

Declaration of Stacie A. Bosley, Ph.D.

1. My name is Dr. Stacie A. Bosley. I have a doctoral degree in Applied Economics from the University of Minnesota. In my capacity as an assistant professor of economics at Hamline University, I research multilevel marketing, direct selling and pyramid schemes. I have written multiple working papers on these topics, ranging from an analysis of direct selling around the world to an examination of the relationship between domestic economic conditions and multilevel marketing activity. I recently published a paper in the *Journal of Public Policy and Marketing*¹ that addresses the intersection of multilevel marketing and pyramid scheme activity. I have also presented research on these topics at numerous economics conferences around the country. My most recent research paper analyzes the spread of Fortune Hi-Tech Marketing, an alleged pyramid scheme and now-defunct multilevel marketing firm. It aims to understand conditions that support or deter scheme adoption around the country (including local economic conditions, the presence of affinity groups, and education level). I have been interviewed by media outlets and have participated in national conversations on multilevel marketing and associated policy and regulation. My university teaching focuses on microeconomics, quantitative analysis, managerial economics and behavioral economics. Each of these areas is relevant to the analysis presented in this declaration. Microeconomics is the study of individual decision-making and responses to incentives. Behavioral economics examines decision-making with a special focus on cognitive biases and errors in judgment. Quantitative analysis provides a background in analytical approaches to understanding data and patterns. Lastly, Managerial Economics studies decision-making inside businesses and organizations. An understanding of the actions of the firm (e.g., in setting compensation policies and procedures) and the actions of the individual (e.g., in joining and participating in a business opportunity) are highly relevant to the analysis that follows. A true and correct copy of my curriculum vitae is attached as Appendix A.

Purpose and Materials

2. The purpose of this Declaration is to analyze the Vemma program to determine whether it is a pyramid scheme. The Sections that follow set forth my analysis and include: 1) a review of the company promotional and training materials (video, audio and documents); 2) a statement of the conceptual and legal framework I used, including legal assumptions provided to me by Federal Trade Commission staff; 3) a review of the company's terms, conditions and Compensation Plan (various iterations); and 4) a discussion of the available empirical data that indicates how the marketing program works in practice, including the company's Income Disclosure Statements and findings from the 2014 Unfair Business Practices case in Italy. A listing of all materials reviewed is available in Appendix B.

Company Overview and Promotion

3. Vemma offers people the opportunity to purchase and consume various "liquid nutrition" products, and also offers a business opportunity to people who seek to earn full or part-time income. The company categorizes participants as either "Customers" or "Affiliates." Customers can only earn product credit, whereas Affiliates have the ability to earn financial rewards (Compensation Plan, discussed *infra*). All participants begin as Customers (policy beginning April 1, 2014) and a Customer currently becomes an Affiliate when he/she (1) buys an Affiliate Pack or (2) refers another Customer/Affiliate (Web Page Explaining Jan. 24 Terminology Change).

¹ Bosley, S. & McKeage, K. (2015). Multilevel Marketing Diffusion and the Risk of Pyramid Scheme Activity: The Case of Fortune Hi-Tech Marketing in Montana. *Journal of Public Policy & Marketing*, 34(1), 84-102.

4. Founder B.K. Boreyko presents the company as the right opportunity for our current economic and societal conditions, as people around the world are seeking health, wellness, financial freedom and time freedom. The company advertises access to an entrepreneurial venture with virtually no start-up costs and no risk. Promotional videos state “no membership fees,” “no signup fees,” “no long-term commitments,” and a 100% money-back guarantee (How Vemma Pays You – 2 & Go and How to Get Paid – Vemma Home Event videos). The Vemma business opportunity is repeatedly presented as a way that ordinary people can achieve their financial goals. For example, Tom Alkazin² presents Vemma as an opportunity to be the CEO and founder of one’s own company, connected to a firm with strength and stability that has “changed my life and the life of my family.” He asks participants to simply place an order and “let us help you” to “take control of your future” and “make dreams become a reality” (24-Hour Overview New Business Call with Tom Alkazin). Mr. Boreyko similarly speaks of Vemma as “a transforming journey from an employee mentality to the mindset of an entrepreneur” that will offer “full-time income with part-time effort” (Vemma – Your First 7 Days, audio).

5. Boreyko and other promoters/materials (see Vemma Business Presentation with Top Leader Tom Alkazin, How Vemma Pays You – 2 & Go, and How to Get Paid – Vemma Home Event) compare Vemma’s business model to soda machines. If an individual had one soda machine, he or she might earn modest income on the product that is sold through that machine. If the individual had access to 1,000 machines, he or she could earn life-changing money by earning a small share from the product passing through those machines all around the world. Vemma is said to “open outlets through people.” Darren Hardy (in Vemma - Your First 7 Days audio) explains that individual efforts are magnified through the “magic of duplication.” By following Vemma’s simple system and by training two people to imitate their actions, Hardy explains that ultimately participants “can earn 1% from 100 people’s efforts, if not 1% from 1,000, 10,000 or more.” The duplication process corresponds to the Vemma Compensation Plan structure. Bonus eligibility within the binary structure requires each Vemma Affiliate to recruit two people, where one person is placed on the left team and the other on the right team. Duplication occurs when those two recruits imitate the actions of their recruiter, each making purchases and recruiting at least two additional Vemma Affiliates.

6. While representations of Vemma’s system might vary slightly, the essential components include (1) purchase of initial product (typically an Affiliate Pack), (2) consistent monthly product purchases (typically on auto-delivery), and (3) recruitment of others who will do the same. For example, Boreyko suggests that success in Vemma is specifically best pursued as follows: (1) buy an Affiliate Pack; (2) order 2-case/month auto-delivery; (3) find 3 Affiliates who buy an Affiliate Pack in the first week to qualify for Frenzy bonuses; (4) get car qualified; and (5) help 5 people get in a car (Vemma News BK’s 2014 Halftime Report video). Boreyko suggests that these 5 steps result in approximately \$50,000 in residual annual income. Tom Alkazin promotes this identical set of steps and outcomes (24-Hour Overview New Business Call with Tom Alkazin). Another representation of the system is articulated in the “Take a Shot and Tell Two” program (see Vemma 13 Month Cycle Plan and Ruth Elliott Success Made Simple videos). “Take a shot” refers to the initial purchase of product and personal monthly auto-delivery orders. These purchases are frequently advertised as serving three functions: to allow an Affiliate to drink the product daily; ensure the Affiliate has product on hand for samples; and to maintain the Affiliate’s bonus eligibility. “Tell Two” refers to the act of recruiting two new Affiliates who are trained to replicate the Affiliate’s actions (order

² Mr. Alkazin and his wife are Vemma’s highest earning Affiliates, reporting an estimated income of \$4.8 million per year (<http://www.businessforhome.org/2014/04/top-150-worldwide-earners-in-mlm-april-2014/>). He operates a website, My Road Map to Success, which contains extensive training materials.

product and recruit two). Elliot, who is identified as a high ranking Vemma Affiliate³, argues that “your team will begin to grow through the power of ‘2,’” and your teams can grow to “infinity.” As suggested in the Vemma Presentation and Training document, “Of all the people you know, and all the people you’ll meet, can you find two?”

7. While the “Take a Shot and Tell Two” program is only one variation of the language used by the company and Affiliates, the fundamental components are consistent with incentives in the Vemma Compensation Plan, company promotional materials, and assertions of other top distributors (see How To Get Paid - Vemma Home Event video as an example). Matt Morrow, a high ranking Vemma Affiliate, describes the same system for success in his “Verve in Simple Terms” video.⁴ He suggests that new Affiliates purchase product every month (drinking 1 per day and giving the rest away) and get two other people to do the same. Morrow summarizes this as a \$5/day investment that will consistently yield substantial returns, delivering “more in a week than most people make in a year.” Morrow claimed earnings of \$59,500 in the prior two weeks, where those earnings were derived from his simple model for success.

8. Darren Hardy (in Vemma – Your First 7 Days audio) also describes the Vemma business model as proven, having worked for “thousands of others.” He argues success is only ensured through strict adherence to Vemma’s duplication system for at least one year. Hardy notes, “all it really requires is commitment to see it through long enough for the Vemma business model to work and ... for the compound effect to ignite, which kick starts the money machine.” He describes time devoted to Vemma as an act of watering the “new money tree.” Hardy stresses simplicity and universal access – anyone, even without specific skills, education, experience, or training, can receive the same outcomes if they are committed, trust, use the tools, and follow the system. He further describes the Vemma business model as an “unlimited, infinitely scalable business and income that’s recurring and, eventually, passive.” Failure is attributable only to lack of commitment and/or deviation from the system. While the Alkazin family (parents, sons and daughter) are the top income-earners in Vemma, father Tom Alkazin promises each new Affiliate that “you will be able to do exactly what our family has done” (in BK Boreyko - Elevate San Diego 2013 speech). In a 2014 video, Boreyko introduces the Alkazin family by mentioning that he recently paid the family \$963,000 in a single month. Later, in that same video, Tom motivates the crowd by saying “what’s happened for us can happen for you” (in Star Pinnacle Tom Bethany Alkazin Vemma All In 2014 video). His youngest son, Brad Alkazin⁵, similarly states that, with the “simple plan” and supporting tools and resources, “you really can’t fail” (in YPR Radio - Brad Alkazin Full Length video). Brad attributes failure to “giving up” on the system. At Vemma’s 2014 European Convention, Jamie Chirio went further to state that it was “selfish to quit,” as you were denying yourself and thousands of others the chance to succeed (in Jamie Chirio Speaks at Vemma’s 2014 European Convention). The central message: anyone can do it, stick to the simple system, and success is assured if you don’t quit.

9. The notion of “passive income” is a consistent selling point in Vemma promotional materials. Mr. Boreyko (for examples, see Vemma News BK’s 2014 Halftime Report, Vemma Action Plan 2014, and the Vemma Training Bible), refers to the long-term objective of “passive” or “residual” income.

³ Ms. Elliot and her husband report an estimated \$1.8 million per year in Vemma income (<http://www.businessforhome.org/2014/04/top-150-worldwide-earners-in-mlm-april-2014/>).

⁴ Verve is a specific product line within the Vemma company.

⁵ Brad Alkazin reports an estimated \$2.64 million per year in Vemma income (<http://www.businessforhome.org/2014/04/top-150-worldwide-earners-in-mlm-april-2014/>). Brad is also considered a leader of the Young People Revolution (or YPR) group.

Such income is achieved when duplication results in significant downline teams, yielding continuing monthly income without further effort. Boreyko suggests that Vemma participants can earn \$500, \$5000, or even \$50,000 per month part-time (in Vemma Nutrition Company Marketing and Sales Business Plan for Premium Supplement Products video). Top distributors similarly emphasize earnings connected to the business opportunity, especially those earnings that constitute passive residual income. Alex Morton, a high ranking Vemma Affiliate, included the following comments in a live motivational speech (in Vemma Success Alex Morton video):

“This is about a 3-5 year plan, to where you never have to worry about money ever again.”

“You don’t want to live life with no money. You want to have so much money that it doesn’t even matter. That is why people do Vemma, to have enough money to where it doesn’t even matter anymore.”

“Sun comes up, goes down, we make money while we are asleep. That’s how Vemma works - you are paid 24 hours a day, 7 days a week, no matter what you are doing.”

“Yeah, you can make a million a year or a million a month.”

Affiliates echo Morton’s promises in their own video testimonials, stating “my family will never have to worry about money again” and you can “retire your parents,” “have six Saturdays and one Sunday,” and “set yourself up for the rest of your life” (examples include Jed Buenaluz on Leading by Example from the Verve Leadership, Learn What Drove Emily McCullah to Success – YPR Radio Season 2, and TK Kubvoruno on YPR Radio Season 2 w/Eric Thomas – Learn How TK’s Why Drove Him to Success). As promised in the Vemma Presentation and Training document, “If you put in a million dollar effort, you’ll earn a million dollars.”

10. Vemma documents and videos suggest that the opportunity remains the same for any new member, regardless of economic conditions. “If you are dedicated to success and you follow all of the steps, there is absolutely no question that you will find great success in the Vemma business.” (Vemma Workbook). Morton (in Zero to Sixty: A Start-up Business Plan for Young People Self-Employment with Alex Morton video) echoes that idea, suggesting: “Follow our proven system, follow our proven method guys. If you say what we say and do what we do, you get what we have every single time.” The business opportunity is advertised as “easy to set in motion and easy to duplicate.”

11. Vemma has specific recruitment materials and products aimed at young adults. Boreyko (in Vemma – Your First 7 Days audio) suggests that, “in today’s economic climate, going to school and getting a good job may not be the best path for financial security and time freedom.” Mr. Boreyko (in BK’s Blog CEO of Vemma Nutritional Company Speaks on Why To Join Vemma audio) cites the “youth revolution” as the number one reason to join the organization. He notes that young people can “think differently,” have a “clean slate,” and are burdened with high student loan debt and an environment of high unemployment. The founder reported that of the 28,000-30,000 people joining Vemma per month, over half are young adults. Affiliates Brad Alkazin and Alex Morton, among others, mention the number of current college students as a way to identify the market potential of Vemma. Libraries, fraternities, sororities, and dorms are frequently mentioned as places of recruitment. The Young People Revolution, or YPR, group has developed tailored materials (e.g., the Vemma Training Bible) and meetings for Vemma recruitment. These often focus on Vemma’s Verve line of energy drinks.

12. In Alex Morton’s talk to young adults (Vemma Success Alex Morton video), he speaks directly to the concerns regarding earnings, autonomy and security. “You are either in or you are out. You are either in, you want to make enough money to live life the way you want...” or go to school, get good grades, then “beg someone to hire you.” Even if you do secure a job, that job will dictate when to go

to lunch, when to take vacation, even when to use the bathroom. Morton notes that we are “God’s greatest creation” and should not be paid by the hour or by salary. Morton then echoes Hardy’s comments when he speaks of perseverance and universal access. “The only way you fail in this is by quitting or doing nothing. That’s it. If you do something, and don’t quit, you succeed every time. No matter where you come from, no matter what your educational level is. No matter what guys.” Morton asks the recruits to consider the power of young Vemma participants to change the way business is conducted and the way people are paid. This notion of revolutionary power is reflected in the testimonial videos of Affiliates within the YPR group, as Affiliates discuss the vulnerabilities of following the traditional “school, grades, resume, job” track. Videos frequently mention the moment when the Affiliate “saw the vision,” embracing the “no boss, no job, no hours” freedom of entrepreneurship and the idea to “make your own economy” and “change the world” (examples include Patrick Comer on Prospecting Like a Pro – Vemma Verve Leadership Academy Power Talk, Shane Sullivan Verve Power Talk on Elevating Your Vemma Business to the Next Level, and TK Kubvoruno on YPR Radio Season 2 w/Eric Thomas – Learn How TK’s Why Drove Him to Success). This vision frequently includes luxury cars. For example, Bryce Majdick notes his vision to “put 6 BMWs in my hometown” (in Bryce Majdick - Elevate San Diego 2013 speech). The tradeoff for new recruits is represented as the choice to sell your Xbox (presumably to purchase initial product and materials) in order to join a movement and invest in a life-changing opportunity, yielding permanent financial and time freedom. Affiliate Luke Wilborn further suggests that a college degree might no longer have value and that there is a gap between what is being taught in school and “what it takes to earn money” (Luke Wilborn – Elevate San Diego 2013 speech).

13. Boreyko even addresses parents of Vemma recruits directly (in Boreyko Video to Parents), asking them to congratulate their son or daughter for taking the initiative to “check out this Verve opportunity.” He notes that young people can no longer be assured that they will find a job they are passionate about by following traditional paths. Boreyko argues that Vemma offers skill-building that can’t be found in the classroom: people-skills, goal-setting, motivational strategies, and experience in running a business. He also notes that the company’s business model fits young people as they tend to be very socially connected. Suggested earnings range from free product to “\$500 per month, \$500 per week, or \$5,000 per month or week.” He mentions a 26-year old who will “make \$1 million this year with Vemma.” Boreyko concludes that their sons and daughters will be better people if they choose to join Vemma. The founder does address pyramid scheme concerns and assures parents that, in illegal pyramid schemes, the only focus is on signing people up and there is no emphasis on selling product. He further promises that Vemma offers free sign-up and only pays bonuses after a product is sold. These assertions will be addressed below.

14. Company promotional materials devote some attention to product attributes but do not emphasize sales to ultimate users as a source of compensation and do not typically provide training or support specifically aimed at sales to ultimate users. The product discussions contained in the presentations appear to be primarily designed to lend credibility to the business opportunity being offered. It is represented that the Vemma product line will allow the Affiliate to profit from the three multi-billion dollar “mega-trends” that will only continue to grow in the future – health and fitness products, energy drinks, and weight loss products. Mr. Boreyko refers to Affiliate recruits as the “gold nuggets” while customers are the “silver nuggets,” saying that customers are “a by-product of our business” (Vemma News BK’s 2014 Halftime Report video). A similar sentiment is expressed on a video on Vemma’s website titled, “How to Get Paid - Vemma Home Event.” After urging viewers to purchase an Affiliate Pack, the announcer concludes that if you are a person without clear goals or are lacking a desire for financial improvement, or just have trouble making a decision, then the Affiliate Pack is not for you and you should just remain a Customer. Training videos (Affiliate Action Plan–Steps 4 and 5) for new Affiliates reflect this emphasis on bringing in

Affiliates over customers. In the video centered on “Leading with the Product,” Boreyko and Affiliates still refer to customers as Affiliates in-the-making, suggesting that “some will be customers at first” and that many of the most successful Affiliates started as customers first. In the video centered on “Leading with the Business,” Affiliate Richard Bischoff mentions that he first approached people with the product and his business stalled as it didn’t “duplicate.”

