable due to the number of requests, and that their responses “practically cannot be completed on this timeline.” Pet. at 4-5. They also contend that many of their documents are “not currently within Petitioner’s possession, custody, and control, because of a separate investigative action.” *Id.* at 5.

By stating that the return date is “not reasonable” due to the number of demands, the Commission takes the Petitioners to mean that responding within the allotted time is unduly burdensome. Agency process is not unduly burdensome unless compliance “threatens to unduly disrupt or seriously hinder” the normal operations of the recipient’s business. *FTC v. Texaco, Inc.*, 555 F.2d 862, 882 (D.C. Cir. 1977). This test is “not easily met” because “[s]ome burden on subpoenaed parties is to be expected and is necessary in furtherance of the agency’s legitimate inquiry and the public interest.” *Texaco*, 555 F.2d at 882. Moreover, the recipient of process must make “a record . . . of the measure of [its] grievance rather than ask [the court] to assume it.” *United States v. Morton Salt Co.*, 338 U.S. 632, 654 (1950).

Petitioners’ bald assertion that its CID responses “cannot be completed on this timeline” does not satisfy the required showing. Merely reciting the number of interrogatories (78 numbered interrogatories with 167 total subsections) and document requests (64 numbered requests with 129 total subsections) does not demonstrate how business operations would be seriously hindered by compliance. *Texaco*, 555 F.2d at 882.<sup>5</sup> As we have noted in the past, “[t]he number of requests, by itself, says little or nothing about the burden of compliance because complying with many of the specifications would require little time, effort, or money.” *In the Matter of March 19, 2014 Civil Investigative Demand Issue to Police Protective Fund, Inc.*, File No. 1323239, \*7 (May 22, 2014). Petitioners provide no evidence of undue burden beyond recitation of the number of requests.

Moreover, because the filing of a petition to quash or limit compulsory process “shall stay the remaining amount of time permitted for compliance,” 16 C.F.R. § 2.10(b), the original

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<sup>4</sup> Respondents indicate that the records have been collected in a separate investigation. Pet at 5.

<sup>5</sup> Note that in the other version of the CID, received by the parties that have not claimed non-profit status, there were 47 numbered interrogatories with 121 subsections, and 39 requests for production with 83 subsections. *See* Innovative Capital Strategies Petition to Quash at 3.

return date has already been effectively extended by three weeks. The Commission declines to grant an additional extension, beyond a modest two weeks' time for compliance following issuance of this order. The Commission notes that attorneys in the Bureau of Consumer Protection proposed entering into a tolling agreement, multiple times, to allow consideration of a rolling production while still providing the Commission the information it needs. If Petitioners doubt their ability to comply in full with the CID by the deadline set forth in this order, they may wish to revisit this proposal previously made by Commission attorneys.

Petitioners also claim that they should be granted an extension because the CIDs seek information and documents that Petitioners do not currently have in their possession. Pet. at 5. A recipient's lack of certain responsive information or documents, however, is not a valid reason to quash or grant extension for the return date of the entire CID. *New York Marine & Gen. Ins. Co. v. Tradeline (L.L.C.)*, 186 F.R.D. 317, 321 (S.D.N.Y. 1999) (denying a motion to quash a subpoena based in part on the recipient's purported lack of responsive documents). The Commission declines to extend the return date based on Petitioners' bare representation that some documents are currently in possession of other investigative authorities, where Petitioners have failed even to identify which requests are affected by this circumstance. Here, as well, if Petitioners are prepared to be forthcoming with the necessary details, they may seek an agreement with attorneys in the Bureau of Consumer Protection allowing for extensions and rolling productions to accommodate this purported impediment to prompt compliance with the CIDs.

## **B. Petitioners Arguments of Undue Burden, Overbreadth, and Insufficient Specificity Are Unavailing**

Petitioners have made numerous arguments that specific definitions or requests should be quashed or modified. They have failed, however, to support their assertions of insufficient definiteness, overbreadth, or undue burden with more than conclusory statements. For the reasons stated below, the Commission declines to quash or modify any of the CID definitions or requests.

### **1. Definitions of "Business Opportunity Program" and "Insurance Product" Are Sufficiently Definite and Not Overbroad**

Petitioners ask the Commission to limit two definitions which they argue render CID requests overbroad, irrelevant, and insufficiently definite. Pet. at 6.

