

AUGUST 29, 2016



**HERBALIFE / FTC**

**APPLICATION RE:  
INDEPENDENT COMPLIANCE AUDITOR**

---

RE: STIPULATION TO ENTRY OF ORDER FOR PERMANENT  
INJUNCTION AND MONETARY JUDGMENT

Solving Uncertainty

August 29, 2016

Janet Ammerman  
Brad Winter  
Attorney- Division of Marketing Practices  
Bureau of Consumer Protection  
Federal Trade Commission  
600 Pennsylvania Ave. NW  
Mailstop: CC-8528  
Washington, D.C. 20580

**Re: Independent Compliance Auditor – Herbalife Litigation**

Dear Ms. Ammerman and Mr. Winter,

Thank you for providing Ankura Consulting Group, LLC (“Ankura”) with the opportunity to submit our proposal and qualifications to the Federal Trade Commission (“FTC”) to serve as the Independent Compliance Auditor (“ICA”) pursuant to Section VI of the Stipulation to Entry of Order for Permanent Injunction and Monetary Judgment (the “Stipulation”) filed on July 15, 2016, between the FTC and Herbalife International of America, Inc., Herbalife International, Inc., and Herbalife, Ltd. (collectively “Herbalife”).






Ankura is a business advisory and expert services firm offering a range of professional services including: monitorship services, data analytics, forensic accounting, economic and financial analysis, valuation, settlement administration, expert witness, corporate investigation, disputes/litigation support, geopolitical advisory, mass dispute resolution, transaction advisory, trust services, turnaround and restructuring, and visual communications. The firm has an international client base and has consulted to leading corporations, law firms, governments, regulatory agencies, and bankruptcy trusts. We have served as expert advisors, independent monitors and settlement administrators for some of the most significant cases in recent history.

We welcome the opportunity to tell you more about Ankura and how a select team of Ankura professionals could ensure Herbalife complies with the terms of the Stipulation. Our proposal is organized into the following sections:

- Executive Summary
- Personnel & Qualifications
- Prior Experience and References
- Proposed Activities
- Potential Conflict of Interest or Bias
- Estimated Costs

# I. Executive Summary

Ankura is uniquely positioned to effectively and efficiently carry out the various responsibilities contemplated in the Scope of Work. With decades of experience in Risk, Resilience & Geopolitical, Regulatory & Contractual Compliance, Investigations & Accounting Advisory, Litigation & Disputes, and Turnaround & Restructuring, Ankura has the resources and professionals to coordinate an integrated approach related to the responsibilities of the ICA as contemplated in the Stipulation. A snap-shot of our practice groups is as follows:

 <b>Risk, Resilience &amp; Geopolitical</b>	 <b>Regulatory &amp; Contractual Compliance</b>	 <b>Investigations &amp; Accounting Advisory</b>	 <b>Litigation &amp; Disputes</b>	 <b>Turnaround &amp; Restructuring</b>
<ul style="list-style-type: none"> <li>• Risk and Geopolitical Analysis</li> <li>• Strategic Planning</li> </ul>	<ul style="list-style-type: none"> <li>• Compliance and Ethics</li> <li>• Healthcare Compliance</li> <li>• Royalty Analysis</li> <li>• Information Governance</li> </ul>	<ul style="list-style-type: none"> <li>• Forensic Accounting and Financial Investigations</li> <li>• Technical Accounting Advisory</li> <li>• Receiver and Monitorship Services</li> <li>• Data Analytics</li> <li>• eDiscovery</li> </ul>	<ul style="list-style-type: none"> <li>• Expert Services and Litigation Analytics</li> <li>• Mass Torts and Class Action Disputes</li> <li>• Visual Communications</li> </ul>	<ul style="list-style-type: none"> <li>• Creditor Advisory</li> <li>• Company Advisory</li> <li>• Interim Management and CRO</li> </ul>

For the purposes of this engagement, Ankura would rely primarily on professionals from its Investigations & Accounting Advisory practice group. Professionals from this group would ensure that the Herbalife business model is reformed in a way that ensures compliance with the elements of the Stipulation. Our professionals will provide a cross-section of government/regulatory experience, auditing/accounting experience and data analytics expertise. As explained in further detail in the “Proposed Activities” section of this proposal, we plan to exercise each of these skills in a coordinated, seamless manner to achieve the goals of the ICA for the FTC and Herbalife.

A further discussion of the Investigations & Accounting Advisory practice group is as follows:

- **Investigations & Accounting Advisory**

Ankura’s Investigations & Accounting Advisory practice assists clients with complex problems. Our exceptional professionals have a wide range of experience with backgrounds in forensic and technical accounting, auditing, corporate finance,

---

government regulation, compliance, data analytics, eDiscovery and information technology. Our staff members have served on some of the largest and most globally recognized investigation and accounting advisory engagements.

- **Receiver and Monitorship Services**

When interested parties, regulators, or Courts require an organization to appoint an independent party to oversee the company or evaluate a specific situation, Ankura professionals have the requisite in-depth experience to serve in those roles, or provide exceptional consulting support to those who do. We have experience with high profit receiver and monitorship matters as further described in the “Prior Experience and References” section below.

- **Data Analytics**

Our professionals are highly experienced in numerous systems and platforms utilized by our clients and we apply a deep understanding of the latest technologies for analyzing and presenting complex analytics across mass amounts of disparate data sources.

- **Forensic Accounting and Financial Investigations**

We assist boards of directors, special committees, senior management, and legal counsel by deploying experienced forensic accountants and investigators to objectively assess challenging and novel accounting issues, interpret complex data, perform financial analysis and methodically unravel fraud schemes.

- **Technical Accounting Advisory**

Our professionals have the technical skills, qualifications, industry and regulatory knowledge and experience to address the most complex accounting, auditing, financial reporting and disclosure issues.