15. In sum, it is clear from my review of Vemma’s promotional materials that Vemma is primarily promoting a business opportunity that can supposedly generate substantial, even life-changing income. The business opportunity is presented as a way to capitalize on social networks and word-of-mouth advertising to promote the product, but the emphasis is almost exclusively on promotion of the business opportunity and income potential rather than the product itself. It is also clear that Vemma emphasizes recruitment of downline Affiliates as the primary method of obtaining substantial income, rather than retail sales of the product. As will be discussed in the Compensation Plan analysis, the compensation plan strongly incentivizes recruitment and provides few incentives for an Affiliate to make sales to ultimate users.

Scope of Assignment and Conceptual Framework

16. For purposes of my analysis of the Vemma program, I have been asked to apply two related descriptions of a pyramid scheme: one being a general economic characterization and, the other, a definition borne of relevant court findings known as the Koscot test.⁶

17. From a general economic perspective, a pyramid scheme exists when a compensation plan is structured to create a perpetual recruitment chain that dooms the vast majority of participants to financial loss. It requires ongoing recruitment as new entrants must recruit others in order to cover their own personal investment. When a new participant recruits others, all individuals who join become part of her “downline,” while those above her are considered her “upline.” Downline activity (recruitment and associated payments/purchases) is needed in order to cover participation costs and potentially achieve advertised earnings. While the compensation plan details may vary, the essence of the system is that earnings are dependent on the ongoing ability of a participant to recruit others into the same system. By design, this creates a system where the vast majority of participants cannot recoup their personal investment. As long as recruitment continues, membership grows at an exponential rate. At any moment in time, the most recent entrants make up the vast majority of membership. This majority is the very group that is in a position of financial loss, as they have not acquired the downline recruits necessary to offset personal investments (see Appendix C for mathematical exposition on these points). By nature of the structure itself, a pyramid scheme is a money-transfer scheme that siphons money from later entrants to compensate earlier entrants, delivering easily foreseen losses (from a structural perspective) to the vast majority of participants.

18. It should be noted that the outcomes of exponential growth and widespread losses, articulated above, are expected at any point in time and do not require that the firm has reached market saturation. As demonstrated in Appendix C and below, in the context of Vemma’s Compensation Plan analysis, the percentage of participants in the lowest levels of the organization will constitute the majority of participants at any moment the scheme is analyzed. The analysis will show that loss

⁶ The definitions used in this declaration are adapted from the definitions in a recent peer-reviewed article by William Keep and Peter Vander Nat (Keep, W. & Vander Nat, P. (2014). Multilevel marketing and pyramid schemes in the United States: An historical analysis. *Journal of Historical Research in Marketing*, 6(2), 188–210).

rates are not accidental and can be anticipated given the recruitment incentives inherent in the Compensation Plan. As the promised rewards are realized only if successful recruitment continues indefinitely, positive earnings suggestions are inherently deceptive and cannot be fulfilled for the overwhelming majority of participants. The absolute number of people who will ultimately be harmed (left with loss positions) grows exponentially as the organization expands. Many participants will exit when recruitment becomes more difficult. New recruits then take the place of the recent dropouts, creating a churning base. Most in the churning base will lose money while a few advance to higher levels of the organization. The vast majority of overall participants are not expected to earn enough to cover their personal investment.

19. While pyramid schemes can take a relatively simple form (e.g., gifting table or chain email/letter solicitation), they can also be embedded within a business opportunity that offers a product or service for sale. The Koscot test (1975) addresses this type of business structure. The Koscot analysis assumes a direct selling context where participants make payments that entitle them to earn based on subsequent sales and recruitment, either direct (sales or recruitment by the participant him/herself) or indirect (sales or recruitment by those in his/her downline). Such structures are commonly known as network marketing or multi-level marketing (MLM). The Koscot analysis applies the general economic characterization of a pyramid scheme to a specific context - that of multi-level marketing - and is used by the courts to distinguish between legal multi-level marketing programs and pyramid schemes. The Koscot test states that a pyramid scheme is characterized by the payment by participants of money to the company in return for which they receive (1) the right to sell a product and (2) the right to receive in return for recruiting other participants into the program rewards which are unrelated to sale of the product to ultimate users.

20. The Koscot test, which was adopted by the FTC in 1975, has been affirmed in multiple Federal court opinions including *Omnitrition* (1998), *Gold* (1999) and *Burn Lounge* (2014). I am not an attorney and this declaration does not purport to contain a detailed discussion of the legal issues surrounding pyramid schemes. To the extent that this declaration depends upon legal analysis, I rely upon the determination of the applicable law provided to me by the staff of the Federal Trade Commission. In addition to the Koscot test, I have been asked to apply two principles from the 9th Circuit's decision in *Burn Lounge* that are relevant to the second prong of the Koscot test. The first principle is that program participants may only be considered "ultimate users" if the participants purchase the products for personal consumption based on consumer demand, not primarily for the purpose of participating fully in the rewards under the compensation plan for the business opportunity. The second principle is that, in order for the second prong of the Koscot test to be satisfied, it is not necessary for compensation to be completely unrelated to sales to ultimate users. Stated another way, the existence of some sales to ultimate users for purposes of consumption does not prevent a plan from being an illegal pyramid structure.

The Vemma Compensation Plan

21. Vemma gives potential purchasers who simply want to "enjoy the products" the option to purchase products without becoming Affiliates. For example, a Vemma 1-pack contains 2-32 ounce bottles that are advertised as a 30-day supply for \$74. A 24-pack of 8.3 ounce Verve energy drink cans can be purchased for \$79.80. On each of these products, up to 10% can be saved by establishing a monthly auto-delivery order. However, if potential purchasers want to "succeed by helping others succeed" and have an interest in life-changing compensation, they are encouraged to purchase an Affiliate Pack (examples abound that direct the purchase of an Affiliate Pack, including the *How Vemma Pays You – 2 & Go*, *How to Get Paid – Vemma Home Event*, *Vemma News BK's*

2014 Halftime Report, and Affiliate Action Plan–Step 1 videos).⁷ Affiliate Packs are said to be reserved for those who “see the big picture” and “want to create cash flow with their Vemma business.”

22. A \$499.95 Affiliate Pack includes a variety of Vemma products, access to an e-commerce website, and the Vemma Success Kit. Stated reasons for purchasing the Affiliate Pack include having product on hand to hand out as samples and qualification for Frenzy and Premier Club bonuses (described later in this section). This purchase is said to be necessary whether Affiliates want a large, medium or small-sized Vemma business (How Vemma Pays You - 2 & Go and How to Get Paid – Vemma Home Event videos). While the 2015 Compensation Plan does not technically require the purchase of an Affiliate Pack, it is heavily incentivized and promoted as a necessary investment to pursue the business opportunity. As BK Boreyko stated at a Vemma Leadership Academy event, “You know what, you don’t have to buy an Affiliate Pack, but you *have* to buy an Affiliate Pack” (Vemma News BK’s 2014 Halftime Report video). He notes that this is a much lower investment than would be required for a traditional franchise or other small business.

23. Once Affiliates have made this initial investment in the business, the next recommended step is to immediately initiate a monthly auto-delivery order that will ensure ongoing eligibility for compensation, for a monthly cost of approximately \$150.00. After emphasizing the importance of an Affiliate Pack purchase, Boreyko went on to say:

“Now, after you’ve done your Affiliate Pack, you need to get on an auto-delivery order” as “that makes sure that you’re qualified.” “Here’s the thing, yes, you can qualify with customers but, you know what, sometimes customers don’t order and they don’t tell you they don’t order and all of a sudden you’re like, hey, I wasn’t qualified....” (Vemma News BK’s 2014 Halftime Report video)

Individual Affiliates also recognize \$150/month as the cost of doing business in Vemma, based on the minimum monthly purchase that ensures bonus eligibility. Affiliate Nick Ptak encourages new Affiliates to focus on the \$5 participation cost per day - “don’t say \$150 bucks per month” (in Nick Ptak video). Affiliate Blake Stauffer also refers to being “out \$150 every month,” referring to the cost of his monthly auto-delivery purchase (in Message of the Month - Blake Stauffer video). Brad Sarver, in his address to Vemma’s Elevate San Diego in 2013, challenges the crowd to be serious about the business by asking: “Who is on a 2-pack autoship with me to the grave?” These purchase expectations are codified within the new “2 & Go” program (discussed further in paragraph 38), as the new Affiliate is directed to take two steps on day one of joining Vemma: 1) buy an Affiliate Pack and 2) initiate the \$150 monthly auto-delivery.

24. Boreyko goes further in the Vemma–Your First 7 Days recording where he argues that continual auto-delivery provides tax benefits. He suggests that these monthly payments demonstrate to the IRS that the Affiliate is actively engaged in a “home-based business with the intent of making a profit” since auto-delivery ensures eligibility for all bonuses. In making this argument, Boreyko is identifying these monthly auto-delivery purchases as a cost of pursuing the business opportunity.

25. If an Affiliate is following the recommended strategy, they have now purchased the Affiliate Pack and signed up for monthly auto-delivery of product. Vemma’s current Compensation Plan (as of January 1, 2015) has three ways to “get paid,” summarized in Table 1. I will describe each of these forms of compensation below.

⁷ The Affiliate Pack is also referred to as an Affiliate Builder Pack or Affiliate Starter Pack and was formerly called a Builder Pack.

Table 1: Vemma Reward Types

| Purchase Loyalty Rewards | Immediate Income | Long-term Team-Volume Rewards |
|------------------------------------|------------------------------------|--|
| Vemma Loyalty Program ^a | New Customer Bonus ^a | Cycle Commissions ^q |
| | Frenzy Bonus ^{*q} | Premier Club Bonus ^{*q} |
| | Double-Frenzy Bonus ^{*qd} | Balanced Team Bonus ^q |
| | | Affiliate Pack Flag ^{*q} |
| | | Matching Commission ^q |
| | | Rank Advancement Rewards ^q |
| | | Second Tier Matching Commission ^q |
| | | Global Bonus Pool ^q |

* Explicitly requires personal purchase of an Affiliate Pack for eligibility

^q Requires “qualified” status for eligibility

^a Requires “active” status for eligibility

^d Requires auto-delivery for eligibility

26. As seen in Table 1, nearly all forms of financial compensation require an Affiliate to be “qualified,” meaning they must have:

- 1) a minimum of 120 points in personal volume per month, and
- 2) at least one “active” recruit on each of two teams (left and right).

To achieve 120 personal volume points in a month, one can personally purchase products worth 120 qualifying volume (QV) points (e.g., 2-pack of Vemma 2-ounce bottles for \$171 is 120QV) or have a minimum of 240 qualifying volume points purchased by his/her recruited Customers. One can also have some combination of these direct and indirect purchases. For the recruits to be considered “active,” the Customer or Affiliate must have a minimum of 60 personal volume points in a month. The recruit can achieve 60 personal volume points by personally purchasing products worth 60 qualifying volume points (e.g., 1-pack of Vemma 32oz bottles for \$74 is 60QV) that month, have a minimum of 120 qualifying volume points purchased by his/her personally enrolled Customers, or some combination.⁸ As stated above, Affiliates are encouraged to purchase product using auto-delivery (or “autoship”), as this establishes a monthly purchase that will continue automatically unless terminated and thus, ensures uninterrupted eligibility for compensation.

27. Before reviewing the forms of compensation, it is important to address the series of changes Vemma has made to its Compensation Plan over the last few years. Appendix D will present a summary of the changes made in a number of recent iterations but this report will focus on the most recent plan effective January 1, 2015. My analysis, along with statements from Vemma founder BK Boreyko, suggest that the plan and terminology changes have had no impact on the primary incentive structure embedded in the marketing program. Though certain key terms have changed and some adjustments have been made to bonus eligibility requirements, incentives are still aligned with recruitment and purchases, rather than retail sales based on market demand. Company materials also suggest that recent changes do not reflect significant change: “Vemma’s compensation plan won’t change; we’ll just describe it differently...” (Web Page Explaining Jan. 24 Terminology Change) and the suggested system for success remains the same.

28. In discussing the forms of compensation, I will begin with the sources of immediate income: the New Customer Bonus, Frenzy Bonus and Double Frenzy Bonus. All “active” participants are eligible for the New Customer Bonus and this bonus rewards the participant for the first purchase made by

⁸ If qualifying for the Platinum level or above (discussed further below), the requirements for “active” status are doubled (i.e., a minimum of 120 personal volume points).

a new recruit (e.g., \$10 payment when a recruit purchases a Vemma 1-pack; \$100 on the purchase of an Affiliate Pack if made within 60 days of enrollment). Frenzy and Double Frenzy Bonus eligibility requires a “qualified” status and the personal purchase of an Affiliate Pack. If eligible, the Frenzy Bonus will be paid if the Affiliate recruits 3 people in the same week that they personally enrolled, so long as those 3 recruits each have a minimum purchase of 120 QV within that week. Higher rewards are paid, in the form of the Double Frenzy Bonus, if each of those 3 recruits purchase an Affiliate Pack and sign up for monthly Auto-Delivery (minimum 120 points per month). This is the company’s advertised method of covering initial costs of participation, as the New Customer Bonus and Double Frenzy Bonus combined would pay \$700 in the first week of enrollment. Note that this requires an Affiliate Pack purchase by the initial Affiliate and the 3 new Affiliates he/she recruits, as well as monthly auto-delivery by those recruited.

29. While the immediate income is hailed as a way to offset initial expenses, Vemma portrays its Cycle Commissions as the primary path to long-term financial prosperity. Vemma’s description of its Compensation Plan at Vemma.com (Web Capture-www.vemma.com Opportunity Compensation Plan Basics) emphasizes the power of Cycle rewards. Videos describe cycle rewards as the primary source of long-term residual income that “has changed lives” (How Vemma Pays You – 2 & Go and How to Get Paid – Vemma Home Event videos).

30. This emphasis on Cycle Commissions is consistent with Vemma’s incentive structure as all forms of long-term compensation depend on the number of cycles generated. With training and bonuses emphasizing cycles, Affiliate behavior is expected to be aligned with cycle accumulation. Cycle Commissions are based on the two-team (binary) concept discussed in paragraph 5, above. The Affiliate “cycles” in a 4-week period each time there are 360 points on one team and 180 points on the other (left or right). The team with higher points is considered the “power” team while the other is termed the “profit” team. For example, the participant “cycles” 1 time and achieves Bronze rank if there are 360 points on the left (power) team and 180 points on the right (profit) team (e.g., \$444 in purchases via three 2-pack Vemma purchases on the left team and \$222 in purchases via three 1-pack Vemma purchases on the right team). The participant “cycles” 5 times and achieves Silver rank if there are $360 \times 5 = 1,800$ points on the power team and $180 \times 5 = 900$ points on the profit team (e.g., \$2,220 in purchases via fifteen 2-pack Vemma purchases on the power team and \$1,110 in purchases via fifteen 1-pack Vemma purchases on the profit team⁹). Approximately \$20 is earned per cycle.

Figure 1: Cycle Compensation Visual



⁹ This example does not include shipping cost or tax and does not assume auto-delivery.

31. The Compensation Plan provides suggested earnings from Cycle Commissions (see Figure 2 below). As an example, the Star Royal Ambassador level requires 4,000 cycles in a 4-week period (equivalent to \$2.664 million in Vemma 2-pack purchases). The 4,000 cycles yield approximately \$80,000 in cycle compensation for the Affiliate in that 4-week period. This is far from the end of the commissions based on these purchases, as all those above this Affiliate (in upline) and below (in downline) will similarly earn cycle rewards on these same purchases, depending on their position within the organization relative to person who made each purchase. There are no defined limits to the number of individuals who can be compensated based on an individual purchase - eligibility would depend on whether the purchase counts as QV (qualifying volume points) within an Affiliate's power or profit team.

Figure 2: Cycle Earnings Levels

The cycle earnings levels only apply to the Cycle Commission and do not affect any other areas of income in the **Vemma Compensation Plan**. Once the Affiliate reaches the maximum cycle level earnings on that position for four (4) consecutive weeks, the Affiliate will be given one (1) new position above his or her maxed position. That position will have the same earning level limit, unless the Affiliate rank advances to the higher rank, as specified below. Up to two (2) positions maximum are allowed per Affiliate, four (4) individual positions per married couple.

| Earnings Level up to:† | Affiliate Rank: |
|---|----------------------------|
| \$25,000 per week/\$1,300,000 USD per year | Affiliate—Royal Ambassador |
| \$30,000 per week/\$1,560,000 USD per year | Star Royal Ambassador |
| \$35,000 per week/\$1,820,000 USD per year | Pinnacle Leader |
| \$45,000 per week/\$2,340,000 USD per year | Star Pinnacle |
| \$50,000 per week/\$2,600,000USD per year | Royal Pinnacle |
| \$55,000 per week/ \$2,860,000 USD per year | Legend |

(<https://www.vemma.com/opportunity/compensation-plan-basics>, accessed 2/10/2015, downloaded embedded *Compensation Plan*)

32. Additional incentives directly tied to the number of cycles include: Rank Advancement Awards, Balanced Team Bonus, Balanced Team Bonus Affiliate Pack Flag, Premier Club Bonus, Matching Commission, Second Tier Matching Commission, and the Global Bonus Pool. All are dependent on maintaining a "qualified" status and specific payouts are based on the QV accumulated within the power and profit teams (i.e., based on number of cycles).