A CID request is overbroad only where it is "out of proportion to the ends sought," and "of such a sweeping nature and so unrelated to the matter properly under inquiry as to exceed the investigatory power." *U.S. v. Wyatt*, 637 F.2d 293, 302 (5th Cir. 1981) (quoting, inter alia, *Morton Salt*, 338 U.S. at 652). Generally, "[b]roadness alone is not sufficient justification to refuse enforcement" of compulsory process." *Texaco*, 555 F.2d at 882. Moreover, the Commission has wide latitude to determine what information is relevant to its law enforcement investigations. *See, e.g., Morton Salt*, 338 U.S. at 642-43 ("[Administrative agencies have] a power of inquisition, if one chooses to call it that, which is not derived from the judicial function. It is more analogous to the Grand Jury, which does not depend on a case or controversy for power to get evidence but can investigate merely on suspicion that the law is being violated, or

even just because it wants assurance that it is not.”). The Commission’s compulsory process need not be limited to information necessary to prove a specific charge; it can demand any documents or information “relevant to the investigation—the boundary of which may be defined quite generally” by the Commission. *Id.* A request is impermissibly vague where it lacks reasonable specificity or is too indefinite to allow a responding party to comply. *See, e.g., Robert Larson Auto. Grp., Inc.*, FTC No. 162-3006, 2016 WL 807984, at \*4.

The first definition, “Business Opportunity Program,” is defined as,

...[A]ny service, product, plan, or program advertised, marketed, offered, or sold by the Company, directly or indirectly, including those offered free of charge, which represent consumers may earn compensation by participation in the program or through recruitment of other consumers into the program or through the sale of various programs, products, or services (e.g., Affiliate, Branch Manager, Regional Director, offers of compensation for lead referral, insurance sales, or similar opportunities).

CID at 17.

Petitioners state that they are “not certain what would fall within the definition provided, and therefore request that this definition be limited to the examples provided in the parenthetical, or other specific examples provided by the Agency.” Pet. at 6. However, the definition of “Business Opportunity Program” is clear in that it encompasses all programs offered by Petitioners for which consumers may earn compensation. The definition is not overly broad and the Commission declines to limit the definition to those programs in the parenthetical because it is possible that Petitioners offer other programs beyond those specifically listed. Such programs are clearly relevant to a stated purpose of the CID, to determine whether Petitioners “have made false, deceptive, or unsubstantiated representations in connection with the marketing and sale of...business opportunities...in violation” of the FTC Act, CROA, or TSR. CID at 2.

The second definition objected to by Petitioners is “Insurance Product,” defined as,

...[A]ny type of insurance advertised, marketed, offered, or sold by the Company or its affiliates, regardless of whether the insurance is sold through the Company, an employee, or on behalf of a third party or affiliate.

CID at 18.

Petitioners object that inclusion of third parties or affiliates renders the requests related to insurance products overbroad and ask that the definition be limited to “insurance obtained in connection with a program or service provided by Petitioner.” Contrary to Petitioner’s assertion, the inclusion of third parties and affiliates in the definition does not extend the CID beyond the scope of the investigation and is directly relevant. This definition seeks to capture all insurance products offered by Petitioners, including those that might be *sold through* the efforts of others (e.g., consumers engaged in Petitioners’ business opportunity programs). This definition clearly seeks information related to the investigation, which covers “the marketing of...insurance products in violation of” the FTC Act, CROA and TSR. CID at 2.

For these reasons, the Commission denies Petitioners requests to modify the CID definitions.

**2. Requests 23, 31, 32, 34 and Interrogatories 7, 13, 16-18, 22-25, and 29 are Sufficiently Definite and Not Overbroad or Burdensome**

Petitioners also assert that certain requests should be quashed or limited because they seek irrelevant information, are overbroad, and/or are unduly burdensome. Pet. at 7-9. These requests can be categorized into four groups: (1) requests involving “insurance products,” (2) interrogatories seeking information Petitioners claim is available in documents it will produce, (3) requests for documents consumers view or receive from Petitioners; and (4) requests for consumer data and information. *Id.* Petitioners fail to substantiate their claims as to all of these requests.

For requests involving insurance products (Interrogatories Nos. 31 and 32, Requests for Production Nos. 22, 23, and 24), Petitioners suggest that they should be limited for the same reasons and in the same manner as the definitions of insurance products. Pet. at 7. For the reasons set for in Section I.B.1, the Commission finds that these requests are sufficiently definite and not overbroad.

For Interrogatories 23 and 34, Petitioners claim they should be allowed to respond merely by referencing documents they will produce in response to the CIDs. They claim that having to “review and analyze the documents being produced in response to the CID in order to compile such information” for the interrogatories would be “heavily burdensome.” Pet. at 7-8. However, “some burden” on the party receiving compulsory process is acceptable and expected. *Texaco*, 555 F.2d at 882. And Petitioners have not made any specific showing of anticipated disruption or serious hinderance to their business operations by having to review those documents. *Id.* Petitioners must respond to these interrogatories in full and not merely refer the Commission to produced documents.