- **eDiscovery**

Ankura’s team of eDiscovery and Digital Forensics professionals provides technical expertise, project advice, and project management in the preservation and collection of all paper and electronically stored information (ESI) for litigation and non-litigation related matters.

In addition to the ongoing monitoring obligations, we understand that the ICA also has an obligation to report to the FTC and Herbalife as it pertains to Herbalife’s compliance with the Stipulation. These reports are to occur every six months for the first three years, and then annually for the remaining four years. Finally, we also understand that in order to ensure that the cost of the ICA is reasonable and not excessive in light of the ICA’s duties, we would be required to prepare an initial scope of work and budget for the first year of the appointment, and subsequent annual budgets, for review and approval by the FTC and Herbalife.

---

## **II. Personnel & Qualifications**

Ankura is one of the most experienced firms with respect to monitoring and independent oversight of court settlements. Ankura professionals have provided services related to monitor, receiver, or trustee engagements for some of the largest actions brought by governmental entities over the last decade. As a result, we have a team of highly experienced personnel with in-depth knowledge of every aspect of the monitoring process. The proposed team brings the expertise and experience required to execute in the ICA role. Furthermore, the proposed team members have worked together on multiple similarly large matters over the past decade. This ensures a coordinated approach employing the best resources to handle different areas of the engagement. The collaboration across the team will drive efficiency and effectiveness through the already established understanding of each team member's skills and experience.

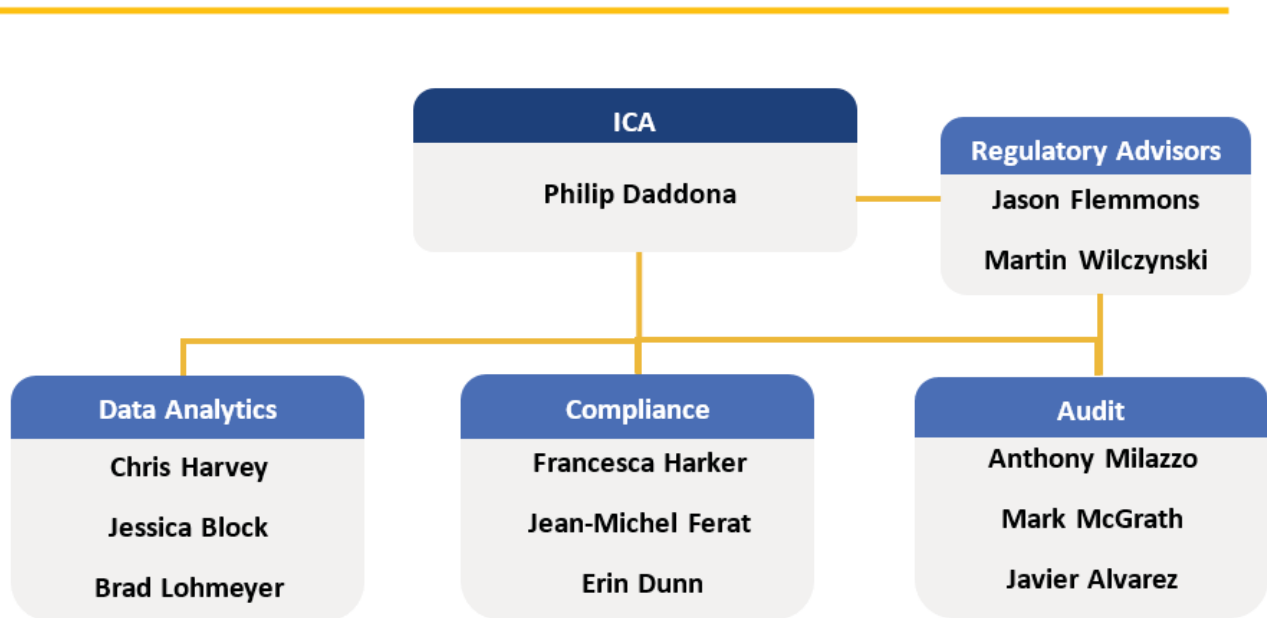
Our Co-President, Philip Daddona, will lead the engagement as the ICA. As further described below, Philip Daddona led a Receivership project (Michael Kenwood) which was one of the largest white-collar matters in Connecticut's history. The proposed ICA support teams will include individuals that worked on that Receivership. In addition, many of the team members (including members of our data team) were instrumental in the delivery of services to the trustee in the Bernard L. Madoff recovery. Philip Daddona and the support team he has assembled for this matter know how to tackle large, high-profile engagements and are poised to deliver work product of the highest quality.

All proposed team members are available to begin working on this matter.

A summary of Philip Daddona's resume as well as those of his supporting team members are as follows:

- **Philip Daddona**, Co-President of Ankura. Mr. Daddona has extensive experience in the resolution of complex disputes and significant investigative, operational and financial management experience in various industries. Mr. Daddona has served as an arbitrator in major class action matters and he has provided expert testimony in arbitration and litigation matters. Mr. Daddona has served as a monitor including leading the team which served as the extension of staff for New York City for financial oversight for the debris removal after the terrorist attacks of September 11, 2001. He also led the Michael Kenwood Receivership matter which has recovered hundreds of millions of dollars for victims of that Ponzi scheme.

Philip Daddona will be supported by a strong team of experienced professionals with backgrounds in forensic accounting, law and data analytics. The supporting teams will be organized as follows:



- **Regulatory Advisors**

The ICA will look to Jason Flemmons and Martin Wilczynski to provide government-side perspective, as needed, as both Mr. Flemmons and Mr. Wilczynski have extensive experience working for the SEC and on large scale investigations (e.g., work for the Madoff Trustee). Mr. Flemmons and Mr. Wilczynski will provide concurring review on all reports and will lend their decades of experience to the engagement. They both understand the balance between regulation and private industry having worked on both sides of the divide. The collective experience of Mr. Flemmons and Mr. Wilczynski is a good example of the depth that Ankura will bring to this engagement to ensure that our work product is of the highest quality.