33. Rank Advancement Awards are a one-time bonus paid when an Affiliate achieves a new rank, as determined by the number of cycles in the 4-week Rank Advancement Period. In most cases, the new rank must be achieved for at least two consecutive 4-week periods in order to receive the Rank Advancement Award. For example, if an Affiliate has at least 20 cycles in February and in March, he/she would receive the Diamond Rank Advancement Award of \$500. For higher ranks, Presidential and above, the rank must be maintained for six consecutive 4-week periods. Rank Advancement Awards are as high as \$1 million for an Affiliate who reaches the rank of Legend (20,000 cycles in a 4-week period).

34. The Balanced Team Bonus is also accrued on top of cycle earnings but can be paid in every 4-week period. If, for example, an Affiliate has a minimum of 500QV on both the left and right teams in a 4-week period, he/she will be paid an extra \$100 for that period. If the Affiliate personally purchased an Affiliate Pack, the Affiliate Pack Flag pays the Balanced Team bonus at one higher level than would otherwise be earned for 90 days (e.g., would be paid \$200 in the 4-week period

rather than \$100). As volume rises and this bonus increases to \$400, the Affiliate is now considered a member of the “Premier Club.” The Premier Club bonus is now paid in cash. Suggested uses include leasing a luxury car or paying down college loan debt.¹⁰ Recall that, beyond minimum volume requirements, qualification for the Premier Club also includes a personal purchase of an Affiliate Pack.

35. Matching and 2nd Tier Matching Commissions activate when the Affiliate recruits and maintains additional active PEQs (or Personally Enrolled Qualifiers). The Matching Commission requires 4 active PEQs each month and, when activated, pays the Affiliate 10% of the PEQ’s cycle commissions. The Affiliate will earn approximately \$2 every time a PEQ has one cycle (i.e., your PEQ earns \$20 and you earn \$2 on a single PEQ cycle). The 2nd Tier Matching Commission requires 6 active PEQs and pays 10% one level further, so approximately \$2 every time a PEQ’s PEQ has one cycle.

36. The Global Pool Bonus is paid quarterly to those at Platinum level (50 cycles per 4-week period) and above. Payouts depend on the size of the pool and are based on 2.25% of overall Vemma sales.

37. Lastly, the Vemma Loyalty Program rewards purchase consistency by providing a free case of product in the seventh month if a participant has made purchases for six consecutive months (minimum 60QV/month over the six months). This free product does not constitute points, for purposes of bonus determination.

Limited Incentives for Retail Sales

38. While the company claims a new emphasis on customer acquisition, personal statements, company literature and the Compensation Plan minimize retail sales activity, whether through re-sale or through development of direct-sale customers. Instead, the company focuses its guidance on encouraging Affiliates to purchase product for the purposes of bonus qualification and recruit down-line Affiliates to do the same (duplication). This emphasis on a duplication approach, centered on recruitment and bonus-qualifying purchases, is demonstrated by Mr. Boreyko’s recent announcement of a new “2 & Go” program in the May 2015 Live Vemma Call (Big News From the May Vemma Call Live – Vemma News).¹¹ According to Boreyko, a new Affiliate will be able to earn \$320 in the first week with “Get 2 and Go Bronze” if he/she purchases an Affiliate Pack, sets up monthly auto-delivery and recruits 2 new Affiliates who take both of those same steps within 7 days. Now at Bronze, this participant can “Help 2 and Go Silver” by helping these 2 recruits to duplicate those actions (recruit 2 who purchase an Affiliate Pack and set up auto-delivery within 7 days) and earn an additional \$330 within the first rank advancement period. Now at Silver, this

¹⁰ Before 2015, Affiliates were required to take the Premier Club bonus in the form of college loan payments or a luxury car lease in order to obtain the full \$400 value, hence the frequent references to luxury cars in Vemma’s marketing materials. Affiliates who elected to receive cash received only \$200. Under the current compensation plan, Affiliates receive the full \$400 Premier Club bonus in cash.

¹¹ Additional changes to the Compensation Plan effective June 12, 2015 and mentioned in the May 2015 Live Call (Big News From the May Vemma Call Live – Vemma News) include the following: 1) only one Affiliate Pack will be available, priced at \$599 (a \$100 increase); 2) the New Customer Bonus on the Affiliate Pack will fall from \$100 to \$75; points on the Affiliate Pack will go from 250 to 500, advertised to increase cycles and rank advancements without additional enrollees; 4) Affiliate Pack purchase by recruits will now be required for the Frenzy Bonus (previously required only for the Double Frenzy); 5) the Frenzy bonus can now be achieved by enrolling 2, rather than 3, new Affiliates with an Affiliate Pack purchase (as mentioned in the “2 & Go” Program); 6) a new rank of Star Diamond is being introduced; and 7) a new Builder Bonus is being introduced which provides additional rewards to enrollees for rank advancements.

participant can “Teach 2 and Go Gold” by teaching enrollees to duplicate with their recruits, earning at least \$1650 within the first 2 rank advancement periods. Program visuals that provide detailed instructions (see Figures 3-6) are condensed and provided to new recruits as a simple one-page handout (Figure 7) that explains how to start the Vemma business. BK Boreyko, Tom Alkazin, and Ruth Elliot all describe this new program, and corresponding handout, as a powerful way to simplify and duplicate, creating a uniform approach to starting the business. Note that all instructions center on three actions: 1) Buy an Affiliate Pack, 2) Start your personal monthly 120 QV auto-delivery, 3) recruit and train to bring in others who will do steps 1 and 2.

Figure 3: “2 & Go” Program – Day 1 Instructions

DAY 1

JOIN VEMMA

IT ALL STARTS WITH YOU

JOIN WITH AN AFFILIATE STARTER PACK AND SET UP YOUR 120 QV MONTHLY AUTO-DELIVERY. (YOUR AUTO-DELIVERY WILL SHIP THE FOLLOWING MONTH.)

IT JUST TAKES TWO & GO TO ACHIEVE...

- BRONZE IN 7 DAYS...**
- SILVER IN 30 DAYS...**
- GOLD IN 60 DAYS!**

This is your simple pathway to earning up to **\$1,650 in bonuses*** and commissions in your first 60 days to cover the cost of your Affiliate Starter Pack and get you profitable in your new business!*

1 THE KEYS TO TWO & GO:

- ENROLL WITH THE AFFILIATE STARTER PACK***
 This 500 QV Pack unlocks your business potential, qualifies you for the Premier Club Bonus and preps you for Two & Go. It also includes all the products you need to share and consume so you can experience Vemma for yourself and pass it along to others. Like any business, we love customers, but we also love to expand our affiliate base so they can reach more customers.
- START ON A MONTHLY, 120 QV AUTO-DELIVERY ORDER***
 Never miss a day of products with this super convenient program; enjoy your products at the lowest possible price (save 10%) and ensure you are always commission-eligible so you never miss a Vemma bonus check.
- PRACTICE BALANCED BUILDING**
 To maximize your bonus potential, it's important to place your new Affiliates on both your Left and your Right Teams for a balanced business. This readies you for the possibility of true residual income and the Balanced Team Bonuses at the Silver and Gold ranks. The customers you develop can be placed on either team.

Figure 4: "Get Two and Go Bronze" Instructions



Figure 5: "Help Two and Go Silver" Instructions

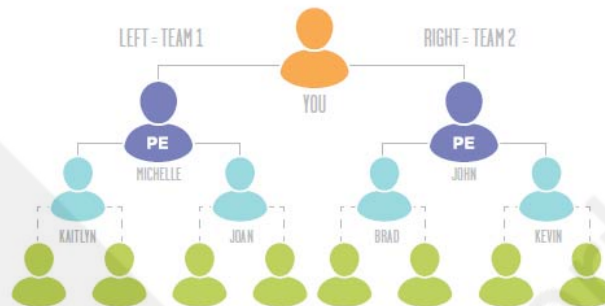


Figure 6: "Teach Two and Go Gold" Instructions

HERE'S HOW IT WORKS:

EXAMPLE TEACH TWO & GO GOLD

- Michelle now teaches Kaitlyn and Joan to help two new Affiliates join, one on their LEFT and one on their RIGHT, with the Affiliate Starter Pack and set up their 120 QV Auto-delivery orders.
- John teaches Brad and Kevin to help two new Affiliates join, one on their LEFT and one on their RIGHT, with the Affiliate Starter Pack and set up their 120 QV Auto-delivery orders.
- Michelle and John both become Silver and earn the Step 2 bonuses.



EXAMPLE REPEAT - GET TWO MORE

- In one commission week, you personally enroll Carey on your LEFT and Mike on your RIGHT
- Carey and Mike each purchase an Affiliate Starter Pack and sets up their monthly, 120 QV Auto-delivery order.

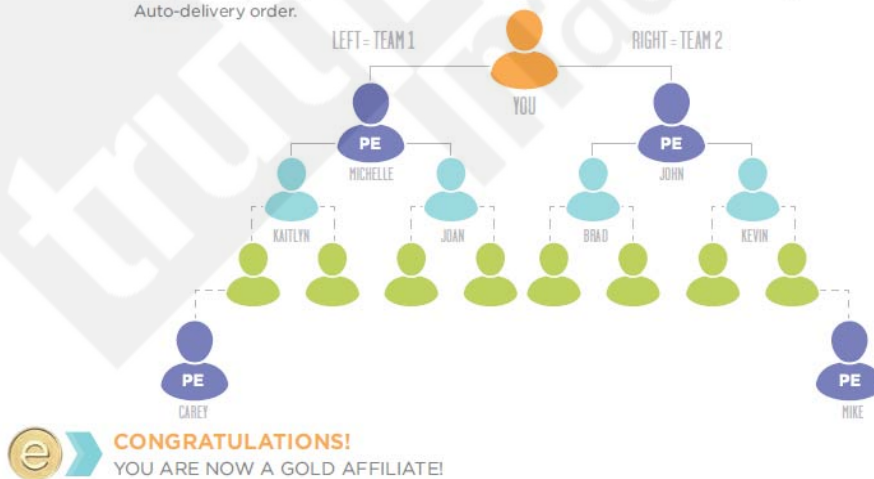
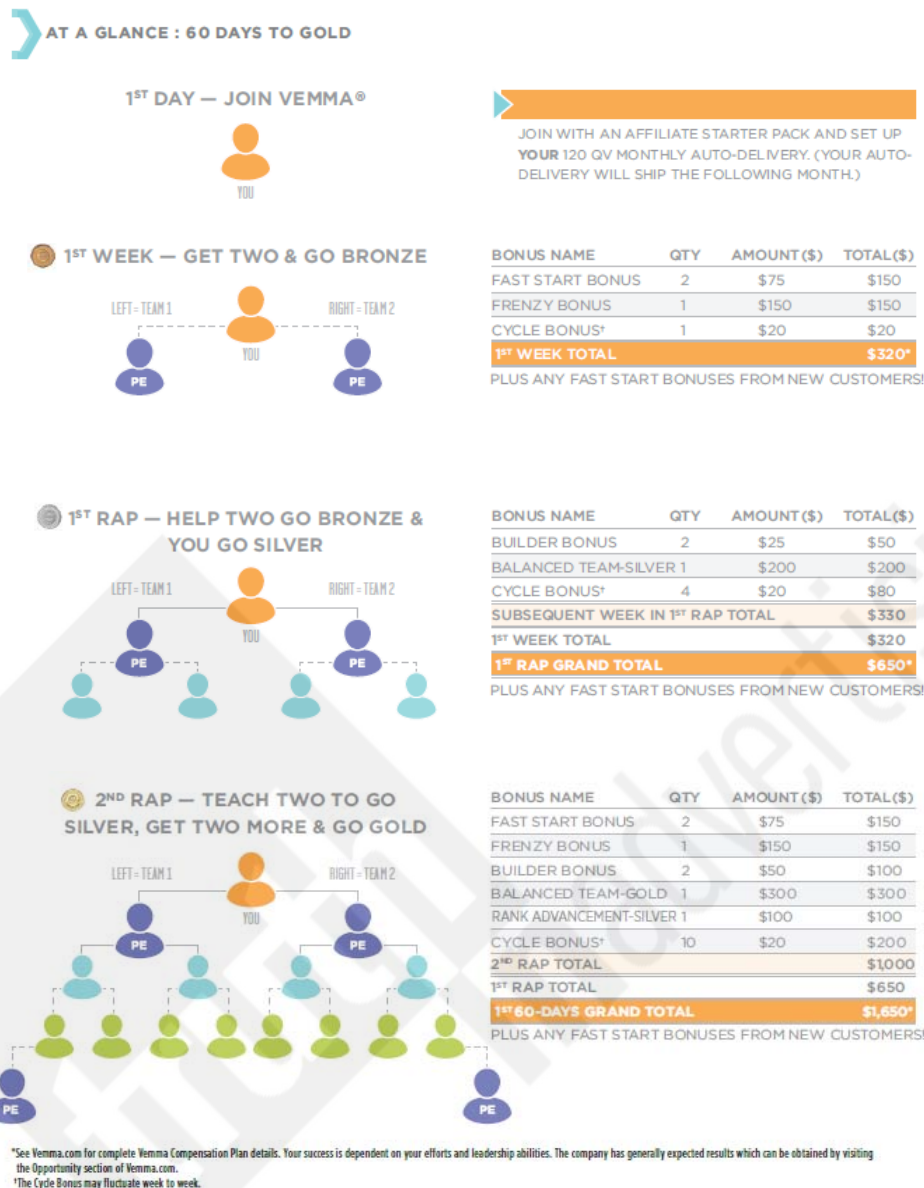


Figure 7: “2 & Go” Program – At a Glance (One Page Handout)



39. If new entrants follow the aforementioned system of duplication, suggested by the company's founder and consistently echoed by top Vemma distributors, firm growth will rest entirely on ongoing recruitment and bonus-qualifying purchases. Moneys paid, derived from behavior that follows this suggested pattern of growth, are not significantly connected to sales to ultimate users and are, instead, effectively rewards for recruitment.

40. Not only do Vemma's materials heavily emphasize recruitment, its Compensation Plan incentivizes recruitment over retail sales. We can contrast the earnings made through recruitment with the earnings associated with a retail sale. To further explore the incentives associated with recruitment versus retailing, we can contrast the earnings made through recruitment with the

earnings associated with retail sales. If an Affiliate sells from personal inventory, he/she might be expected to buy with auto-delivery at the 10% discount and sell for full retail price. To match the \$700 available in immediate income from recruitment (through New Customer and Double Frenzy Bonuses described in paragraph 28), the Affiliate would need to sell \$7000 worth of personal inventory to earn \$700 through retail sales. If, on the other hand, the Affiliate seeks out customers who would buy directly through the Vemma website, a higher level of sales would be required to achieve the \$700. If a retail customer purchases a 1-pack of Vemma for \$74 (or \$67 with auto-delivery), this contributes 60QV toward the 540QV needed for a cycle. This means the customer's retail purchase corresponds with 1/9 of a cycle, or \$2.22 in potential cycle earnings.¹² To earn \$700, the Affiliate would need to sell 315 Vemma 1-packs for a total retail value of over \$21,000 (incorporating 10% auto-delivery discount). The differential effort supports an expectation that the Compensation Plan drives recruitment over retailing.