Next, Petitioners claim that Requests for Production Nos. 25 and 29, which seek documents consumers might see when signing up for or using Petitioners’ programs, are insufficiently definite and duplicative. Pet. at 8. To the extent Requests 25 and 29 seek advertisements Petitioners produce in response to Request 28, Petitioners may reference those documents in their responses and need not produce those documents twice. *See* CID at 27 (“[y]ou must identify in writing the Documents that are responsive to the specification. Documents that may be responsive to more than one specification of this CID need not be produced more than once.”). Requests 25 and 29, however, clearly seek documents beyond advertisements. Request 25 seeks all materials that a consumer might see when interacting with Petitioners’ websites or mobile apps (“visual content, including screenshots...Consumers have seen during the process of applying...”) and not merely advertisements. Request 29 seeks all documents “other than advertisements” made available to Petitioners’ customers. CID at 14 (emphasis added). While the Commission need not enumerate all web or app content or documents that consumers might see when engaging in Petitioners programs, those materials clearly go beyond advertisements. Petitioners must respond to these two requests as written.

Petitioners further argue that Requests for Production Nos. 7 and 13 are insufficiently definite and overbroad. Pet. at 8-9. Request 7 seeks all documents exchanged between Petitioners themselves and between Petitioners and specific named companies. This request explicitly seeks documents shared or exchanged between Petitioner and other listed entities, which is a clearly delineated set of documents. Such documents may provide information about the relationship between the Petitioners themselves and with other entities involved in the Petitioners' business, all of which is relevant to the investigation. Request 13 seeks documents concerning the relationship between Petitioners and other entities providing services or products to Petitioners in connection with programs offered by the company. Such documents are limited to entities which are involved in the programs at issue, thus the requests are not out of proportion to the needs of the investigation. Nor, as Petitioners argue, should these requests be limited to contracts and written communications because other documents might reflect those relationships, including, for example, internal memoranda or records of oral communications. As such, the Commission declines to limit Request 7 or 13.

Finally, Requests for Production Nos. 16-18 seek information about the consumers of Petitioners' services or products. Petitioners argue that locating and compiling such information, which is not in a database, would require "an immense amount of resources." Pet. at 9. Petitioners have, again, failed to show how the request might be "highly disruptive" and, therefore, unduly burdensome. *See FTC v. Standard American, Inc.*, 306 F.2d 231, 235 (3d Cir. 1962). Information about consumers who may have engaged in Petitioners' programs at issue in the investigation is highly relevant in determining issues of liability and identifying consumers who may be entitled to redress. Petitioners must respond to Requests 16-18.

### **C. Requests Related to Non-Profit Status Are Within FTC's Investigative Authority**

Four of the seven Petitioners also move to quash all CID specifications related to their non-profit status (Interrogatories Nos. 48-78 and Requests for Product Nos. 40-64), claiming that they are "not subject to the Agency's jurisdiction" and that their non-profit status is "not relevant to the CID[s]." <sup>6</sup> Pet. at 9-10.

The Commission is authorized to issue CIDs to both non-profit and for-profit companies under its investigative authority. While the Commission's authority to enforce the prohibitions of Section 5 applies to corporations that are "organized to carry on business for [their] own profit or that of [their] members," 15 U.S.C. § 44, Section 20 authorizes the FTC to issue a CID "[w]henever the Commission has reason to believe that any person may be in possession, custody, or control of any documentary material or tangible things, or may have any information, relevant to unfair or deceptive acts or practices in or affecting commerce." 15 U.S.C. § 57b-1(c)(1). Courts have consistently held that "an individual may not normally resist [investigative process] on the ground that the agency lacks regulatory jurisdiction . . ." *FTC v. Ken Roberts Co.*, 276 F.3d 583, 586 (D.C. Cir. 2001) ("... courts of appeals have consistently deferred to agency determinations of their own investigative authority, and have generally refused to entertain

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<sup>6</sup> Section IV only appears in Petitions submitted by Smart Money Alliance, Business Credit Literacy Initiative, Institute for Improved Minority Financial Literacy, and Stars & Stripes Business Financial Literacy, and thus this section of the order applies to them.

challenges to agency authority in proceedings to enforce compulsory process.” (citing *United States v. Sturm, Roger & Co*, 84 F.3d 1, 5 (1st Cir. 1996)); *United States v. Construction Prods. Research, Inc.*, 73 F.3d 464, 468-73 (2d Cir. 1996). Thus, the Commission may issue CIDs to organizations that may have relevant documents in their possession, custody, or control, or have information relevant to violations of Section 5 of the FTC Act, regardless of those organizations’ not-for-profit status or potential liability.