- **Jason Flemmons, CPA, CFE, CFF.** Jason Flemmons has over 20 years of experience as a forensic accountant, regulator, accounting consultant and auditor. Mr. Flemmons provides a broad range of expert and consulting services involving accounting advisory, auditor liability, fraud examination, dispute resolution and other services. Mr. Flemmons is the former Deputy Chief Accountant of the U.S. Securities & Exchange Commission’s Division of Enforcement, where he supervised and performed numerous financial and accounting fraud investigations involving SEC registrants and other parties. During his 12 years of service in the SEC’s Division of Enforcement from October 2000 to November 2012, Mr. Flemmons advised on a wide variety of technical accounting, auditing, disclosure, internal control and transactional tracing matters. Before joining the SEC, Mr. Flemmons was both a forensic accountant and an auditor with an international public accounting firm.

- 
- **Martin Wilczynski, CPA, CFE, CFF.** Martin Wilczynski has nearly 35 years of professional experience in accounting, internal and forensic investigations. In addition to his nearly 20 years of consulting experience, Mr. Wilczynski's background includes 10 years of auditing experience at an international accounting firm and 6 years on the staff of the United States Securities and Exchange Commission (SEC), where he served for 5 years within the Enforcement Division.

- **Data Analytics Team**

The Data Analytics team has deep experience assisting clients in understanding, reviewing and analyzing technology infrastructure, systems (both 3<sup>rd</sup> party and proprietary), data storage and information reporting.

As outlined in the "Proposed Activities" section below, the Data Analytics team will be the backbone for much of the ICA activities. A key focus of this matter will be Herbalife's systems and how relevant information across the business is captured, updated, tracked and reported. This requires the ability to understand the system functionality, deconstruct the relevant processes and programs and analyze how data is utilized through the system. The Data Analytics team will be instrumental in ensuring that the system functions and performs calculations in line with the requirements of the Stipulation. By understanding how the system processes the data related to tracking customers, partners, compensation, payments and sales, we will be able to proactively identify any potential systematic issues.

For all system and data-related activities, the Data Analytics team will design and implement processes for receiving relevant data in a timely manner, causing as little disruption as possible to core business processes. Additionally, the Data Analytics team will build systematic procedures that will create efficiencies across the scope of work to be performed by the ICA and other support teams. Many of the Stipulation requirements can be largely assessed through the development of automated processes that will confirm compliance and identify any anomalies for further review.

The team is experienced and has flexibility to utilize multiple tools to facilitate the secure transfer and analysis of data. All Herbalife data accessed or acquired by Ankura, in conjunction with the ICA role, will be securely hosted in Ankura's Amazon Web Services (AWS) environment. The team will employ various industry-standard tools, including Microsoft SQL Server, Tableau for data visualization, R statistical programming language, and Excel, as appropriate.

- **Chris Harvey, CFA.** Chris Harvey leads Ankura's Data Analytics practice. Mr. Harvey has nearly 20 years of experience leading engagements requiring

---

extensive review of financial and accounting systems, regulatory compliance, data analysis, and large-scale data management. He has led multidisciplinary teams working with large financial institutions in the deconstruction of proprietary systems and performing complex analytics as part of investigations and compliance reviews. He has significant experience working in conjunction with numerous government agencies to provide detailed analysis of key information and financial and regulatory reporting. Additionally, Mr. Harvey's practice frequently develops technology-based systematic processes to facilitate the accumulation, analysis, and reporting from disparate data sources.

- **Jessica Block.** Jessica Block is a Senior Managing Director and leads the firm's data governance practice within the Regulatory & Contractual Compliance group. She has more than a decade of experience helping companies face complex information management challenges. Ms. Block specializes in applying technology to unlock the value of data and decrease the burden of compliance. Ms. Block has led consulting efforts across the lifecycle of various litigations, arbitrations, investigations and transactions, including the regulatory investigations of a global pharmaceutical company and various actions related to the gulf oil spill investigation. She has led teams in the acquisition, review and production of large volumes of electronically stored information and fostered ongoing data management partnerships with multiple major corporations.
- **Brad Lohmeyer.** Brad Lohmeyer has over nine years of experience collecting and analyzing electronic data. Over the course of his career he has been a key member of many engagement teams requiring the creation, collection, analysis and management of mass amounts of disparate data, both structured and unstructured. He has worked with clients responding to regulatory scrutiny related to potential fraud, compliance issues and other general inquiries involving core business processes. On several occasions Mr. Lohmeyer has built custom, web-based tools that allow access to and interaction with data and reporting. Mr. Lohmeyer has experience in evaluating systems, building and evaluating statistical models and applying predictive analytics concepts to address client's needs.



---

- **Compliance Team**

The Compliance team will assist the ICA with legal policy and report drafting. In addition, the Compliance and Audit teams will work together to develop testing protocols to meet the needs of the scope of work items. The Compliance team is comprised of individuals with both legal and forensic accounting/compliance experience and credentials. The forensic/compliance background is important to evaluate, with a keen eye, the systems, processes and procedures set in motion by Herbalife to conform to the elements of the Stipulation. The legal team members are experienced report drafters and are adept at mining through fine print and detailed components of any arrangement. The team will look for any unintended shortcomings and loopholes in the processes and procedures developed by Herbalife and will work with Herbalife to remedy any compliance concerns.