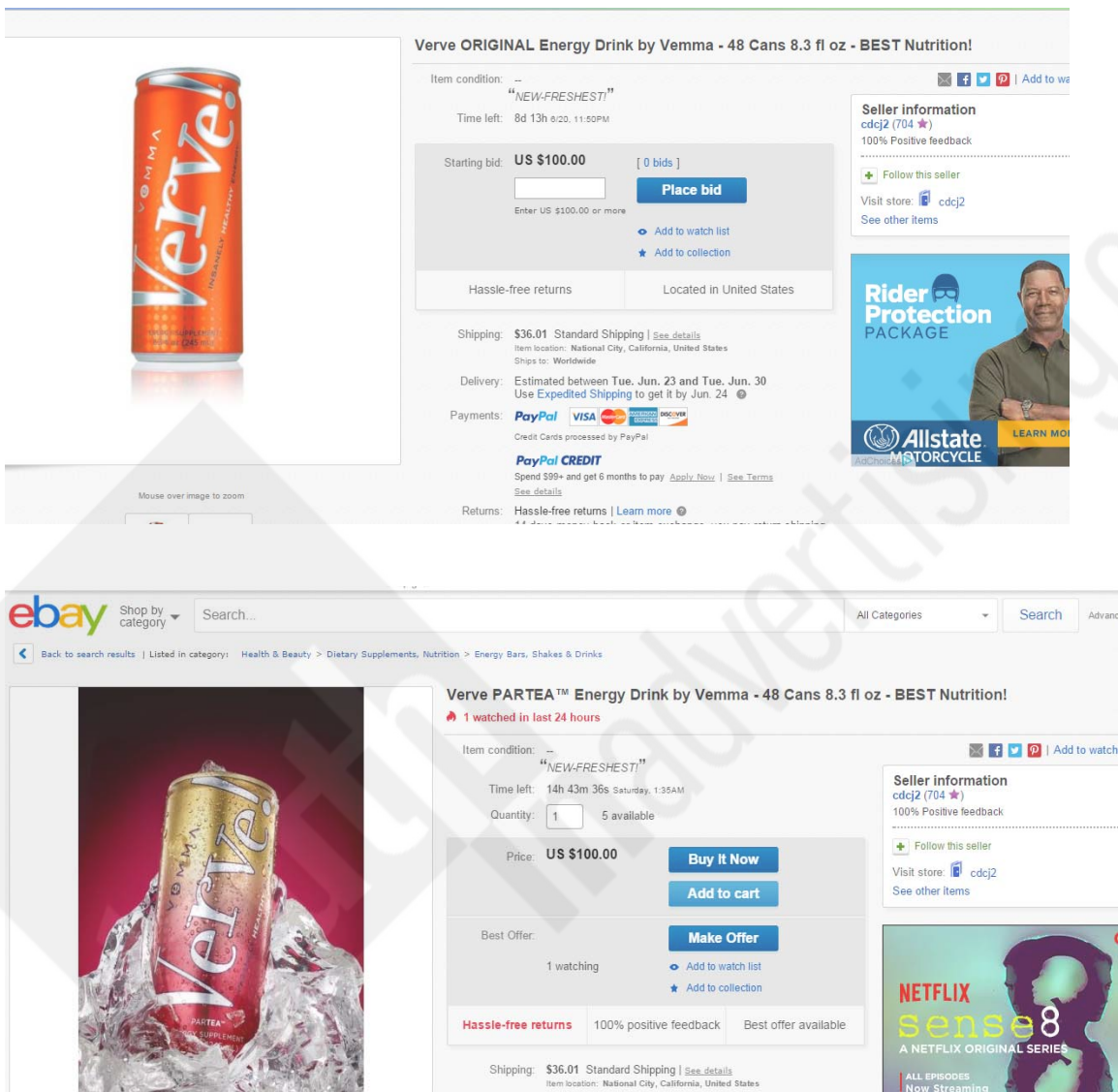
41. Affiliate training also discourages retail sales. Ruth Elliot (in Why a Game Plan with Ruth Elliot on Vimeo video) contrasts a retail sales approach with a system of duplication as articulated in her "Take a Shot - Tell Two" system, described in paragraph 6. She suggests that the duplication approach is analogous to a penny doubled each day while the retail sales approach is analogous to a penny added each day. The results are dramatically different and the contrast is clearly meant to direct efforts to recruitment over retail selling. With a penny added each day, the hypothetical retail seller ends a 30 day period with 30 cents while the "duplicator" ends that period with over \$5 million. She argues that, if building the business on product sales, you are "missing half of the message." In a call between David Treat and undercover Affiliate Matthew Thacker, Mr. Treat provides upline advice that specifically discourages retail sales. Asked about how to sell the product, Mr. Treat responds that he didn't make much money selling the product and doesn't recommend that as a strategy. He also speaks of advice he received from Matt Morrow, saying "And he [Morrow] said, he goes, I don't move much product at all. He's like, in fact, I don't really ever move any product myself." Treat continues, "And he says, so, what has to happen is you have to forget about traditional retailing and about you moving a lot of product." Treat then provides his own advice, suggesting that certain Vemma products are priced above the market so are difficult to sell without the income opportunity. He also mentions that you might find some who aren't interested in the income opportunity "because they're, you know, a bazillionaire or whatever" so you can bring them on as a customer as a fallback. Treat continues, "We're not really in the business of selling anything. We're in the business of showing people that if they shift existing behavior that some incredible results can show up."

42. In addition to incentivizing Affiliate recruitment over retail sales and discouraging retail sales in Affiliate training, the Vemma Affiliate Agreement Terms and Conditions (effective January 1, 2015) place significant limitations on Affiliates' ability to re-sell the products to ultimate users. It prohibits sales in business/retail outlets, offices, online outlets (e.g., ebay, Craigslist, etc.), or home shopping networks. In videos of Vemma meetings, little time is devoted to helping distributors learn to retail the product to those outside the organization. Pricing issues also make re-selling to retail customers difficult. The images below demonstrate the challenge in finding retail customers who will pay above the distributor's cost. Regarding the first example in Figure 8, a 2-pack of Verve (48 cans) is offered for \$145 (including 10% auto-delivery discount) + shipping when purchased from Vemma.com while the same product retails for \$100 + \$36 shipping on ebay.com (Buy it Now price, 2016 expiration). Assuming a conservative shipping cost of \$15 for the 2-pack product purchased through Vemma, this translates to a price of \$3.33/can from Vemma and a price of \$2.83/can from eBay (a minimum 18% price premium, even when the ebay product sells at the full

¹² Assuming \$20 per cycle.

Buy it Now price and when Vemma product is purchased under auto-delivery). The second example shows the identical pricing difference for Vemma's PARTEA product. This pricing issue would make even direct, authorized sales of Vemma products to ultimate users challenging.

Figure 8: ebay.com Pricing for Vemma Products



(eBay.com, captured on 6/12/2015)

43. Evidence of limited sales to Customers comes from the recent discontinuation of the Customer Referral Program. This program, known as the “3 for Free Program,” allowed Customers or Affiliates to earn free product if they maintained a personal auto-delivery purchase and had 3 buying Customers in the month (specific details provided in Appendix D). In the First Vemma Call Live of 2015, Mr. Boreyko stated that the Customer Referral Program was discontinued because fewer than 1,700 members qualified for free product. The Vemma Loyalty Program, which replaces “3 for Free,” can be satisfied solely with personal purchases. The Vemma website indicates the purpose of the new program as follows: “The new Vemma Loyalty Program focuses on rewarding

you for the right actions that fuel this business: consistent orders and Auto-delivery.” (Web Capture-www.vemma.com Opportunity Compensation Plan Basics). These two actions can be satisfied without seeking retail sales.

Illustration of a Downline and Related Earnings

44. To demonstrate the implications of Vemma’s business model, I will illustrate a scenario in which each entrant follows the promoted system for success. Each entrant is assumed to purchase an Affiliate Pack, make personal purchases of 120QV per month (for every month after the month of enrollment), and recruit two individuals who do the same. Assume that the first entrant is Jane, where Jane recruits Bill and Tom within the first month. Further assume that Bill and Tom then each recruit 2 individuals within a month after their enrollment, those 4 individuals recruit 8 within a month, and so on. Figure 9 depicts Jane’s growing 2-team organization.

Figure 9: Downline Illustration

| | | | | | | | | | | | | | | | | |
|--------|-------|----|-------|----|--------|----|-----|----|------|----|-----|----|-------|----|-----|----|
| Period | Jane | | | | | | | | | | | | | | | |
| 0 | | | | | | | | | | | | | | | | |
| 1 | Bill | | | | | | | | Tom | | | | | | | |
| 2 | Susan | | | | Dave | | | | Walt | | | | Kelly | | | |
| 3 | Cathy | | Laura | | Amanda | | Joe | | Matt | | Eli | | Rick | | Zoe | |
| 4 | C1 | C2 | L1 | L2 | A1 | A2 | J1 | J2 | M1 | M2 | E1 | E2 | R1 | R2 | Z1 | Z2 |
| 5 | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX | XX |

45. Table 2 depicts the advertised outcomes for Jane after 13 months of ongoing recruitment. This scenario is modeled after the “Take a Shot - Tell Two” approach, promoted in Ruth Elliot’s Success Made Simple document and in the Vemma 13 Month Cycle Plan video. As described in paragraphs 6 and 7, this illustration is consistent with the advice the company offers in the vast majority of the training materials. As in the Vemma 13 Month Cycle Plan video, I am treating months as equivalent to 4-week Rank Advancement Periods. Table 2 follows the 13 Month Cycle Plan video and assumes that the first Affiliate (Jane) purchases an Affiliate Pack and initiates 120QV monthly auto-delivery while all subsequent recruits imitate the 120QV/month auto-delivery but do not purchase an Affiliate Pack.¹³ Note that this illustration includes Cycle earnings but also includes Rank Advancement Awards, New Customer Bonus and Balanced Team & Premier Club Bonus. This scenario demonstrates that Jane experiences a cumulative loss for multiple months, until month 6, at which time gains overcome the cumulative loss experienced from prior months.¹⁴

¹³ Table E1 in Appendix E also depicts a 13-month compensation scenario but assumes that all recruits purchase an Affiliate Pack, as recommended in the “2& Go” (discussed further in paragraph 38) and other company materials (see discussion in paragraphs 21-22).

¹⁴ The net profit calculations in these illustrations do not include possible gains from resale of product from personal inventory (likely to be limited, see paragraphs 40-42) or additional expenses such as training, tools, travel, or opportunity cost of time which would further aggravate losses. For example, brochures are \$0.80 each and Action Plan handouts are \$2.75 each. Such tools are widely advertised as necessary for success and Vemma’s Terms and Conditions bar Affiliates from preparing their own selling tools.

Table 2: 13-Month Compensation Scenario with Monthly Auto-delivery (2-recruit duplication occurs within the enrollment month, without Affiliate Pack purchases by recruits)¹⁵

| Month | New Recruits | Cumulative Recruits | 120QV orders in month | 60QV (initial orders) in month | Total QV in month | Cycles in month | Cycle Payout in month | Left-over QV | New Customer Bonus | Rank | | | Total Earnings in Month | Monthly Expenses | Jane's Net Profit in Month | Jane's Cumulative Net Profit |
|-------|--------------|---------------------|-----------------------|--------------------------------|-------------------|-----------------|-----------------------|--------------|--------------------|--------------------|--------------------|-------|-------------------------|------------------|----------------------------|------------------------------|
| | | | | | | | | | | Advance-ment Award | Premier Club Bonus | Bonus | | | | |
| 0 | - | - | - | - | - | - | \$0 | - | \$0 | \$0 | \$0 | \$0 | \$0 | \$532 | -\$532 | -\$532 |
| 1 | 2 | 2 | - | 120 | 120 | - | \$0 | 120 | \$40 | \$0 | \$0 | \$0 | \$40 | \$150 | -\$110 | -\$642 |
| 2 | 4 | 6 | 240 | 240 | 600 | 1 | \$22 | 60 | \$0 | \$0 | \$0 | \$0 | \$22 | \$150 | -\$128 | -\$770 |
| 3 | 8 | 14 | 720 | 480 | 1,260 | 2 | \$44 | 180 | \$0 | \$0 | \$100 | \$100 | \$144 | \$150 | -\$6 | -\$776 |
| 4 | 16 | 30 | 1,680 | 960 | 2,820 | 5 | \$110 | 120 | \$0 | \$0 | \$200 | \$200 | \$310 | \$150 | \$160 | -\$616 |
| 5 | 32 | 62 | 3,600 | 1,920 | 5,640 | 10 | \$220 | 240 | \$0 | \$100 | \$300 | \$300 | \$620 | \$150 | \$470 | -\$146 |
| 6 | 64 | 126 | 7,440 | 3,840 | 11,520 | 21 | \$462 | 180 | \$0 | \$250 | \$400 | \$400 | \$1,112 | \$150 | \$962 | \$816 |
| 7 | 128 | 254 | 15,120 | 7,680 | 22,980 | 43 | \$946 | 0 | \$0 | \$500 | \$400 | \$400 | \$1,846 | \$150 | \$1,696 | \$2,512 |
| 8 | 256 | 510 | 30,480 | 15,360 | 45,840 | 85 | \$1,870 | 0 | \$0 | \$0 | \$400 | \$400 | \$2,270 | \$150 | \$2,120 | \$4,632 |
| 9 | 512 | 1,022 | 61,200 | 30,720 | 91,920 | 170 | \$3,740 | 120 | \$0 | \$1,750 | \$400 | \$400 | \$5,890 | \$150 | \$5,740 | \$10,372 |
| 10 | 1,024 | 2,046 | 122,640 | 61,440 | 184,200 | 341 | \$7,502 | 60 | \$0 | \$1,500 | \$400 | \$400 | \$9,402 | \$150 | \$9,252 | \$19,624 |
| 11 | 2,048 | 4,094 | 245,520 | 122,880 | 368,460 | 682 | \$15,004 | 180 | \$0 | \$2,000 | \$400 | \$400 | \$17,404 | \$150 | \$17,254 | \$36,878 |
| 12 | 4,096 | 8,190 | 491,280 | 245,760 | 737,220 | 1,365 | \$30,030 | 120 | \$0 | \$0 | \$400 | \$400 | \$30,430 | \$150 | \$30,280 | \$67,158 |
| 13 | 8,192 | 16,382 | 982,800 | 491,520 | 1,474,440 | 2,730 | \$60,060 | 240 | \$0 | \$0 | \$400 | \$400 | \$60,460 | \$150 | \$60,310 | \$127,468 |

¹⁵ Model assumptions include the following:

- the first participant (Jane) is an Affiliate who purchases the Affiliate Pack (with approximately \$32 in shipping cost), buys 120 QV monthly (Vemma 2-pack, with 10% discount for auto-delivery and approximately \$15 in shipping costs), and all recruits purchase 120 QV per month (following the illustration in the "Vemma 13 Month Cycle Plan" video which does not address subsequent Affiliate Packs),
- personally purchased product is not included in QV calculations for cycle bonus (following the illustration in the "Vemma 13 Month Cycle Plan" video and description in compensation plan),
- cycle earnings are \$22/cycle (following the illustration in the "Vemma 13 Month Cycle Plan" video),
- recruitment is not assumed to occur within the week of enrollment, meaning Jane is not eligible for Frenzy Bonuses,
- it is assumed that PEQ's (Personally Enrolled Qualifiers) do not exceed 2, meaning Jane is not eligible for Matching Bonuses,
- the Vemma Loyalty Program is not included, though this constitutes a very small benefit in the form of free product every 7th month,
- the Balanced Team Bonus Affiliate Pack Flag is not included, though this would have no significant impact on these results,
- the Global Pool Bonus was not included as the payout size varies based on Pool size - note that eligibility would not begin until Platinum rank, and
- Balanced Team and Premier Club bonus amounts are assumed paid in the first Rank Advancement Period that the rank is achieved.

46. It can be assumed that members of Jane's downline will also not reach profitability for many months. Accordingly, the overwhelming majority of participants are in a loss position at any point in the life of the organization, since participants in the lowest levels have yet to reach a positive cumulative net profit. Though company promotional materials use this illustration to show that a person can receive residual income of \$60,000 per month by month 13, the materials do not disclose that, at any given point in time, the overwhelming majority of participants will not have achieved this result and will have actually lost money.¹⁶

47. The poor results for most participants, as illustrated in Tables 2, E1 and E2 (in Appendix E), are predictable because the Cycle Commission's incentives are based upon recruitment into a binary matrix. Table C1 in Appendix C contains a mathematical analysis of a generic binary progression, which is applicable to any binary compensation plan. Table C1 shows that the percent of Affiliates in the bottom 5 levels of a binary structure converges to 96.9% after 10 periods. Given the estimated expenses in Table 2, which prevent participants from acquiring cumulative net profit until month 6, this means that at any time in the life of the organization a minimum of nearly 97% of participants will need additional recruitment to cover personal investments. Additional recruitment will be increasingly difficult to achieve as cumulative recruits have already grown exponentially. It is important to stress that I am not contending that all binary compensation plans are inherently deceptive or that any MLM that uses such a plan is necessarily a pyramid scheme. A binary compensation plan that sufficiently emphasizes retail sales may not be a pyramid. Tables 2, C1, E1 and E2 assume no retail sales and illustrate the effects on participants when compensation is based solely on recruitment.

48. It should be noted that Tables 2, C1, E1 and E2 are all theoretical models and do not determine how the program actually operates in practice. A variety of factors may affect the actual results. For example, some participants may recruit more than two new participants and others may recruit none and drop out of the program. However, it should be noted that Vemma's 2013 and 2014 Income Disclosures (discussed in paragraphs 59-61, *infra*), which show that the majority even of Active Affiliates made minimal income, are generally consistent with the predicted results from these models. The models illustrate that the structure of the program itself predictably leads to poor results for the vast majority of participants, regardless of accidental or external factors. While many new businesses fail because of adverse business conditions, poor management, bad luck, or any number of other reasons, with this type of program, failure for most participants is inherent in the system. These models provide a useful economic context to explain why courts have condemned pyramid schemes.

49. Vemma's claims that substantial wealth is available for participants are deceptive. This is true whether the representations involve specific income claims (e.g. \$ 60,000 in residual income), or are more general (e.g. the "soda machine" analogy, or claims that Vemma can provide retirement income). The pay plan depends on continuous recruitment, which results in the vast majority of participants not having sufficient "downline" activity to make any significant amount of money. Vemma's 2013 and 2014 Disclosure Statements (discussed below) confirm that while it is possible for some participants to make large amounts of money, the vast majority do not.