Moreover, the Commission regularly issues CID requests to companies, like Petitioners, who claim non-profit status in order to evaluate that status for liability purposes. *See Police Protective Fund Order*, File No. 1323239 (May 22, 2014) at \*3-4 (discussing FTC’s authority to issue CIDs to companies to evaluate their non-profit status). If a company carries on business as a de facto for-profit organization, it is subject to FTC jurisdiction under Section 5. While the Commission may take into account Petitioners’ form of organization and tax exemption status in making an initial determination of regulatory coverage, these factors are not dispositive.<sup>7</sup> As the Commission has previously explained,

[T]he Commission is not required to take at face value an organization’s claim that it is a charitable organization, and can require it to produce documents and other information to enable the Commission to make that determination itself...[j]ust as a court has the power to determine whether it possesses jurisdiction to address and resolve any given case, the FTC has the power to determine whether it possesses jurisdiction over a given matter or entity.” [The entity] may not foreclose that inquiry simply by asserting that, *if* conducted, the inquiry would yield facts favorable to [it].

*Police Protective Fund Order*, at \*4.<sup>8</sup>

Through its CID requests, Commission attorneys will examine information and documents to determine whether Petitioners who claim non-profit status “[are] organized to carry on business for its own profit or that of its members,” and thus subject to the

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<sup>7</sup> *See, e.g., Community Blood Bank of the Kansas City Area, Inc. v. FTC*, 405 F.2d 1011, 1019 (8th Cir. 1969) (“mere form of incorporation does not put them outside the jurisdiction of the Commission”); *FTC v. Ameridebt, Inc.*, 343 F. Supp. 2d 451, 460 (D. Md. 2004) (“Although Ameridebt is incorporated as a non-stock corporation with tax-exempt status, the Court finds this insufficient to insulate it from the regulatory coverage of the FTC Act.”); *In re Daniel Chapter One*, 2009 WL 5160000 at \*12 (F.T.C. 2009) (“As recognized by the ALJ, however, ‘courts and the Commission look to the substance, rather than the form, of incorporation in determining jurisdiction under the FTC Act.’”), *aff’d*, 405 Fed. Appx. 505 (D.C. Cir. 2010) (unpublished opinion); *In re College Football Association*, 117 F.T.C. 971, 1004 (1994) (IRS determinations are not binding on the Commission); *In re Am. Medical Ass’n*, 94 F.T.C. 701, 990 (1979) (“status as . . . tax-exempt organization does not obviate the relevance of further inquiry”), *enforced as modified*, 638 F.2d 443 (2d Cir. 1980), *aff’d by an equally divided court*, 455 U.S. 676 (1982); *In re Ohio Christian College*, 80 F.T.C. 815, 949-50 (1972) (“Notwithstanding the fact the [defendant] had been afforded an exemption certificate . . . it was not in fact an exempt corporation.”).

For this reason, the Commission also denies Petitioners’ request to “provide documents supporting its status as a non-profit organization, such as copies of organizational documents and other filings with federal and state authorities” in lieu of responding to Interrogatory Nos. 48-78 and Document Requests Nos. 40-64. Pet. at 10-11.

<sup>8</sup> *See also, FMC v. Port of Seattle*, 521 F.2d 431, 434 (9th Cir. 1975) (“Each independent regulatory administrative agency has the power to obtain the facts requisite to determining whether it has jurisdiction over the matter sought to be investigated.”).



Commission's enforcement authority. 15 U.S.C. § 44. This inquiry encompasses multiple factors, including the organization's primary purpose, the extent to which funds or other benefits may have been conferred on related for-profit companies or individuals, the relationship between the non-profit and related for-profit companies, and the extent to which the organization may have been used by individuals or for-profit entities as a device to seek monetary gain. *See Police Protective Fund Order*, at \*4. The specifications of the CIDs related to non-profit status are properly designed to elicit information to determine if Petitioners operate as de facto for-profit companies.<sup>9</sup>

### III. CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED THAT** Petitioners' Motions to Quash or Modify Civil Investigative Demands be, and they hereby are, **DENIED**.

**IT IS FURTHER ORDERED THAT** Petitioners shall comply in full with the Commission's Civil Investigative Demand no later than August 2, 2021, subject to any modifications as to scope or timing that attorneys in the Bureau of Consumer Protection may determine.

By the Commission.



  
April J. Tabor  
Secretary

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<sup>9</sup> Nor are these requests overbroad or unduly burdensome. Pet. at 10. Again, Petitioners merely assert that the requests are "far reaching" and the information would be "burdensome to collect" without any showing of how it would be highly disruptive to business to respond to these requests. *Texaco*, 555 F.2d at 882.