- **Francesca Harker, JD.** Francesca Harker is an attorney with recent law firm experience at BakerHostetler. She has worked on a number of monitorships for the Department of Justice and the FTC, as well as receiverships for the Securities and Exchange Commission, and as counsel to the SIPA Trustee overseeing the liquidation of the Bernard L. Madoff Investment Securities LLC. Ms. Harker will lead the reporting effort for the ICA.
- **Jean-Michel Ferat, CPA, CFF.** Jean-Michel Ferat has over 18 years of experience in the specialized fields of reactive investigations and proactive compliance projects involving large amounts of data. He has applied his skills in a variety of cases involving financial statement fraud, corruption, kickbacks, collusive bidding rings, money laundering, embezzlement, asset misappropriation and terrorist financing. He has led or participated in investigations across the United States and in numerous international locations. Significant cases include: investigation into fraudulent claims filed against the BP Deepwater Horizon Fund (current), forensic accounting support on a 3 year FCPA monitorship under a DOJ DPA (current), investigation into \$300 million allegedly embezzled by officials of Kyrgyzstan (current) and investigation into the United Nations Oil-for-Food Programme in Iraq.
- **Erin Dunn, CPA, JD.** Erin Dunn has 6 years of experience working on a variety of forensic and litigation consulting engagements including corporate accounting investigations, business valuations, corporate monitorships, and bankruptcy matters. She has experience working on corporate monitorships and in that capacity she identified key risk areas and helped clients build compliance programs and bolster their internal control processes.

---

- **Audit Team**

The ICA will work with the Audit team and rely on their experience working for large audit firms as well as their extensive forensic accounting backgrounds to assist with all aspects of analysis and testing of the scope of work tasks. The Audit team will work in tandem with Jason Flemmons and Martin Wilczynski, both of whom have deep forensic accounting and transactional tracing experience. The Audit team members also have experience working in internal audit and within the C-suite of an organization. They know how to develop a work plan that will best target potential compliance weaknesses and have the experience to efficiently execute on that work plan. The Audit team members have worked closely with the Data Analytics team members on past engagements and work seamlessly together to arrive at data driven, efficient solutions.

- **Anthony Milazzo, CPA, CFE.** Anthony Milazzo has over 22 years of experience in auditing, corporate finance and forensic accounting. He is responsible for leading forensic accounting engagements including internal investigations, disputes and general accounting advisory matters. Mr. Milazzo has experience leading forensic accounting investigations including some well publicized Ponzi scheme matters that required detailed investigation and asset tracing analysis work. His responsibilities have included unraveling complex accounting transactions, advising legal counsel and presenting findings to various third parties including the Securities and Exchange Commission (“SEC”) and law enforcement. Mr. Milazzo also provides technical accounting advice on a variety of Generally Accepted Accounting Principles (“GAAP”), Generally Accepted Auditing Standards (“GAAS”), and SEC matters including taking the lead on SEC filing restatement projects, drafting technical accounting white-papers and coordination with management, directors, audit firms, counsel and government authorities. Mr. Milazzo also has experience serving as an expert and testifying. Mr. Milazzo has previously worked in audit for KPMG and has held roles as a CFO and Controller. He has over 13 years of forensic accounting experience.
- **Mark McGrath, CPA, CFF, CFE.** Mark McGrath has nearly 20 years of broad based accounting, auditing, investigative and internal controls experience. In addition to extensive forensic accounting and investigative consulting experience, Mr. McGrath’s background includes work as an external auditor at international accounting firms and an internal auditor at a Fortune 300 company. Mr. McGrath has conducted investigations and reviews into accounting, reporting, compliance, and internal control issues at organizations across a range of industries in the public and private sectors. He has worked extensively with outside counsel in representing boards and audit committees in a number of complex, fact-finding accounting investigations involving whistleblower allegations, SEC and reporting issues, Ponzi schemes, and anti-corruption matters. Mr. McGrath’s varied

---

background affords clients unique perspective and insights regarding financial and operational risks, processes, controls and remediation.

- **Javier Alvarez, CPA, CFE.** Javier Alvarez has more than 14 years of experience in auditing, forensic accounting and litigation consulting. He has extensive international experience with large-scale financial investigations and litigation assignments including Foreign Corrupt Practices Act (FCPA) related matters and Receiverships. He has also provided accounting and consulting services to clients across a wide range of industries. Mr. Alvarez has worked in audit with Deloitte and has extensive forensic accounting experience with FTI Consulting and Kroll.

### **III. Prior Experience and References**

#### **Michael Kenwood Receivership Advisory**

In February 2011, John J. Carney, Esq. was appointed as the Receiver of the Michael Kenwood Group, a group of offshore hedge funds and related entities located in Stamford, CT. The Receiver retained a team of professionals led by Philip Daddona to serve as the financial advisor in the seizure of the Michael Kenwood Group. Shortly after the appointment, the principal of the hedge funds pled guilty to multiple counts of securities and wire fraud. The hedge funds were actually a Ponzi scheme of nearly \$1 billion. On March 1, 2011, the Court expanded the scope of the Receivership to include other affiliated entities, all of which were organized under the name of a Connecticut holding company, The Michael Kenwood Group, LLC. In the course of the representation, it was necessary to seek and receive recognition from the Court of Grand Cayman to unwind numerous complex transactions and obtain information from Cayman-based professionals and service providers. The forensic team lead by Mr. Daddona performed a detailed forensic accounting reconstruction of more than 12,000 transactions without any accounting records, the electronic capture and storage of over 50 million pages of documents, conducted over 1,000 due diligence background investigations, and the wind down of business operations. As counsel to the Receiver, Francesca Harker was responsible for the recovery of illegally misappropriated investor assets, as well as the management and liquidation of the assets of the Receivership Estate, including investments in more than a dozen private equity enterprises. The investigation team was led by Mr. Milazzo working with Mr. Alvarez. Among other things, that team helped to unravel a spider-web of transactions that was key to the success of the recovery effort.