¹⁶ Vemma advertises the New Customer Bonus and the Frenzy Bonus as the source of immediate income that can offset initial investments. For purposes of comparison, Table E2 in Appendix E depicts a 13-week scenario where Affiliates would recruit 3 new Affiliates within the week of their enrollment, thereby qualifying for a larger New Customer Bonus and the Double Frenzy Bonus. This illustration does, in fact, show that Jane covers her initial investment after the first week through rapid recruitment activity. However, we see that the number of recruits needed to satisfy this promise is incredibly high – nearly 2.4 million recruits needed within only 13 weeks.

50. It is clear from the illustrations set forth above that earnings received are rewards for recruitment, rather than rewards for sales to ultimate users, and that an equivalent promise cannot be made and satisfied for each new Vemma Affiliate given the dramatic exponential recruitment required. The ability for the most recent Affiliates to reach a positive cumulative net profit relies upon an ongoing and consistent ability to recruit new Vemma Affiliates. Returning to the economic definition of a pyramid scheme, the Vemma business model, marketing materials, and Compensation Plan do appear to create a perpetual recruitment chain that dooms the vast majority of participants to financial loss. As demonstrated, the business model requires ongoing recruitment as new entrants must recruit others in order to cover their own personal investment. In terms of the Koscot test, I conclude from my analysis that Vemma's business model and compensation plan create a system that permits participants to receive rewards that are unrelated to actual sales to ultimate users. I also find that Vemma's program, including its marketing, encourages and incentivizes participants to seek rewards through recruitment rather than sales of product to ultimate users.

Safeguards

51. Having found that Vemma's program grants rewards that are unrelated to actual sales to ultimate users, and encourages and incentivizes participants to seek those rewards, I next consider whether the company has "safeguard" policies and procedures that are sufficient to ensure that adequate retail sales to ultimate users exist and inventory loading¹⁷ is prevented. As noted in Omnitrition (1996): "Where, as here, a distribution program appears to meet the Koscot definition of a pyramid scheme, there must be evidence that the program's safeguards are enforced and actually serve to deter inventory loading and encourage retail sales." Such safeguards are necessary, as a structure with insufficient retail sales will inevitably generate a pyramid scheme that relies on ongoing recruitment to fund commission payments, matching the general economic characterization of a scheme described in paragraph 17. As established in paragraphs 19-20, the Koscot test also hinges on the existence of significant sales to ultimate users. In Amway (1975), the FTC found that Amway was not operating a pyramid scheme because it had adopted and enforced certain procedures to prevent inventory loading and to insure that actual retail sales existed. As noted in Omnitrition (1996), the safeguard "policies adopted by Amway were as follows: (1) participants were required to buy back from any person they recruited any saleable, unsold inventory upon the recruit's leaving Amway, (2) every participant was required to sell at wholesale or retail at least 70% of the products bought in a given month in order to receive a bonus for that month, and (3) in order to receive a bonus in a month, each participant was required to submit proof of retail sales made to ten different consumers." These safeguards must be stated, enforced, and effective.

52. In the Amway case, the company's retail sales were in the form of re-sales by distributors. In Vemma's model, most retail sales outside the organization will likely not come from Affiliates' inventory, but will be in the form of direct sales to non-Affiliates ("Customers"), induced by and credited to Affiliates.¹⁸ Because of this difference in business models, an effective Amway-type safeguard for Vemma may look slightly different than the specific rules in Amway. However, the objective would be the same—to encourage sales to ultimate users who purchase for the purpose of personal consumption. I see no evidence of any safeguards in place that would be effective to deter inventory loading and encourage retail sales to ultimate users.

¹⁷ Keep and Vander Nat (2014) define inventory loading as "purchases of inventory just to meet volume targets that grant multilevel rewards." See footnote 6 for full citation.

¹⁸ Sales to Affiliates for personal consumption are addressed in paragraphs 56-57, below.

53. Vemma has a 70% rule within its “Vemma Affiliate Agreement - Terms and Conditions” document. It states, “Placing a new order is your certification that 70% of the products previously purchased have been sold to or consumed by end users.” While it warns that the company will “call on random orders to verify that the products have been consumed or sold,” this policy depends on self-verification and there are no explicit sanctions for violation. Even if Vemma were to take steps to verify this implied certification, presumably an Affiliate could meet the standard by consuming the product personally, even if the purchase was motivated by the business opportunity. For this reason, even if enforced, this rule would not be effective to encourage retail sales to non-Affiliates or other ultimate users (see discussion of internal consumption in paragraph 56, *infra*). Vemma also has no Amway-like “10 customer rule” or similar policy requiring Affiliates to prove that a substantial portion of the product purchases credited to the Affiliate were made by non-Affiliates for the purposes of personal consumption. Training and promotion materials, including the new “2 and Go” program, do not incentivize or encourage retail sales to non-Affiliates and, in some cases, such sales are explicitly discouraged (see further discussion in paragraph 41).

54. Vemma does have a return policy but the company requires all returns to occur within 30 days of purchase (Affiliate Agreement - Terms and Conditions, dated June 12, 2015). There is an additional 1-year return policy for Affiliates who leave the business. Ability to return is limited, however, by potential expiration of product and, more significantly, by the 70% certification assumed in every Affiliate purchase. If the purchase itself certifies that 70% will be sold to or consumed by an end-user, ability to return is assumed to be limited by that certification. Returns also reverse any bonus payments based on the returned purchase and there may be upline pressure to limit returns.

55. To summarize, there is no evidence that Vemma has enforced and effective safeguards that would ensure sufficient sales to ultimate users and prevent inventory loading. The absence of enforced and effective safeguards compounds an existing problem within the Compensation Plan, namely that compensation is based on purchase volume, regardless of whether the purchases relate to retail sales to ultimate users. By encouraging participants through its marketing materials to purchase product for the purposes of bonus eligibility, and by basing its compensation on purchase volume, Vemma has created a system that incentivizes inventory loading.

Sales to Affiliates for personal consumption

56. It is possible that Vemma Affiliates sometimes buy products for the purposes of personal consumption. In *Burn Lounge*, the 9th Circuit Court noted that distributors could be “ultimate users” for purposes of the Koscot test under a narrow set of circumstances; namely, if they purchased the products for personal consumption based on consumer demand, not primarily for the purpose of participating fully in the rewards under the compensation plan for the business opportunity. I consider it unlikely that many Affiliates would qualify as “ultimate users” under *Burn Lounge* given the criteria.

57. Vemma’s marketing materials specifically encourage Affiliates to purchase product to maintain eligibility for rewards and to use as samples in connection with recruitment, and Vemma’s compensation plan strongly incentivizes this behavior. People who are interested in purchasing Vemma for personal consumption (including Affiliates) can obtain it cheaper from alternative outlets (see discussion in para 42, above). Affiliate status does not appear to entitle purchasers to any product discounts that are not available to Customers, so purchasers have no incentive to become Affiliates simply to obtain product. As discussed below, the Italian Competition and Markets Authority, analyzing Vemma’s very similar Italian program, found that 80% of Vemma’s revenue came from Affiliate Pack and auto-ship sales, which are best

viewed as expenses for the business opportunity and are represented as such by Boreyko and other top Affiliates (see paragraphs 22-24). Any purchases by Vemma Affiliates for the purposes of internal consumption are likely incidental to the main motivation of maintaining eligibility for rewards.

Data from actual operations

58. At this time, the available evidence about how the Vemma program works in practice comes from two sources: Vemma's Disclosure Statements from 2013 and 2014, and findings by the Italian Competition and Markets Authority, which investigated a very similar Vemma program in Italy. The information from these sources is consistent with my finding that Vemma likely operates as a pyramid scheme.

A. US Disclosure Statement

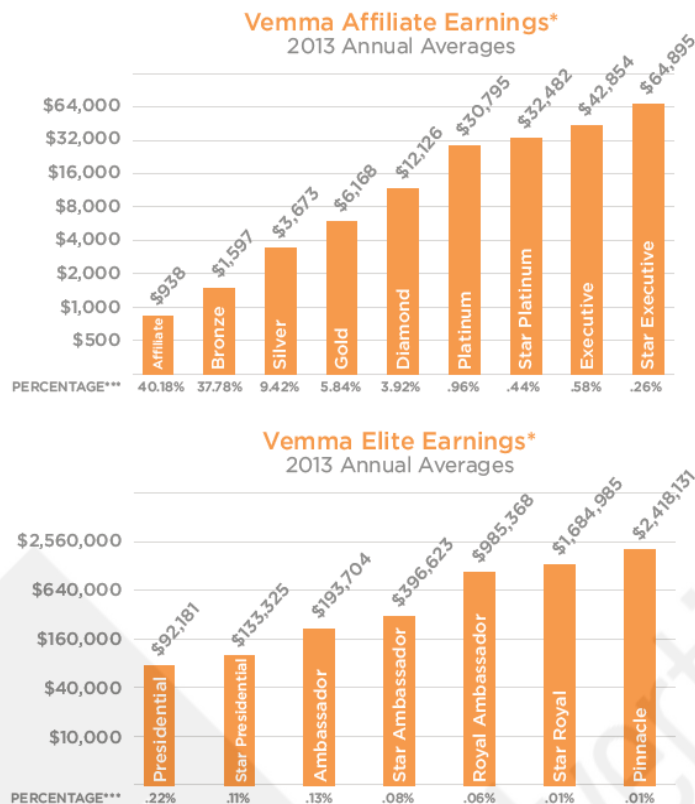
59. The 2013 U.S. Disclosure Statement showed that most participants achieved poor results, as would be expected based on the theoretical models previously discussed. The Statement shows that 78% of active Affiliates (participants who maintained a minimum of 60 PV points per month and purchased an Affiliate Pack or enrolled a Customer/Affiliate) received gross compensation of less than \$1,600 in 2013, or less than \$133 per month. Graphs from the disclosure are represented below in Figure 10. The Statement likely understates losses by participants by excluding all participants who were not considered "active" (did not maintain 60PV per month). Also, the Statement does not factor in expenses associated with maintaining bonus eligibility (or any other costs of doing business), anticipated to be at least $\$532 + \$150 \times 12 = \$2,332$ for the year, if it is assumed that all active participants were maintaining qualified status.¹⁹ This means that, at a minimum, 78% of participants in 2013 who pursued the business opportunity experienced a net loss if all were maintaining qualified status. If the participants maintained only active (but not qualified) status, minimum annual expenses would be $\$532 + \$75 \times 12 = \$1,432$. This means that the 40% in Affiliate status would have a negative net profit and the 38% in Bronze would have a potential annual net profit of \$165. It seems unlikely that participants would incur only the expenses associated with "active status," since under Vemma's compensation plan participants cannot rank advance or earn cycle-related income with "active" status.

60. While the 2013 disclosure reports 246,388 active Customers (as compared to 105,250 active Affiliates), the company apparently assumes that all Customers were not interested in the business opportunity.²⁰ It seems far more likely, given Vemma's marketing and the above discussion of the incentive structure, that many, if not most, of these individuals were interested in the business opportunity but chose not to purchase an Affiliate Pack and were unable to recruit. In other words, they are best viewed as distributors who were unsuccessful in the business opportunity, but have been redefined by Vemma as Customers.

¹⁹ The annual expense calculations in this paragraph assume that it is the first year of the Affiliate's participation in Vemma, as the calculations include the one-time purchase of an Affiliate Pack. These expenses theoretically could be offset by profit from reselling personal inventory but this is likely to be a very small offset, if any (see discussion of retail selling in paragraphs 38-43).

²⁰ The company recently stated that 64% of recruits are customers (in Vemma Response to CBS 5).

Figure 10: U.S. Average Affiliate Earnings in 2013



61. Vemma's 2014 Income Disclosure outcomes²¹ (depicted in Figures 11 and 12) are similar to those in 2013, though somewhat worse for low-level participants. In the U.S, a minimum of 79% would be expected to have negative net profit, given average earnings of \$1,232 or less. Worldwide, a minimum of 80.2% of participants would be expected to have a negative net profit, given annual earnings for Bronze and below are \$1,212 or less, again assuming that participants were maintaining qualified status.

62. As discussed in paragraph 18, above, pyramid schemes are often characterized by a constant churning of the base, as unsuccessful participants at the lowest level drop out and are replaced by new recruits. Company statements provide data that indicate Vemma is experiencing a high drop-out rate. While the 2013 disclosure reports 105,250 Affiliates, the Vemma Response to CBS 5 reports 145,348 Affiliates (document created in May, 2015). If we assume that the 2013 disclosure number represents the number of Affiliates at the end of 2013, these numbers suggest a net increase of 40,098 Affiliates over approximately 16 months. Boreyko has stated that Vemma recruits between 28,000 and 30,000 each month, translating to an estimated 464,000 people over a 16-month period (in BK's Blog CEO of Vemma Nutritional Company Speaks on Why to Join Vemma audio). Even if it is assumed that that a substantial number of the over 450,000 new participants Vemma claims to have enrolled in the past 16 months are properly defined as customers, the

²¹ While not explicitly stated, it is assumed that the 2014 disclosure continues to depict only "active" participants given the similarity between the 2013 and 2014 disclosure percentages.

number of new Affiliates recruited would be substantially greater than the stated 45,000 net increase in Affiliates. This indicates that substantial numbers of affiliates have dropped out during this period. Factoring in dropouts, participants who fail to maintain active status, and customers who are really failed Affiliates, I believe that the true outcomes are substantially worse than even the dismal results depicted by Vemma's 2013 and 2014 Income Disclosures. The data from the Italian investigation (discussed below), which showed that only 27 percent of Italian distributors were considered "active," supports this conclusion. Internal data would support a more thorough analysis of participant outcomes and would be useful in calculating the full extent of the consumer loss caused by Vemma's program.

Figure 11: U.S. Average Affiliate Earnings in 2014

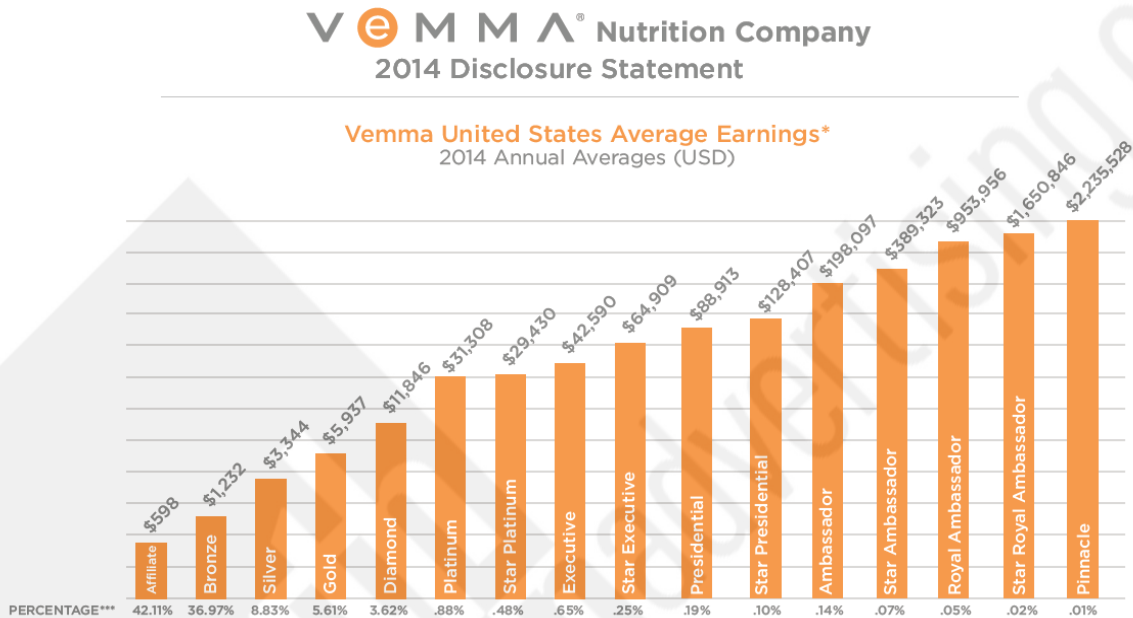
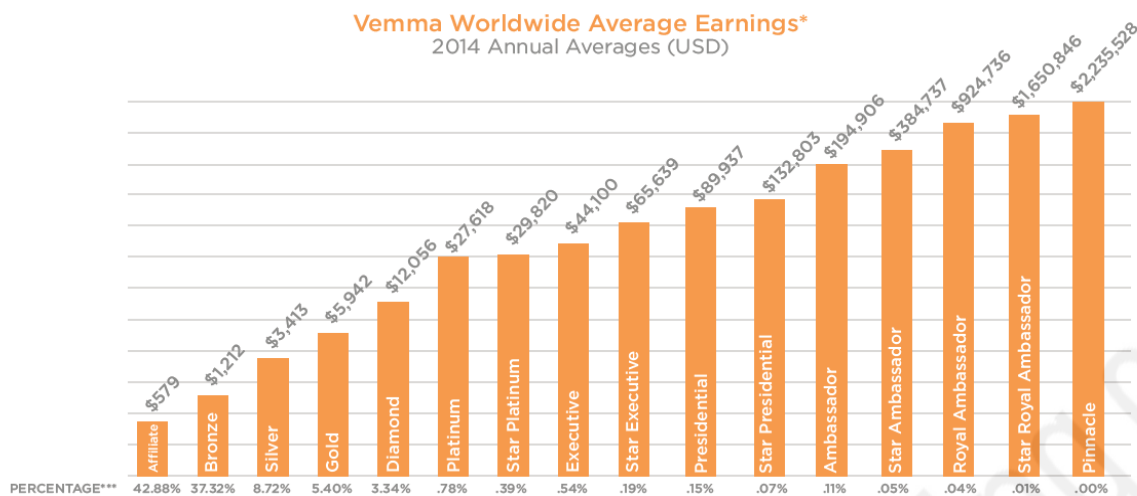


Figure 12: Worldwide Average Affiliate Earnings in 2014



B. Findings from Italian investigation

63. In early 2014, the Italian Competition and Markets Authority found that Vemma was operating as a pyramid scheme and engaging in unfair business practices (PS7621 Vemma Italia, 2014). The Compensation Plan evaluated in the Italian case is comparable to earlier (pre-2014) versions of the pay plan in the United States. Participation and consistent bonus eligibility required purchase of a starter pack and monthly auto-delivery (60QV/month for “active” and 120QV/month for “qualified” status). Appendix D reviews changes to the Compensation Plan that likely came in response to increased pressure from this case and general scrutiny of the multilevel marketing industry (see Truth in Advertising, “Vemma Deemed Pyramid Scheme in Italy”). As discussed above and specifically outlined in Appendix D tables, these changes do not change the fundamental incentives or the suggested approach to the business opportunity. Appendix tables D1-D4 show that the changes made between 2013 and 2015 are essentially changes to the bonus names and requirements for “qualified status.” The company did remove the auto-delivery requirement to be active and qualified but minimum volume requirements are maintained and auto-delivery is heavily recommended by Boreyko and others to ensure ongoing bonus eligibility (see paragraphs 23-24). Auto-delivery is still required for Double Frenzy Bonus eligibility. Given that the changes to the Vemma Compensation Plan are minor and do not affect the fundamental incentives or compensation, the current U.S. plan is expected to result in outcomes similar to the Italian market. Internal data would allow for evaluation of this assertion.