---

Reference: BakerHostetler  
Contact Person: John J. Carney, Partner  
45 Rockefeller Plaza  
New York, NY 10111  
212-589-4255  
[jcarney@bakerlaw.com](mailto:jcarney@bakerlaw.com)

**Bernard L. Madoff Investment Securities Trustee Advisory**

In the largest reported Ponzi scheme in U.S. history, Irving H. Picard, partner at BakerHostetler, was appointed as the Trustee under the Securities Investor Protection Act (SIPA) for the liquidation of Bernard L. Madoff Investment Securities (BLMIS). Members of the core ICA team have been intimately involved since 2008 assisting the SIPA Trustee with the necessary investigation, forensic accounting, and complex financial and enterprise data analytics. Martin Wilczynski oversaw the Madoff effort as the co-team leader. Chris Harvey led the data analytics component of work for the Trustee, that involved the accumulation of close to 30 years of books and records, detailed analysis of core computer systems and program code and designing systematic processes to analyze mass amounts of data. Brad Lohmeyer was instrumental in the technical execution of the data analytics work. Anthony Milazzo and Mark McGrath led the investigation of the BLMIS broker/dealer business that included numerous illicit transaction stemming from the investment advisor business that was the primary vehicle for the scheme. Erin Dunn also supported expert work related to the claw-back litigation efforts.

Reference: BakerHostetler  
Contact Person: Lauren Resnick, Partner  
45 Rockefeller Plaza  
New York, NY 10111  
212-589-4241  
[lresnick@bakerlaw.com](mailto:lresnick@bakerlaw.com)

**Major Mortgage Originator – Compliance Matter**

Engaged by external counsel on behalf of management on a multiyear multidisciplinary consulting engagement to help management prepare for newly established federal regulations and oversight by the Consumer Financial Protection Bureau (CFPB). The work, supervised by Martin Wilczynski and Mark McGrath, included helping management evaluate and improve the overarching enterprise risk management structure, including entity-wide examination of policies and procedures, extensive interviews of business leaders and operational staff to understand current and future state of key business and control processes, internal control design and testing and validation of

---

operating effectiveness. Helped company implement and populate risk control self-assessments across key functional units. Seamlessly worked across integrated team of subject matter experts and data analytics team to ensure controls were in place and operating through the various proprietary systems as intended and that sufficient audit trail existed to support process improvements and system changes. Also, helped the company transition to and create an in-house internal audit function.

References: Relevant contact information available by request due to confidentiality issues

### **Cash Tracing Investigation**

Retained by counsel representing a foreign national government to perform transactional testing and cash-tracing investigation in response to allegations of corruption made by a United Nations monitoring group. Jason Flemmons led the engagement, which given the dearth of electronic records entailed substantial reconstruction of transactions using documentary and other evidence. Mr. Flemmons oversaw the preparation of a written report summarizing the work performed, findings and internal control issues, which formed the basis of a report issued to the United Nations.

Reference: Dickson Wright  
Contact Person: Jacob Frenkel  
International Square  
1825 Eye Street N.W. Suite 9  
Washington, D.C. 20006  
202-466-5953  
[jfrenkel@dickson-wright.com](mailto:jfrenkel@dickson-wright.com)

### **Louis Berger International Monitorship**

Jean-Michel Ferat is currently leading a team of forensic accountants in support of the independent monitor appointed by the US Department of Justice pursuant to a 3-year FCPA deferred prosecution agreement. In this role, Mr. Ferat has been tasked with gaining an understanding of the company's worldwide ERP systems, obtaining relevant data, and performing data analytics in support of the monitor's compliance testing.

Reference: Affiliated Monitors, Inc.  
Contact Person: Eric Feldman  
27 School St.  
Boston, MA 02108  
540-226-3070  
[efeldman@affiliatedmonitors.com](mailto:efeldman@affiliatedmonitors.com)

---

## **World Trade Center**

Philip Daddona, while at KPMG, was the overall monitor, leading a team which served as the extension of staff for New York City for financial oversight for the debris removal after the terrorist attacks of September 11, 2001. The City recognized very early on that it needed to control and completely document debris removal costs to avoid a second, financial disaster. He designed and oversaw the implementation of the financial controls which ultimately resulted in no reimbursement disallowances by FEMA for work performed. He assembled a team of outstanding professionals, each with discrete responsibilities, to execute the project requirements. The team provided field personnel to observe and verify the use of labor, equipment and materials at the site. The data accumulated was analyzed and verified through data bases constructed in our offices.

In addition, the team participated in regular meetings with NYC Department of Interior and the four integrity monitors assigned to the contractors. We reviewed the findings of the monitors including “cost savings charts,” all of the supporting detail and source documentation accumulated by the monitors, and reconciled that to our findings. We also incorporated the findings of DOI, as deemed appropriate, into the database, in essence creating one overall repository of all of the financial and integrity related information. Ultimately, we produced a complete digital record for all of the financial information which was forwarded to FEMA.

Reference: New York City Department of Design and Construction  
Contact: Deputy Commissioner Eric McFarlane (retired)

### ***Current engagement related to FTC:***

## **Volkswagen Clean Diesel Independent Claim Supervisor**

On July 26, 2016, the District Court for the Northern District of California appointed Ankura Consulting Group, LLC as the Independent Claim Supervisor, responsible for monitoring Volkswagen’s compliance with the plaintiff class action settlement. Ankura’s appointment in connection with the Federal Trade Commission, Department of Justice and Environmental Protection Agency settlements is pending. As Independent Claim Supervisors, Ankura is working in a unique dual capacity, overseeing the integrity of the claims process while also monitoring Volkswagen’s compliance with the remaining aspects of the settlement agreements.

---

Reference: Federal Trade Commission  
Contact Person: Jonathan Cohen  
600 Pennsylvania Ave., N.W. CC-9528  
Washington, D.C. 20580  
202-326-2551  
[Jcohen2@ftc.gov](mailto:Jcohen2@ftc.gov)

## **IV. Proposed Activities**

Based upon an initial review of the scope of work set forth in the Stipulation and request for application, we have developed certain proposed activities as outlined below. For ongoing monitoring and reporting requirements we would develop automated and systematic processes that would allow for efficient monitoring on a frequent basis (likely monthly at the outset of the monitorship) and for all compliance/audit elements we would test as frequently as necessary (generally monthly or quarterly), but at least every 6 months in-line with reporting requirements.

### **Initial Steps**

From the outset (within the first 90 days), it will be essential for the Ankura team to understand Herbalife's business from multiple angles to appropriately address the issues raised by the FTC. The initial phase is critical to the long term success of Ankura's role as the ICA.

1. Conduct onsite interviews with key stakeholders, including Herbalife business and customer relationship management, Compliance & Monitoring, and Information Technology.
  - Gain information on the business processes related to preferred customers, business opportunity participants, downline management, compensation and the sales classifications and reporting
  - Understand the current compliance protocols and processes related to customer management. Key areas of focus would be related to changes in customer classification, compensation agreements, system change management and system monitoring
  - Understand the systems that are utilized to capture, track, update and report information in the sales cycle – identifying how the systems take in data, performs calculations and reports data
  - Understand the business rules surrounding the relevant areas of the business

- 
- Understand policies and other evidence of data quality standards and controls and change management for pertinent systems
2. Develop formal request for further information based on initial meetings with Herbalife personnel.

### **Develop Plan to Execute**

Based on information gained and Ankura's collective experience, we will work with Herbalife and the FTC to design a comprehensive plan with detailed steps to address areas outlined in the scope of work items. This plan would include details to prioritize specific areas of focus, the roles assumed by the different Ankura teams, the resources required to execute the plan and a formalized budget in order to manage the engagement over time. It will be essential to get the buy in of all interested parties in the approach to ensure a common vision to addressing the matter.

Key areas of the plan will address:

- Identifying and testing system procedures and processes to verify compliance with the requirements of the Stipulation
- Evaluate the compliance procedures in place to manage, detect and respond to issues that are not in line with the requirements of the Stipulation
- Evaluate the effectiveness, efficiency, and accuracy of the overall process of customer intake, management, compensation, payments and reporting
- For ongoing monitoring and reporting requirements, develop automated and systematic processes that would allow for efficient monitoring
- Evaluate systems and data management protocols including user access rights, custom development and security
- Create or review data dictionary to evaluate if business rules were applied consistently to common data elements across technical and business stakeholders and across related systems
- Evaluate the potential of a web based solution that would provide access to relevant parties (FTC, Herbalife, ICA) to review, evaluate, comment on data as well as provide regular required reporting.



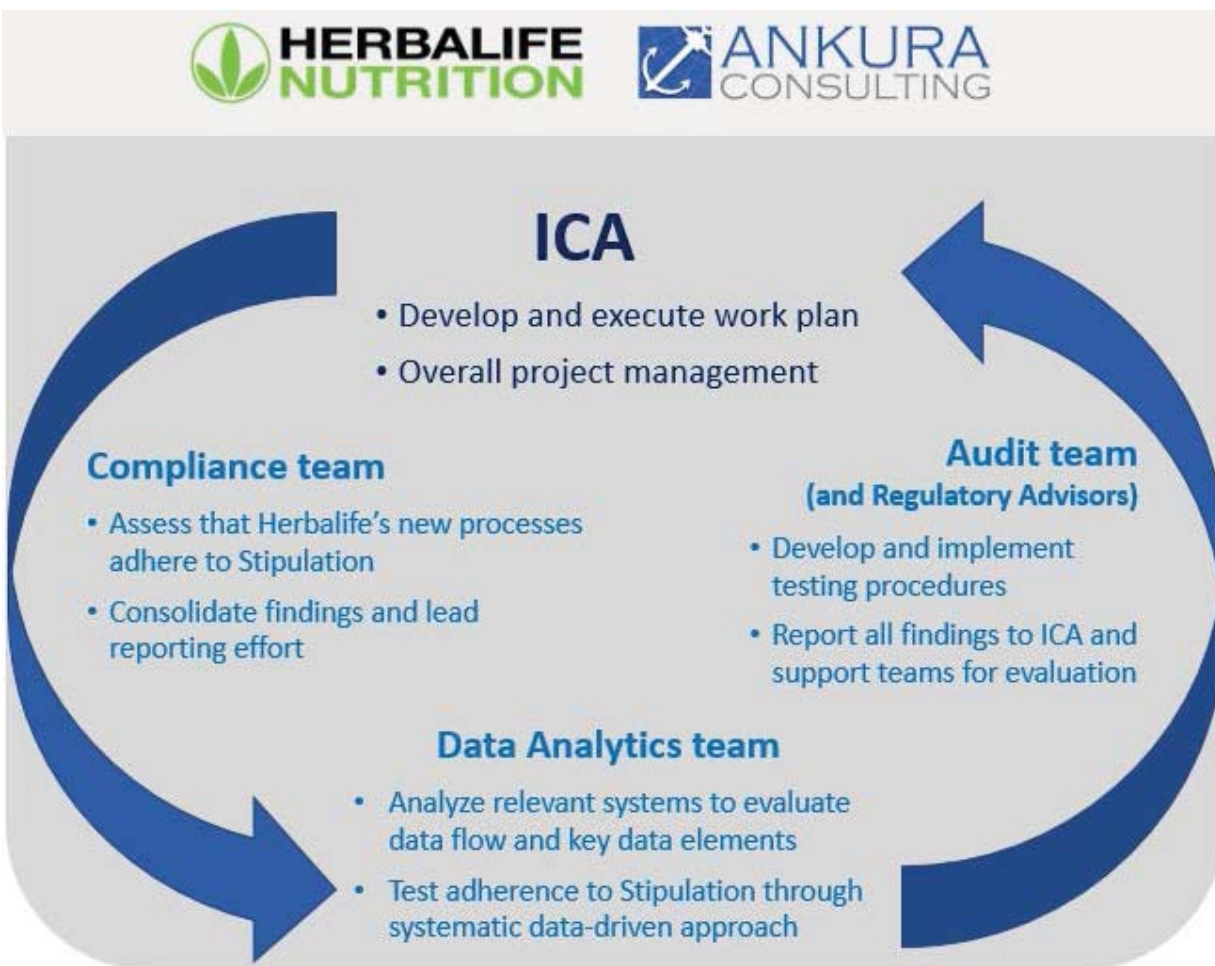
---

## Execution

The ICA will leverage the different areas of expertise to effectively execute, augment and manage the matter for the long term. The approach will focus on bringing the appropriate resources, both in expertise and experience level, to the various areas of the plan in a cost effective manner. Ankura will provide regular reporting, as agreed upon by all parties, related to progress, issue identification and budget.