64. The Italian authority found that 20 percent of Vemma’s revenue came from Builder Packs (Affiliate Packs), over 60 percent was from auto-ship (auto-delivery), and only 16 percent was attributable to external sales. As previously discussed, both Affiliate Packs and auto-delivery orders are best viewed as expenses to participate in the business opportunity. This finding supports my conclusion that Vemma’s compensation plan and marketing strongly incentivize participants to purchase product for the purpose of reward eligibility in connection with the business opportunity.

65. The Italian authority also found that only 27% of Italian “associates” (i.e. Affiliates) were “active.” As discussed in para 59 above, the 2013 U.S. Disclosure Statement was limited to “active” Affiliates, and it can be determined by applying estimated expenses to the income figures in the Statement that an estimated 78% of “active” U.S. participants experienced a net loss. If the percentage of “active” Affiliates in the U.S. in 2013 was similar to the percentage of “active” Italian associates, the percentage of total U.S. participants experiencing a loss would have been much higher than 78%.

66. The Italian Competition and Markets Authority ultimately found that Vemma was a pyramid scheme. In addition to the factual findings discussed above, the Authority found that:

- Vemma’s income claims were clear, specific and exaggerated in comparison to the compensation plan, which was extremely complex;
- the combination of incentivized monthly autoship and starter pack purchase constituted “the typical elements of a pyramid scheme, in which the purpose of the manufacturer or business organization is to receive a significant contribution from consumers, both initially and in the form of subsequent purchases....”;
- “personal” orders (Builder Packs and auto-ship orders) played “an absolute predominate role” in the program, as opposed to sale to third parties;
- most associates achieved only “paltry compensation;” and
- associates’ promotional efforts focused on constantly enrolling new associates, rather than product sales.

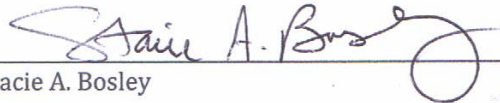
Conclusion

67. The *Koscot test* analysis is critical to the determination of a pyramid scheme, set within a marketing program with multilevel compensation. The fundamental question, as articulated in the second prong of the *Koscot test*, is whether participant compensation plans grant participants the right to obtain recruitment rewards that are unrelated to sales to ultimate users. It is my judgment that Vemma’s marketing program and business model meets this necessary component of a pyramid scheme and is likely to lead to widespread participant losses. All forms of compensation are driven by recruitment or purchase volume and there is no direct connection between this compensation and retail sales or market demand. This structure incentivizes participants to purchase product for the purposes of maintaining eligibility for recruitment rewards (inventory loading) and to encourage their “downlines” to do the same. Company representatives (including founder Boreyko) continue to stress the importance of personal minimum monthly purchases, Affiliate Pack purchase, and recruitment of new Affiliates. Premium pricing and alternative retail outlets undermine Affiliates’ ability to resell products or induce others to purchase product directly from Vemma for personal consumption. Company safeguards appear insufficient to ensure a minimum level of retail activity and prevent inventory loading.

68. The anticipated result of Vemma’s program is an endless recruitment chain, with a strong emphasis on recruitment over sales to ultimate users. At any moment that the scheme is analyzed, analysis indicates that the vast majority will be in a loss position. U.S. disclosures and Italian data corroborates these conclusions. Internal data from Vemma would provide additional detail on how the program operates in practice and would assist in calculating the scale of consumer injury, but I am confident it would confirm my judgment that Vemma is a pyramid scheme.

69. I understand that this declaration may be used in a law enforcement proceeding.

Pursuant to 28 USC Section 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge and belief.


Stacie A. Bosley

Appendix A – Curriculum Vitae**STACIE A. BOSLEY**

Assistant Professor of Economics
Hamline University
Saint Paul, Minnesota

sbosley@hamline.edu
651-523-2436

| | |
|---|---|
| EDUCATION | Ph.D. in Applied Economics – University of Minnesota (2001) GPA 3.95/4.0 BBA in Finance – University of Wisconsin-Madison (1994) GPA 3.74/4.0 |
| TEACHING EXPERIENCE | Hamline University: Assistant Professor, Economics (2011-present) Hamline University: Visiting Assistant Professor and Adjunct Instructor (2002-2011) Macalester College: Visiting Assistant Professor (2003-2005) University of Wisconsin River Falls: Adjunct Professor (1999-2000) |
| COURSES TAUGHT | Macroeconomic Principles, Microeconomic Principles, Intermediate Microeconomics, Intermediate Macroeconomics, Managerial Economics (for undergraduate and MBA students), Statistics, Quantitative Analysis and Data Management, Behavioral Economics, First Year Seminar – “Our Wal-Mart World” |
| HONORS AND AWARDS | Hamline University Faculty Advisor of the Year (2013) Dean’s Leadership Award (2013) Hamline Oracle (student newspaper): Named in Top 10 Hamline Professors (2010) Inducted as Faculty Member in Omicron Delta Kappa (2008) University of Minnesota Doctoral Dissertation Fellow (2000-2001) USDA National Needs Doctoral Fellow (1997-2000) |
| COLLABORATIVE RESEARCH (competitive research program with undergraduate students) | Affinity Fraud in Multilevel Marketing: The case of Fortune Hi-Tech Marketing in the U.S. Direct Selling and Economic Growth Bitcoin, Behavioral Economics, and the Austrian School The Minimum Wage and Community College Enrollment in the U.S. Why Here and Not There? A look at participation and growth in direct selling across countries Implications of Light Rail Transit in Minnesota College Greek Participation and Long-term Outcomes Division III Intercollegiate Athletics and Enrollment The Conservation Reserve Program and Hunting Expenditures in Minnesota |
| HONORS PROJECTS | Primary advisor for “Game Theory Analysis of the NFL Lockout” by Ryan Hable (2012) Committee member for additional honors projects |
| PRESENTATIONS | Bosley, S. (2015). Network Analysis of a Pyramid Scheme. Paper presented at the annual meeting of the Midwest Economics Association, Minneapolis, MN. Bosley, S. (2015). Network Analysis of a Pyramid Scheme. Paper presented at the Hamline School of Business Faculty Research Forum, Saint Paul, MN. Bosley, S. (2015). Business Opportunities (“Biz Opps”) on College Campuses. Presentation to the Hamline ODK Student Chapter, Saint Paul, MN. Bosley, S. (2015). Business Opportunities (“Biz Opps”) on College Campuses. Presentation to the Hamline University Student Congress, Saint Paul, MN. Bosley, S. (2014). Learning through Experimentation: Creating an Authentic Experiment with Behavioral Economics Students. Paper presented at the annual meeting of the Western Economic Association, Denver, Co. Bosley, S. (2014). Creating Custom Student-Driven Experiments in Behavioral Economics: The Simulation of a Pyramid Scheme. Paper presented at the Hamline School of Business Faculty Research Forum, Saint Paul, MN. Bosley, S. (2013). Participation and Growth in Direct Selling across Countries. Paper presented at the Southern Economic Association Conference, Tampa, FL. Bosley, S. (2013). The Virality of a Pyramid Scheme. Paper presented at the Eastern |

- Economic Association Conference, New York, NY.
- Bosley, S. (2013). The Virality of a Pyramid Scheme. Paper presented at the Hamline School of Business Faculty Research Forum, Saint Paul, MN.
- Bosley, S. (2013). Program Assessment: Process and Progress in the Hamline School of Business. Presented to the Hamline University School of Education, Saint Paul, MN.
- Bosley, S. (2013). Program Assessment. Presented at the Faculty Development Day, Saint Paul, MN.
- Bosley, S. (2012). Labor Supply and Pyramid Schemes – Evidence from a State Settlement. Paper presented at the Eastern Economic Association Conference, Boston, MA.
- Bosley, S. (2012). Labor Supply and Pyramid Schemes – Evidence from a State Settlement. Paper presented at the Hamline School of Business Faculty Research Forum, Saint Paul, MN.
- Bosley, S. (2011). Multilevel Marketing: Liberation or Entrapment. Presented at the National Women's Studies Association 2011 Conference, Atlanta, GA.
- Bosley, S. (2011). Labor Participation in Multi-level Marketing: Is it a Counter-cyclical Industry? Paper presented at the Eastern Economic Association Conference, New York, NY.
- Bosley, S. (2011). Labor Participation in Multi-level Marketing: Is it a Counter-cyclical Industry? Paper presented at the Annual Conference of the Society for Advancement of Behavioral Economics, San Diego, CA.
- Bosley, S. (2004). Dead-End Jobs or Stepping Stones? The Long-Run Consequences of Early Industry and Occupation. Paper presented at the Annual Meeting of the Midwest Economics Association, Chicago, IL.
- Bosley, S., Keil J. & Aziz F. (2003). Innovative Pedagogy in the Economics Major: Interactive Learning Techniques That Build Critical Basic Skills. Presented at the Collaboration Faculty Development Conference, Bloomington, MN.
- Bosley, S. (2003). Employment Mobility Among Less-Skilled Women and Men – Are There Long-Run Consequences? Paper presented at the Annual Meeting of the Illinois Economics Association, Chicago, IL.
- Bosley, S. (2001). Complex Job Mobility and Long-Run Outcomes for the 'Economically At-Risk. Paper presented at the Annual Meeting of the Midwest Economics Association, Cleveland, OH.
- Bosley, S. (2000). The Employment Stability of Less-Skilled Rural Workers. Paper presented at the Annual Meeting of the American Agricultural Economics Association, Tampa, FL.
- Ben-Ner, A., Kong F. & Bosley, S. (1998). Workplace Organization and Human Resources Practices: The Retail Food Industry. Paper presented at the Wharton "Understanding the Service Workplace" Conference, Philadelphia, PA.
- King, R., Ashman S. & Bosley S. (1998). Store-Level Innovation in the Retail Food Industry: The ECR Initiative and Beyond. Paper presented at the Sixth Joint Conference on Food, Agriculture and the Environment. Minneapolis, MN.

PAPERS/ PUBLICATIONS

- Bosley, S. & McKeage K. (2015). Multilevel Marketing Diffusion and the Risk of Pyramid Scheme Activity: The Case of Fortune Hi-Tech Marketing in Montana. *Journal of Public Policy & Marketing*, 34(1), 84-102.
- Bosley, S. (2015). "Pyramid Schemes and Attraction Reciprocity: Student-Crafted Economic experiments," Working Paper.
- Bosley, S. (2013). Comments Regarding the Federal Trade Commission's Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations, Project Number P087109.
- Bosley, S. (2013). Global Direct Selling. Working Paper.
- Davis, E., & Bosley S. (2007). The Impact of the 1990s Economic Boom on Less-Educated Workers in Rural America: Did the Rising Tide Lift All Boats? *Journal of the Community Development Society*, 38(1), 59-73.
- Bosley, S. (2004). Dead-End Jobs or Stepping Stones? The Long-Run Consequences of

Early Industry and Occupation. Working Paper 04-03. The Retail Food Industry Center, University of Minnesota.

Bosley, S. (2001). Complex Job Mobility and Long-Run Outcomes for the 'Economically At-Risk'. Ph.D. Dissertation, Department of Applied Economics, University of Minnesota.

Honadle, B.W., Honadle G., Bosley S. & Currie E. (2000). Redefining Local Government Roles in Public Services: A Research-Informed Process Model. *Public Management*, 2(4), 457-475.

Ben-Ner, A., Kong F., and Bosley S. (1999). Workplace Organization and Human Resources Practices: The Retail Food Industry. Working Paper 00-01. The Retail Food Industry Center, University of Minnesota.

SELECT PRESS

Guest on AirTalk with Larry Mantel, Southern California Public Radio

"Tweens get into the direct sales market," June 19, 2014.

"The Avon Lady always rings twice: direct sales, MLM's, pyramid schemes and the wisdom to know the difference," January 15, 2013.

"Money between friends: Silicon Valley's embrace of Multilevel Marketing," Pacific Standard, September 19, 2014 by Helaine Olen.

"Has your college student been recruited by a questionable MLM?"

TruthinAdvertising.org, August 26, 2014.

"ZeekRewards scam leaves N.C. town millions poorer," USA Today, March 30, 2013 by Mitch Weiss.

"Federal, state regulators shut down Fortune Hi-Tech," USA Today, January 28, 2013 by Jayne O'Donnell.

SELECT SERVICE

Hamline Committee on Learning Outcomes and Assessment Member (2011-present)

Hamline Committee on Learning Outcomes and Assessment Director (2013-2015)

Hamline University Institutional Review Board (2010-present)

Hamline University Student Progress Committee (2012-2013)

Hamline Plan Revision Taskforce Chair (2012-2013)

Standing Committee on Sustainability Member (2014-present)

Hamline School of Business Undergraduate Curriculum & Assessment Committee (2011-present)

OTHER WORK

EXPERIENCE

Consultant and Systems Analyst for Accenture (then Andersen Consulting), 1994-1997

Appendix B – Materials Reviewed

| Title | Type |
|---|-----------------|
| 24-Hour Overview New Business Call with Tom Alkazin | audio |
| 3 Step Plan --How 8 People Can Change Your Life | video |
| Adam Wenig - Elevate San Diego 2013 | video |
| Affiliate Action Plan – Steps 1-8 | videos |
| Affiliate Action Plan Booklet | pdf |
| Affiliate Agreement – Terms and Conditions (7.12.15) | pdf |
| Affiliate Agreement – Terms and Conditions (4.1.15) | pdf |
| Affiliate Agreement – Terms and Conditions (11.1.14) | pdf |
| Affiliate Agreement – Terms and Conditions (3.28.14) | pdf |
| Affiliate Agreement – Terms and Conditions (7.15.14) | pdf |
| Ambassador Luke Hessler speaks... (https://www.youtube.com/watch?v=YloYvcYcMuM) | video |
| Amway v FTC Final Order (1979) | doc |
| Announcement of New Biz Structure (4.1.14) | pdf |
| Ask Dr. Oz The Lightning Round | pdf |
| Big News From the May Vemma Call Live – Vemma News | video |
| BK Boreyko - Elevate San Diego 2013 | video |
| BK Our Plan to Exceed Your Expectations | video |
| BK's Blog – Upcoming Vemma Events and New Terminology | video |
| BK's Blog CEO of Vemma Nutritional Company Speaks on Why to Join Vemma | audio |
| Boreyko Video to Parents | video |
| Brad Sarver - Elevate San Diego 2013 | video |
| Bryce Majdick - Elevate San Diego 2013 | video |
| Burnlounge v FTC Declaration – Peter Vander Nat (2007) | pdf |
| Burnlounge v FTC Ninth Circuit Court of Appeals Opinion (2014) | doc |
| Burnlounge v FTC Rebuttal Declaration – Peter Vander Nat (2008) | pdf |
| Burnlounge v FTC Second Supplemental Declaration – Peter Vander Nat (2007) | pdf |
| Burnlounge v FTC Supplemental Declaration – Peter Vander Nat (2007) | pdf |
| CBS 5 article and embedded Vemma Response to CBS 5 (http://www.kpho.com/story/29118697/parents-complain-drink-company-turning-their-kids-away-from-college) | webpage and pdf |
| Compensation Plan (1.31.14) | pdf |
| Compensation Plan (2013) | pdf |
| Compensation Plan (2015) | pdf |
| Compensation Plan (7.25.14) | pdf |
| Compensation Plan (9.4.14) | pdf |
| Darik Alexander | video |
| Darik Alexander on the Power of Positive Thinking | video |
| Darik Alexander speaks at Vemma's 2014 European Convention | video |
| Diego Avila | video |
| Europe Talk with Mattias Hovbrandt | video |
| Europe Talk with Star Royal Ambassador Brad Alkazin | video |
| Europe Talk with Vemma Affiliate Star Ambassador Jed Buenaluz | video |
| Europe Talk with Vemma Ambassador Andreas Grenthe | video |
| First Vemma Call Live of 2015 | audio |
| Gary Vaynerchuk | video |
| GIN v FTC Declaration – Peter Vander Nat (2013) | pdf |
| Gold Unlimited v FTC Sixth Circuit Court of Appeals Opinion (1999) | doc |
| How to - Vemma Flipbook Training | video |
| How to Get Paid – Vemma Home Event | video |
| How to Make it Big in Vemma, Part 1 (https://www.youtube.com/watch?v=wACHT9Y1J9g) | video |
| How Vemma Pays You – 2 & Go (at vemmapvideo.com) | video |
| How Vemma Pays You Trailer | video |
| http://www.businessforhome.org/2014/04/top-150-worldwide-earners-in-mlm-april-2014/ | pdf |