We will plan to be on site at Herbalife's offices in Los Angeles as often as necessary with an eye towards being as efficient as possible to curtail travel and other expenses.

The **general work flow** of the engagement will be as follows:



---

## Detailed Scope of Work

The proposed activities following this general work flow process are provided in detail, by each scope of work item, below (these procedures are subject to change as we gain a deeper understanding of the changes Herbalife has made to its business operations):

### Retail Sales

#### *Is Herbalife collecting all required retail sales information? [Order § I.C]*

- Understand from IT and business users how retail sales data is accumulated, maintained and reported.
- Evaluate the completeness and accuracy of the data with regard to the requirements of the Stipulation.
- Identify issues, anomalies, or opportunities to improve the data to meet the requirements of the Stipulation.
- Develop an approach to either gain real-time access to relevant data or build automated and systematic process to facilitate transfer of relevant data.
- Develop validation process to systematically test retail sales data to ensure ongoing compliance.
- Define audit procedures surrounding the collection and reporting of sales information to be executed on a regular basis. This would include consideration of material changes in the business or systems.

#### *Is Herbalife accurately calculating profitable retail sales in a downline? [Order § I.A.1]*

- Understand and formally define the business rules governing the profit calculations to verify they are in line with the requirements of the Stipulation.
- Analyze the system configurations in terms of defining the application of downline characterizations and calculations.
- Analyze the relevant system processes used to calculate profits to determine whether the system is set up to perform the calculations appropriately.

- 
- Test and validate the reported results to ensure compliance with the requirements of the Stipulation.
  - Identification of higher risk areas that should be focused on by the Compliance and Audit teams.
  - Data Analytics to build data validation tests to ensure completeness and accuracy of any data updates.

***Is Herbalife adhering to the requirement that a participant's claimed profitable retail sales cannot exceed that participant's total product purchases minus his or her product designated for personal consumption? [Order § I.D.3]***

- Understand how the Herbalife system captures the elements of this calculation and/or already performs this calculation.
- Develop a data-driven process to calculate that a participant's claimed profitable retail sales does not exceed product purchases (less personal consumption). This process would be automated to identify any issues requiring further review.
- Understand how the business and system defines and tracks product purchases for personal consumptions.
- Build predictive model to identify trends in personal consumption to develop acceptable thresholds to identify instances requiring further review.
- Understand how the business and system defines and tracks product purchases for personal consumptions.
- Build a predictive model to identify trends in personal consumption to develop acceptable thresholds to identify instances requiring further review.

***Is Herbalife adequately monitoring profitable retail sales to ensure that they are genuine and in fact occurred as reported? [Order § I.D.1&2]***

- Develop systematic test that required data has been collected and is legitimate (i.e., not "dummy data") including building predictive models to assist in case-selection for "random and targeted audits."
- Evaluate Herbalife's monitoring of profitable retail sales (including any audits it may conduct) to determine if the process is designed to detect if data is not genuine.
- Perform targeted tests, informed by predictive models, to ensure that retail sales are genuine and in fact occurred as reported.

---

## Preferred Customers

*Is Herbalife correctly differentiating between preferred customers and business opportunity participants, including by:*

- *reclassifying preferred customers and business opportunity participants only upon their own written request or application made directly to Herbalife, and*
  - *ensuring that preferred customers neither sell goods or services, nor recruit others into the program, nor receive multi-level compensation? [Order § I.B & Def. I]*
- Understand how classification is determined, reasons for change in status, approvals required, and ultimately how this affects the reporting of data.
  - Understand how the system differentiates between preferred customers and business opportunity participants.
  - Test a cross-section of new preferred customers and business opportunity participants to determine if appropriate written request was received upon classification transition.
  - Develop systematic process to identify any instances where preferred customers or business opportunity participants are reclassified. This population will be tested for further compliance.
  - Develop systematic process for cross-checking preferred customers against payments of multi-level compensation to ensure that there are no matches (i.e., that preferred customers did not receive multi-level compensation).

*Is Herbalife adhering to the requirement that a preferred customer who transitions to business opportunity participant may not receive or retain any benefit or status other than a continued discount on product for personal consumption? [Order § I.B.3]*

- Develop systematic process to identify transition from preferred customer to business opportunity participant
- Test business opportunity participants who transitioned from preferred customers to ensure that they no longer receive or retain any benefit or status other than a continued discount on product for personal consumption.
- Review the system processes to determine controls in place to prevent continued benefits consistent with preferred customer classification.

---

***Is Herbalife accurately calculating the preferred customer sales of a participant and in the participant's downline? [Order § I.A.1]***

- Analyze the system configurations in terms of defining the application of downline characterizations and calculations.
- Systematically test preferred customer sales of a participant (and downline) to ensure that compensation is only paid for rewardable transactions.

***Is Herbalife adequately monitoring sales to preferred customers to ensure that they are genuine? [Order § I.D.2]***

- Test preferred customers' sales activity to ensure that the transactions are genuine including review of supporting documentation on a sample basis.
- Apply predictive analytics to systematically identify other potential issues across all sales data.