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| Ian Nicholson - Elevate San Diego 2013 | video |
| Income-Disclosure 2014 | pdf |
| Jamie Chirio Speaks at Vemma's 2014 European Convention | video |
| Jason Russell | video |
| Jed Buenaluz on Leading by Example from the Verve Leadership | video |
| Kailey Warren - Elevate San Diego 2013 | video |
| Koscot Interplanetary v FTC Final Order (1975) | doc |
| Learn How to Present the New Vemma Flipbook with Ruth Elliott (at vemmavideo.com) | video |
| Learn What Drove Emily McCullah To Success - YPR Radio Season 2 | video |
| Living the Vemma Lifestyle (at vemmavideo.com) | video |
| Luke Hessler | video |
| Luke Hessler 02/06/14 (https://www.youtube.com/watch?v=Cx0XafOgxg) | video |
| Luke Hessler at home event 09/04/14 (https://www.youtube.com/watch?v=9pUimopXIT0) | video |
| Luke Wilborn - Elevate San Diego 2013 | video |
| Maggie DePippo on Her Success with Vemma - YPR Radio Season | video |
| Meet the Young Professionals #youngpros of Vemma | video |
| Men's Journal Nutrition Superjuices on Trial | pdf |
| Message of the Month - Blake Stauffer | video |
| Multilevel Marketing and Pyramid Schemes in the United States: An Historical Analysis - Keep and Vander Nat (2014) | pdf |
| New College Cash Bonus (10.4.13) | pdf |
| New Policy Banning Under 18 (8.19.13) | pdf |
| Nick Ptak | video |
| Omnitrition v FTC Ninth Circuit Court of Appeals Opinion (1996) | doc |
| Patrick Comer on Prospecting Like a Pro - Vemma Verve Leadership Academy Power Talk | video |
| Product pricing (Vemma, Verve, Bode screenshots as of 1.29.15) | pdf |
| Promotional videos regarding philanthropy, product placement, products, company tools (including Jenny McCarthy Event, Home Office tour, Sundance, NASCAR, Phoenix Suns, Feed My Starving Children, product introductions, reward trips, dittoTalk) | videos |
| Richard Bischoff Jr - Verve Leadership Academy | video |
| Ruth Elliot Success Made Simple 2015 | pdf |
| Scientific Resource Guide Booklet | pdf |
| Shane Sullivan Verve Power Talk on Elevating your Vemma Business to the Next Level | video |
| Star Pinnacle Tom Bethany Alkazin Vemma All In 2014 | video |
| The Young Pros - YPR All Access (https://www.youtube.com/watch?v=3D9iBETn7ic) | video |
| This is Vemma | pdf |
| This is Vemma video collection (including Vemma Formula, Verve Healthy Energy Drink, Vemma Bode Plan, This is Vemma, How Vemma Pays You, Vemma Products Trailer, Vemma Premier Club, Live the Vemma Lifestyle, Vemma #LadyBoss, YPR Voice, Vemma Convention Highlights, Vemma Home Office Tour, and Vemma Manufacturing Plan Tour) | videos |
| TK Kubvoruno on YPR Radio Season 2 w/Eric Thomas - Learn How TK's Why Drove Him to Success | video |
| Top Canada YPR Felipe Gabriele - Verve Leadership Academy | video |
| Transcript of telephone conversation between Matthew Thacker and David Treat | doc |
| Transcript of Vemma Event in Pleasanton, CA | doc |
| Truth in Advertising article, "Health Claims Could Cost Vemma and its CEO Millions," and embedded Vemma Health Claims Database (published 1.20.15 - https://www.truthinadvertising.org/health-claims-cost-vemmas-ceo-millions/) | article with embedded database |
| Truth in Advertising article, "Vemma Deemed Pyramid Scheme in Italy" (published 4.24.14 - https://www.truthinadvertising.org/verma-deemed-pyramid-scheme-italy/) | article |
| Unfair Business Practices Ruling from Italy (PS7621 Vemma Italia, 2014) | pdf |
| Vemma - New Customer | video |
| Vemma - Your First 7 Days audio collection (including Welcome to Vemma with BK Boreyko, Intro to the Entrepreneur Mindset, The Shift to the Entrepreneur Mindset, Mindset Number One, Stepping around Mindset Number One, Mindset Number Two, Start Part Time - Jim Rohn, Mindset Number Three, Robert Kiyosaki on Why to Commit, Mindset Number Four, Two Philosophies to Embrace - Jim Rohn, History of Direct Selling-Network Marketing, Mindset Number Five, How to Become More, Bolstering a Positive Attitude, Completing the Shift to Entrepreneurialism, Putting the Entrepreneur Mindset into Action, Success Book Summary - The Compound Effect) | audio files |

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| Vemma #LadyBoss A Woman Should Be Two Things | video |
| Vemma 13 Month Cycle Plan | video |
| Vemma 2013 | video |
| Vemma Action Plan 2014 | pdf |
| Vemma Action Plan Launch Form | pdf |
| Vemma Affiliate Marketing Text Invite - Vemma App | video |
| Vemma Ambassador Brock Morton Power Talk at Verve Leadership | video |
| Vemma Business Presentation with Top Leader Tom Alkazin | video |
| Vemma Compensation Plan 2015 with Jesse Burke | video |
| Vemma Executive Affiliate Alaina Thomas Power Talk | video |
| Vemma News BK's 2014 Halftime Report and embedded video (http://vemmanews.com/2014/06/19/bks-2014-halftime-report,6.19.14) | pdf and embedded video |
| Vemma Nutrition Company -2013 Income Disclosure Statement | pdf |
| Vemma Nutrition Company Marketing and Sales Business Plan for Premium Supplement Products | video |
| Vemma Opportunity Trailer | video |
| Vemma Presentation and Training from verveworks.org | pdf |
| Vemma Presidential Affiliate Emily McCullah Power Talk | video |
| Vemma Presidential Affiliate Stu Massengill Power Talk | video |
| Vemma Presidential Anton Neugebauer and Eric Thomas on YPR Radio | video |
| Vemma Products Trailer | video |
| Vemma Success Alex Morton | video |
| Vemma Workbook-Vemma Presentation and Training from verveworks.org | pdf |
| Vemma/Verve Home Event feat. Jeremy Bishop #YPR (https://www.youtube.com/watch?v=bVgfV59qtZs) | video |
| Verve in Simple Terms (https://www.youtube.com/watch?v=gGO-WBIYv7Y) | video |
| Verve Leadership Academy Speakers Provide Keys to Success | video |
| Verve Mobile Text Invitation | video |
| Verve opportunity explained - Luke Kish July 20, 2013 (https://www.youtube.com/watch?v=7TUQhnAVjwQ) | video |
| Verve Text Invite - Vemma App Morton Royal Ambassador | video |
| Verve! Magazine | pdf |
| Web Capture-leadlinepro.com Vemma WBTraining- Vemma Training Bible | pdf |
| Web Capture-vemmanews.com-2 & Go - 60 Days to Gold | pdf |
| Web Capture-vemmanews.com-Ruth Elliot Trains on the New Two & Go | pdf |
| Web Capture-vemmanews.com-Updates to Three Key Programs (12.22.14) | pdf |
| Web Capture-www.vemma.com Opportunity Compensation Plan Basics (1.21.15) | pdf |
| Web Page Explaining Jan. 24 Terminology Change (1.31.14) | pdf |
| Why a Game Plan with Ruth Elliot on Vimeo | video |
| YPR Radio - Amy Alkazin Full Length | video |
| YPR Radio - Brad Alkazin Full Length | video |
| YPR Radio -Adam Wenig | video |
| YPR Radio -Colo Jacob | video |
| YPR Radio -Ian Lenhart | video |
| YPR Radio -Luke Hessler | video |
| YPR Radio -Nick Carreiro | video |
| YPR Radio -Stu Massengill | video |
| YPR Radio -Tyler Small | video |
| Zero to Sixty: A Start-up Business Plan for Young People Self-Employment with Alex Morton | video |

Appendix C - Mathematical Analysis of a Pyramid Scheme

The following mathematical analysis of a binary compensation scheme is taken from the Declaration of Peter Vander Nat, formerly a senior economist with the Federal Trade Commission, filed in support of a motion for preliminary injunction and other relief in Burn Lounge. I have reviewed and agreed with Dr. Vander Nat's methodology. This section discusses the mathematical implications of a recruitment system when each entrant recruits X new members and X is some fixed positive integer (e.g., $X=2$). It will be demonstrated that, as recruitment continues, the organization grows at an exponential rate (so long as such recruitment can be sustained) and the percentage of participants at the base (i.e., the lowest level of the organizational structure) will converge quickly to a definite value. It is also the case that the percentage at the two lowest levels of the structure will also quickly converge to a known definite value. The same can be said for any chosen number of levels. This knowledge allows us to predict the loss rate at any period in time in the life of the scheme.

To demonstrate the mathematical properties of such a recruitment system and its resulting implications, analysis begins with an initial entrant who is placed at "level 0." This initial member recruits two new members, who constitute "level 1." When each of these level 1 participants recruits 2 new members, there are now $1+2+4=2^0+2^1+2^2=7$ members in the organization.

| Iteration | Level | Number of Participants in Level | Total Number of Participants | |
|-----------|---------|---------------------------------|---------------------------------|--|
| 0 | Level 0 | $1 = 2^0$ | $1 = 2^0$ | |
| 1 | Level 1 | $2 = 2^1$ | $3 = 2^0+2^1$ | |
| 2 | Level 2 | $4 = 2^2$ | $7 = 2^0+2^1+2^2$ | |
| 3 | Level 3 | $8 = 2^3$ | $15 = 2^0+2^1+2^2+2^3$ | |
| ... | | | | |
| n | Level n | 2^n | $T_n = 2^0+2^1+2^2+2^3+...+2^n$ | |

If $T_n = 2^0 + 2^1 + 2^2 + 2^3 + ... + 2^{n-1} + 2^n$ is the total number of participants in the scheme after n iterations when $X=2$ (i.e., each participant recruits two people), this can be generalized to:

$$(1) T_n = X^0 + X^1 + X^2 + X^3 + ... + X^{n-1} + X^n$$

for any positive integer X .

The percentage of participants at level n (i.e., the share of overall participants who constitute the newest class of entrants) is given by:

$$(2) X^n/T_n = X^n/(X^0 + X^1 + X^2 + X^3 + ... + X^{n-1} + X^n).$$

Dividing the numerator and denominator of (2) by X^n results in:

$$(3) X^n/T_n = 1/[(X^0/X^n) + (X^1/X^n) + (X^2/X^n) + (X^3/X^n) + ... + (X^{n-1}/X^n) + (X^n/X^n)]$$

and therefore

$$(4) X^n/T_n = 1/[(1/X^n) + (1/X^{n-1}) + (1/X^{n-2}) + (1/X^{n-3}) + ... + (1/X) + 1].$$

Equation (4) can be rearranged and expressed as:

$$(5) X^n/T_n = 1/[1 + (1/X) + (1/X^2) + (1/X^3) + ... + (1/X^{n-1}) + ... + (1/X^n)] = 1/[\sum_{k=0}^n (1/X)^k].$$

If each new entrant can recruit X additional members, n increases without bound (i.e., the scheme continues to grow indefinitely as each participant is able to duplicate the recruiting success of the person who recruited him or her). Since the denominator of (5) is a convergent geometric series, as n grows the denominator has a definite limiting value. The general formula for a geometric series (c.f. Apostol, T.M. Mathematical Analysis (1957), Addison Wesley Publ. Company) identifies the limiting value as:

$$(6) \sum_{k=0}^{\infty} b^k = \frac{1}{1-b}, \text{ where } |b| < 1.$$

By setting $b = (1/X)$, X^n/T_n (i.e., the percent of participants at level n) converges to the value given by

$$(7) 1/(\frac{1}{1-b}) = 1/(\frac{1}{1-(\frac{1}{X})}) = 1-(1/X).$$

When $X=2$, (7) yields a value of $1 - 1/2 = 1/2 = X^n/T_n$. From this we know that, when each entrant recruits 2 new participants, the percentage of participants at the lowest level (level n) converges to 50%.

The percentage of members at the lowest two levels (n and $n-1$) can be found as follows:

$$(8) (X^n + X^{n-1})/T_n = [(X^n)(1 + 1/X)]/T_n = [(1 + 1/X)(X^n)]/(X^0 + X^1 + X^2 + X^3 \dots + X^{n-1} + X^n).$$

Dividing the numerator and denominator of (8) by X^n and applying (7) yields

$$\begin{aligned} (9) (X^n + X^{n-1})/T_n &= [1 + 1/X]/[(X^0/X^n) + (X^1/X^n) + (X^2/X^n) + (X^3/X^n) \dots + (X^{n-1}/X^n) + (X^n/X^n)] \\ &= [1 + 1/X]/[(1/X^n) + (1/X^{n-1}) + (1/X^{n-2}) + (1/X^{n-3}) \dots + (1/X) + 1] \\ &= [1 + 1/X][1 - 1/X] = 1 - (1/X^2). \end{aligned}$$

For $X=2$, the percent of participants at the two lowest levels (n and $n-1$) is $1 - (1/4) = 75\%$.

Extending (9) to include three levels yields:

$$(10) (X^n + X^{n-1} + X^{n-2})/T_n = [1 + 1/X + 1/X^2][1 - 1/X].$$

When $X=2$, it follows from (10) that the percent of participants in the lowest 3 levels will be $[1 + 1/2 + 1/4][1 - 1/2] = 87.5\%$. Table 2 illustrates the results for $n = 1, 2, \dots, 20$ iterations and shows that the convergent values are achieved after 10 iterations, when just over 2,000 individuals have joined the scheme. Suppose, for example, that duplication is achieved for 12 iterations (i.e., the founder recruits 2, each level 1 participant each recruits 2, and so on, until each of the 2,048 level 11 recruits each recruit 2). This brings a total of 8,191 individuals into the scheme where $4,096/8,191 = 50\%$ of those people are at the "base," the lowest level of the organization; $(4,096+2,048)/8,191 = 75\%$ are in the lowest 2 levels of the organization; and $(4,096+2,048+1,024)/8,191 = 87.5\%$ are in the lowest 3 levels of the organization.

Table C1: Scheme Growth When $X=2$ (Each participant recruits 2 new members)

| Enrollment level (n) | Participants in level n | Total participants (level n + all levels above) | % of participants at base level n | % of participants at base +1 levels above (bottom 2 levels) | % of participants at base +2 levels above (bottom 3 levels) | % of participants at base +3 levels above (bottom 4 levels) | % of participants at base +4 levels above (bottom 5 levels) |
|----------------------|-------------------------|---|-----------------------------------|---|---|---|---|
| 0 (founder) | 1 | 1 | 100% | | | | |
| 1 | 2 | 3 | 66.7% | 100% | | | |
| 2 | 4 | 7 | 57.1% | 85.7% | 100% | | |
| 3 | 8 | 15 | 53.3% | 80.0% | 93.3% | 100% | |
| 4 | 16 | 31 | 51.6% | 77.4% | 90.3% | 96.8% | 100% |
| 5 | 32 | 63 | 50.8% | 76.2% | 88.9% | 95.2% | 98.4% |
| 6 | 64 | 127 | 50.4% | 75.6% | 88.2% | 94.5% | 97.6% |
| 7 | 128 | 255 | 50.2% | 75.3% | 87.8% | 94.1% | 97.3% |
| 8 | 256 | 511 | 50.1% | 75.1% | 87.7% | 93.9% | 97.1% |
| 9 | 512 | 1,023 | 50.0% | 75.1% | 87.6% | 93.8% | 97.0% |
| 10 | 1,024 | 2,047 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 11 | 2,048 | 4,095 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 12 | 4,096 | 8,191 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 13 | 8,192 | 16,383 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 14 | 16,384 | 32,767 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 15 | 32,768 | 65,535 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 16 | 65,536 | 131,071 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 17 | 131,072 | 262,143 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 18 | 262,144 | 524,287 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 19 | 524,288 | 1,048,575 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |
| 20 | 1,048,576 | 2,097,151 | 50.0% | 75.0% | 87.5% | 93.8% | 96.9% |

Appendix D - Changes to Compensation Plan and Terms & Conditions

Table D1: Terminology and Qualification Requirements

| | Compensation Plan Version | | | |
|-------------------------|---|--|---|--------------|
| | 2013 | January 2014 | July 2014 | January 2015 |
| Terms and Access | Brand Partners, those who want to pursue the business opportunity, must place an auto-delivery order (min 60QV) to access the Back Office and marketing website; can enter immediately as a Brand Partner | Customers and Affiliates (previously called Brand Partners) – all start as Customers and become an Affiliate with purchase of Affiliate Pack OR enrollment of 1 person; need 60QV order and Affiliate status to access website | Need only Affiliate status (no purchase) to access website | No changes |
| Qualifying Volume (QV) | Number of points based on purchases; point value varies between products (also known as “reward points” or Commissionable Volume, CV) | No changes | No changes | No changes |
| Personal Volume (PV) | Not yet introduced | Not yet introduced | Number of points based on personal purchases plus half of QV from personally enrolled Customers | No changes |
| Definition of Active | 60 points in personal QV via auto-delivery per month (double required for Platinum or above) | 60 points in personal QV per month (double required for Platinum or above) | 60 points in personal volume (PV) per month (double required for Platinum or above) | No changes |
| Definition of Qualified | 120 points in personal QV per month AND an auto-delivery order on file AND at least one “active” Brand Partner on each of two teams (left and right) | 120 points in QV per month AND at least one “active” Affiliate on each of two teams (left and right) | 120 points in personal volume (PV) per month AND at least one “active” Customer/Affiliate on each of two teams (left and right) | No changes |

Table D2: Purchase Loyalty and Immediate Income Rewards

| | Compensation Plan Version | | | |
|-------------------------|--|---|--|--|
| | 2013 | January 2014 | July 2014 | January 2015 |
| Purchase Loyalty Reward | No purchase loyalty reward program | Customer Referral Program ("3 for Free" program) – must have 30QV minimum monthly auto-delivery order AND 3 personally enrolled Customers who purchase in month (overall Customer QV must be 3 times personal auto-delivery order); payment is free auto-ship product in month, max 600 QV free order | Max 600QV free order reduced to 120QV | Vemma Loyalty Program (replaces Customer Referral Program) – Customer or Affiliate must have minimum 60QV/month purchase for 6 consecutive months; payment is free product (max 120 QV) received in 7 th month |
| Immediate Income | <p>Fast Start Bonus - must be active; receive bonus on first purchase made by each personally enrolled Brand Partner (approx. 15% of order value)</p> <p>No additional short-term rewards</p> | <p>New Customer Bonus (formerly Fast Start Bonus) – must be active; receive bonus on first purchase made by each personally enrolled Customer or Affiliate (approx. 15% of order value)</p> <p>Frenzy Bonus – must be qualified AND purchase Affiliate Pack AND enroll 3 Affiliates and/or Customers who order min 120 QV in week of enrollment; pays up to \$200 per share</p> <p>Double Frenzy Bonus - must be qualified AND purchase Affiliate Pack AND enroll 3 Affiliates and/or Customers who purchase Affiliate Pack (\$500) or more and have min auto-delivery order of 120 QV in week of enrollment; pays up to \$400 per share</p> | <p>For New Customer Bonus - Customers can now earn the bonus, pays out as product credit</p> <p>For Frenzy and Double Frenzy Bonus – can replace Affiliate Pack purchase with enrollment of 6 customers with min 60 QV order each within 60 days of enrollment</p> | <p>No changes</p> <p>For Frenzy and Double Frenzy Bonus – can no longer replace Affiliate Pack purchase with Customer recruits (reverting back to January 2014 version)</p> |

Table D3: Long-term Team-Volume Rewards Part 1

| Compensation Plan Version | | | |
|---|--|---|--------------|
| 2013 | January 2014 | July 2014 | January 2015 |
| <p>Cycle Commission – must be qualified AND cycle with 180 QV on one team and 360 QV on the other team; pays approximately \$20 per cycle</p> <p>Matching Bonus – must be qualified AND have 4 active personally enrolled Brand Partners (at least one on each team); pays 10% of Cycle Commissions earned by personally enrolled Brand Partners</p> <p>Second Tier Matching Bonus - must be qualified AND have 6 active personally enrolled Brand Partners (at least one on each team); pays 10% of Cycle Commissions earned by personal enrollees' personally enrolled Brand Partners</p> <p>Momentum Bonus - must be qualified AND minimum Bronze level (1 cycle) AND 500 points of auto-delivery or Builder Pack orders on each team; payment varies by level and is based on 3% of sales from participating countries (e.g., first bonus level is up to \$100 per share/month)</p> | <p>Cycle Commission, Matching Bonus, Second Tier Matching Bonus, and Balanced Team Bonus (formerly Momentum Bonus) – no changes other than to definition of “qualified”</p> | <p>For Cycle Commission – added 3 new earnings levels (Star Pinnacle, Royal Pinnacle and Legend)</p> <p>For Matching Bonus – can enroll 4 Customers and/or Affiliates, earnings still based on Affiliate cycles</p> <p>For Second Tier Matching Bonus – can enroll 6 Customers and/or Affiliates, earnings still based on Affiliate cycles</p> <p>No other changes</p> | No changes |

Table D4: Long-term Team-Volume Rewards Part 2

| Compensation Plan Version | | | |
|--|--|---|---|
| 2013 | January 2014 | July 2014 | January 2015 |
| <p>Momentum Bonus Builder Pack Flag – must be qualified AND purchase Builder Pack; pays Momentum Bonus at one higher level for 90 days (e.g., \$200/month rather than \$100/month for 90 days from enrollment)</p> <p>Platinum Club - must be qualified AND purchase Builder Pack within 60 days of enrollment AND reach Diamond rank (minimum 20 cycles) AND have Gold Brand Partner (minimum 10 cycles) on each team AND 500 points in month of auto-delivery Customer or Builder Pack orders on each team; pays Car Bonus or College Bonus or Cash Bonus (50% of Car/College Bonus value), bonus depends on level (e.g., \$400 per 4-week period if Diamond level)</p> <p>Global Bonus Pool – must be qualified and maintain minimum of Platinum rank (50 cycles/month) for 12-week period; payment varies based on level and pool size</p> <p>Rank Advancement Bonus - must be qualified and reach new rank (i.e., new level of monthly cycles) for at least two consecutive 4-week rank advancement periods (in 2012 could qualify after only one 4-week period, higher ranks of Presidential and above require rank to be maintained for six 4-week periods); one-time payment depends on level change (e.g., from Silver (5 cycles) to Gold (10 cycles) pays \$250; moving to Pinnacle (6,000 cycles) pays \$250,000)</p> | <p>Balanced Team Bonus Affiliate Pack Flag (formerly Momentum Bonus Builder Pack Flag) – no changes other than bonus name and definition of “qualified”</p> <p>Premier Club (formerly Platinum Club) - no changes other than bonus name and definition of “qualified”</p> <p>Global Bonus Pool - no changes other than bonus name and definition of “qualified”</p> <p>Rank Advancement Bonus – no changes other than bonus name and definition of “qualified”</p> | <p>No changes</p> <p>For Premier Club Bonus – can replace Affiliate Pack purchase with enrollment of 6 customers with min 60 QV order each within 60 days of enrollment.</p> <p>No changes</p> <p>For Rank Advancement Bonus – introduction of new ranks means Rank Advancement one-time payout can reach \$1 million for movement to Legend (20,000 cycles).</p> | <p>No changes</p> <p>For Premier Club Bonus – can no longer replace Affiliate Pack purchase with Customer recruits (reverting back to January 2014 version); now receive full cash award rather than car/loan payment.</p> <p>No other changes</p> |

Appendix E – Additional Compensation Scenarios

Table E1: 13-Month Compensation Scenario with Monthly Auto-delivery and Affiliate Pack (2-recruit duplication occurs within the enrollment month, with Affiliate Pack purchases by all recruits)²²

| 120QV + Affiliate Pack | | | | | | | | | | Balanced Team & Premier Club Bonus | | | | Jane's Net Profit in Month | | Jane's Cumulative Net Profit | |
|---------------------------|-----------------|------------------------|----------------------------|-----------------------|-----------------------------|---------------------|--------------------------|-----------------------------------|--------------------------|--|---------------------|----------------------------------|------------------------------------|-------------------------------|--|---------------------------------|--|
| Month | New Recruits | Cumulative Recruits | Pack orders in month | Cycles in month | Cycle Payout in month | Left- over QV | New Customer Bonus | Rank Advance- ment Award | Premier Club Bonus | Total Earnings in Month | Monthly Expenses | Jane's Net Profit in Month | Jane's Cumulative Net Profit | | | | |
| 0 | - | - | - | - | \$0 | - | \$0 | \$0 | \$0 | \$0 | \$532 | -\$532 | -\$532 | | | | |
| 1 | 2 | 2 | 500 | - | \$0 | 500 | \$200 | \$0 | \$0 | \$200 | \$150 | \$50 | -\$482 | | | | |
| 2 | 4 | 6 | 1,240 | 2 | \$44 | 160 | \$0 | \$0 | \$100 | \$144 | \$150 | -\$6 | -\$488 | | | | |
| 3 | 8 | 14 | 2,720 | 5 | \$110 | 20 | \$0 | \$0 | \$200 | \$310 | \$150 | \$160 | -\$328 | | | | |
| 4 | 16 | 30 | 5,680 | 11 | \$242 | 0 | \$0 | \$100 | \$300 | \$642 | \$150 | \$492 | \$164 | | | | |
| 5 | 32 | 62 | 11,600 | 21 | \$462 | 260 | \$0 | \$250 | \$300 | \$1,012 | \$150 | \$862 | \$1,026 | | | | |
| 6 | 64 | 126 | 23,440 | 43 | \$946 | 220 | \$0 | \$500 | \$400 | \$1,846 | \$150 | \$1,696 | \$2,722 | | | | |
| 7 | 128 | 254 | 47,120 | 87 | \$1,914 | 140 | \$0 | \$0 | \$400 | \$2,314 | \$150 | \$2,164 | \$4,886 | | | | |
| 8 | 256 | 510 | 94,480 | 175 | \$3,850 | 0 | \$0 | \$1,750 | \$400 | \$6,000 | \$150 | \$5,850 | \$10,736 | | | | |
| 9 | 512 | 1,022 | 189,200 | 350 | \$7,700 | 200 | \$0 | \$3,500 | \$400 | \$11,600 | \$150 | \$11,450 | \$22,186 | | | | |
| 10 | 1,024 | 2,046 | 378,640 | 701 | \$15,422 | 100 | \$0 | \$3,000 | \$400 | \$18,822 | \$150 | \$18,672 | \$40,858 | | | | |
| 11 | 2,048 | 4,094 | 757,520 | 1,403 | \$30,866 | 0 | \$0 | \$15,000 | \$400 | \$46,266 | \$150 | \$46,116 | \$86,974 | | | | |
| 12 | 4,096 | 8,190 | 1,515,280 | 2,806 | \$61,732 | 40 | \$0 | \$15,000 | \$400 | \$77,132 | \$150 | \$76,982 | \$163,956 | | | | |
| 13 | 8,192 | 16,382 | 3,030,800 | 5,613 | \$123,486 | 0 | \$0 | \$0 | \$400 | \$123,886 | \$150 | \$123,736 | \$287,692 | | | | |

²² Model assumptions include the following:

- each participant is an Affiliate who purchases the Affiliate Pack (with approximately \$32 in shipping cost), buys 120 QV monthly (Vemma 2-pack, with 10% discount for auto-delivery and approximately \$15 in shipping costs), and recruits 2 who do the same,
- personally purchased product is not included in QV calculations for cycle bonus (following the illustration in the "Vemma 13 Month Cycle Plan" video and description in compensation plan),
- cycle earnings are \$22/cycle (following the illustration in the "Vemma 13 Month Cycle Plan" video),
- recruitment is not assumed to occur within the week of enrollment, meaning Jane is not eligible for Frenzy Bonuses,
- it is assumed that PEQ's (Personally Enrolled Qualifiers) do not exceed 2, meaning Jane is not eligible for Matching Bonuses,
- the Vemma Loyalty Program is not included, though this constitutes a very small benefit in the form of free product every 7th month,
- the Balanced Team Bonus Affiliate Pack Flag is not included, though this would have no significant impact on these results,
- the Global Pool Bonus was not included as the payout size varies based on Pool size - note that eligibility would not begin until Platinum rank, and
- Balanced Team and Premier Club bonus amounts are assumed paid in the first Rank Advancement Period that the rank is achieved.

Table E2: 13-Week Compensation Scenario with Monthly Auto-delivery and Affiliate Pack Purchases (3-recruit duplication occurs within the enrollment month with Affiliate Pack purchases by recruits)²³

| Week | New Recruits | Cumulative Recruits | Affiliate Pack QV in week | 120QV + Affiliate Pack | | Cycles in week | Cycles in Month | New Customer Bonus | Double Frenzy Bonus | Rank Advancement Award | Jane's Total Earnings in Week | Jane's Monthly Expenses | Jane's Net Profit in Month | Jane's Cumulative Net Profit |
|------|--------------|---------------------|---------------------------|------------------------|----------------|----------------|-----------------|--------------------|---------------------|------------------------|-------------------------------|-------------------------|----------------------------|------------------------------|
| | | | | orders in week | orders in week | | | | | | | | | |
| 0 | - | - | - | - | - | - | - | \$0 | \$0 | \$0 | \$0 | \$532 | -\$532 | -\$532 |
| 1 | 3 | 3 | 750 | 750 | 750 | 1 | 1 | \$300 | \$400 | \$0 | \$722 | \$0 | \$722 | \$190 |
| 2 | 9 | 12 | 2,250 | 2,250 | 2,250 | 4 | 4 | \$0 | \$0 | \$0 | \$88 | \$0 | \$88 | \$278 |
| 3 | 27 | 39 | 6,750 | 6,750 | 6,750 | 13 | 13 | \$0 | \$0 | \$0 | \$286 | \$0 | \$286 | \$564 |
| 4 | 81 | 120 | 20,250 | 20,250 | 20,250 | 38 | 56 | \$0 | \$0 | \$0 | \$836 | \$150 | \$686 | \$1,250 |
| 5 | 243 | 363 | 60,750 | 61,110 | 61,110 | 113 | 113 | \$0 | \$0 | \$0 | \$2,486 | \$0 | \$2,486 | \$3,736 |
| 6 | 729 | 1,092 | 182,250 | 183,330 | 183,330 | 340 | 340 | \$0 | \$0 | \$0 | \$7,480 | \$0 | \$7,480 | \$11,216 |
| 7 | 2,187 | 3,279 | 546,750 | 549,990 | 549,990 | 1,019 | 1,019 | \$0 | \$0 | \$0 | \$22,418 | \$0 | \$22,418 | \$33,634 |
| 8 | 6,561 | 9,840 | 1,640,250 | 1,649,970 | 1,649,970 | 3,056 | 4,528 | \$0 | \$0 | \$1,600 | \$68,832 | \$150 | \$68,682 | \$102,316 |
| 9 | 19,683 | 29,523 | 4,920,750 | 4,950,270 | 4,950,270 | 9,167 | 9,167 | \$0 | \$0 | \$0 | \$201,674 | \$0 | \$201,674 | \$303,990 |
| 10 | 59,049 | 88,572 | 14,762,250 | 14,850,810 | 14,850,810 | 27,502 | 27,502 | \$0 | \$0 | \$0 | \$605,044 | \$0 | \$605,044 | \$909,034 |
| 11 | 177,147 | 265,719 | 44,286,750 | 44,552,430 | 44,552,430 | 82,505 | 82,505 | \$0 | \$0 | \$0 | \$1,815,110 | \$0 | \$1,815,110 | \$2,724,144 |
| 12 | 531,441 | 797,160 | 132,860,250 | 133,657,290 | 133,657,290 | 247,514 | 366,688 | \$0 | \$0 | \$37,500 | \$5,482,808 | \$150 | \$5,482,658 | \$8,206,802 |
| 13 | 1,594,323 | 2,391,483 | 398,580,750 | 400,972,230 | 400,972,230 | 742,541 | | \$0 | \$0 | \$0 | \$16,335,902 | \$0 | \$16,335,902 | \$24,542,704 |

²³ Model assumptions include the following:

- each participant is an Affiliate who purchases the Affiliate Pack (with approximately \$32 in shipping cost), buys 120 QV monthly (Vemma 2-pack, with 10% discount for auto-delivery and approximately \$15 in shipping costs), and recruits 3 who do the same,
- personally purchased product is not included in QV calculations for cycle bonus (following the illustration in the "Vemma 13 Month Cycle Plan" video and description in compensation plan),
- cycle earnings are \$22/cycle (following the illustration in the "Vemma 13 Month Cycle Plan" video),
- recruitment is assumed to occur within the week of enrollment, meaning Jane is eligible for Frenzy Bonuses,
- it is assumed that PEQ's (Personally Enrolled Qualifiers) do not exceed 3, meaning Jane is not eligible for Matching Bonuses,
- the Vemma Loyalty Program is not included, though this constitutes a very small benefit in the form of free product every 7th month,
- the Balanced Team Bonus and Balanced Team Bonus Affiliate Pack Flag are not included, though this would have no significant impact on these results, and
- the Global Pool Bonus was not included as the payout size varies based on Pool size - note that eligibility would not begin until Platinum rank.