**Personal Consumption by Business Opportunity Participants**

***Is Herbalife accurately calculating rewardable personal consumption in a downline according to the both the designation requirement and individual monthly limit? [Order § I.E]***

- Identify and obtain data related to business opportunity participant rewardable personal consumption activity.
- Monthly limits will be tested through analytics to determine if macro metrics are anomalous (e.g., total monthly personal consumption activity as a factor of total business opportunity participants trends higher than expected thresholds).
- Test rewardable personal consumption activity on a sample basis to determine if the business opportunity participant properly designated at the time of purchase for their own or household use and that the monthly limits were not exceeded.

***Is Herbalife ensuring that product purchases that are counted as rewardable personal consumption are in fact being purchased for the participant's own or household use? [Order § I.E & Def. O]***

- Determine how the system tracks and applies rules for rewardable personal consumption.
- Test, on a sample basis, product mix purchased for personal consumption by business opportunity participants to identify anomalies in order activity.

---

## Paying Multi-Level Compensation

*Is Herbalife paying multi-level compensation on retail sales only when retail sales information has been collected and reflects that the sale was profitable? [Order § I.A & Def. M]*

- Obtain retail sales data, systemically calculate profitability of sales and compare paid compensation data to collected sales data.

*Is Herbalife limiting the multi-level compensation paid for consumption by business opportunity participants in a downline based on the relevant volume of retail sales and preferred customer sales? [Order § I.A.1]*

- Systemically compare paid multi-level compensation to reported retail and preferred customer sales.
- Review a sample of compensation payments to ensure that the payments are based upon relevant retail and preferred customer sales and are not related to any other types of activity (e.g., referral fees).

*Is Herbalife paying multi-level compensation for rewardable transactions during the same period only, with the sole exception being a three-month “look-back” for new business opportunity participants during their first six months in that status? [Order § I.A.1]*

- Systemically assess whether paid multi-level compensation relates to rewardable transactions occurring in the same period.
- Test, on a sample basis, the rewardable transactions to ensure that the dates of the transactions were in the same period that correlates to the compensation payments without exception and has not been manipulated.

*Is Herbalife complying with the prohibition against paying multi-level compensation to a participant who has not taken and successfully completed a training course that focused on required topics? [Order § I.H]*

- Understand how Herbalife manages the training process and tracks participation.
- Design process to access training related data in order to compare to participant's receiving multi-level compensation.
- Test sample of participants to confirm that they have complied with the training requirement.

---

***Is Herbalife adhering to the prohibition against varying multi-level compensation based on non-rewardable transactions? [Order § I.A.2]***

- Analyze rewardable transactions throughout the participants' downline to ensure that the total amount of a participant's multi-level compensation is not increased because of non-rewardable transactions in the participant's downline.
- Test a sample of participants' downline to ensure that multi-level compensation is not increased because of non-rewardable transactions in the participants' downline.

***Is Herbalife adhering to the prohibition against varying aspects of multi-level compensation based on the identity of the purchaser? [Order § I.A.3]***

- Test sample of paid compensation to ensure lack of variability as it relates to a preferred customer, to a retail customer, or to a business opportunity participant for personal consumption.

***If business opportunity participants must meet any thresholds related to multi-level compensation, is Herbalife adhering to the requirement that such thresholds may be met exclusively through profitable retail sales and preferred customer sales? [Order § I.F.2]***

- Obtain data related to threshold changes to analyze trigger for threshold change ensuring that it was met exclusively through profitable retail sales and preferred customer sales.

***Is Herbalife complying with the prohibition against paying a "headhunter fee"? [Order § I.A.5]***

- Test sample of paid compensation to ensure that compensation was only paid for rewardable transactions and not solely for enrolling or recruiting a participant or a preferred customer.
- Systematically test compensation payments for any references to referral fees or similar terms that are not in accordance with requirements of the Stipulation.

***Is Herbalife complying with the prohibition against paying multi-level compensation based on purchase of a start-up package? [Order § I.F.1]***

- Obtain paid compensation data and systematically test that no payment is associated with a start-up package.

---

## Annual U.S. Multi-Level Compensation

*Is Herbalife accurately calculating net rewardable sales and total net sales, and limiting the sum of multi-level compensation payments if so required? [Order § I.A.4]*

- Systematically identify any participant where net rewardable sales are less than 80% of total net sales on an annual basis.
- Test sample of the participants that fell under the 80% threshold to ensure that payments did not exceed 41.75% of net rewardable sales.

## Limitations on Leased or Purchased Business Locations

*Is Herbalife adequately enforcing the prohibition against participants leasing or purchasing a physical location unless they have met all relevant requirements? [Order § I.I]*

- Obtain list of all business opportunity participants who have submitted a business plan and test a sample of these participants to ensure that they have met the one-year threshold and that they have received the requisite training.
- Perform public information research and identify a sample of physical Herbalife locations and compare these locations to business plans on file to ensure compliance with business plan requirement (as well as one-year threshold and training requirements).

## V. Potential Conflict of Interest of Bias

Ankura has performed a thorough conflict check and is confident that there are no conflicts in connection with the ICA engagement. Ankura's appointment as an agent of the Court in monitoring the settlement between the Federal Trade Commission and Volkswagen is currently pending. However, Ankura serves as an agent of the Court, not an agent of the FTC, in this capacity. As such, Ankura is not currently working for, or on behalf of, the FTC or Herbalife.

No member of the proposed ICA team is a previous Herbalife board member, employee, or distributor nor has any team member ever worked on a matter for or against Herbalife. None of the proposed ICA team members have been employed by the FTC.

## VI. Estimated Costs





---

***End Note:***

***Ankura submits this request for application to serve as the ICA. It should be noted that our qualifications were also included along with the ICA application of Patomak Global Partners to provide our services as part of their potential retention.***