

## The Fine Line Between Pyramiding and Multi-Level Marketing

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*44 ATENEO L.J. 35 (2000)*

*SUBJECT(S): PYRAMIDING AND MULTI-LEVEL MARKETING*

*KEYWORD(S): PYRAMIDING SCHEMES, MULTI-LEVEL MARKETING,*

Both the Department of Trade and Industry and the Securities and Exchange Commission were placed under heavy fire by the media, the business sector, the uninitiated and the initiated public alike, and by other departments of the Philippine Government. The issue: Pyramiding schemes.

In the short period following the sudden upsurge of questions on the legality of pyramiding schemes, the departments of the government tasked with the protection of the consuming public found themselves unable to clarify the seemingly conflicting and disjointed provisions of law on the issue of what exactly pyramiding is. The objective: the crackdown on illegal pyramiding schemes, disguised as multilevel marketing strategies that have bilked consumers of millions of pesos.

Reference was made to the Consumer Act of the Philippines, as well as the Revised Securities Act, only to discover the extreme difficulty of pinning down the issues and their solutions. Most confusing was the issue of when a company was involved in illegal pyramiding schemes, and when it was actually operating a legitimate multilevel marketing strategy. The cause: a dearth of Philippine law and jurisprudence on the matter.

Whereas legitimate multilevel marketing schemes employ the multilevel structure, wherein distributors at different levels are given the right to recruit other distributors who earn commissions from the sale of consumer products and services, pyramid sales schemes employ the multilevel marketing structure with the focus of the program being recruitment of distributors in order to earn commissions primarily from recruitment activities, rather than from the sale of products and services. There lies the thin line that separates a legitimate multilevel marketing system from an illegal pyramiding scheme. Thus, the predicament: the difficulty in distinguishing the legal multilevel marketing scheme from the illegal pyramid sales scheme, which requires determining whether a particular scheme is established for the sale of products rather than for the recruitment of distributors.

The Consumer Act of the Philippines prohibits pyramiding sales schemes, which are defined as sales devices whereby a participant makes an investment for the right to recruit others, with profits from the scheme being derived primarily from recruitment rather than from the sale of consumer

products, services or credits. What constitutes an investment, and when a scheme is directed at earning income primarily from recruitment, is not elucidated. The definition is, at best, ambiguous, and, at worst, gravely inadequate as a benchmark in determining whether a particular multilevel marketing plan is an illegal pyramid sales scheme or not.

This Paper explores various foreign laws and jurisprudence on the matter, as established over the past few decades. It is proposed in this work that clearly defined boundaries be drawn as to what constitutes an illegal pyramid sales scheme, pursuant to our government's duty of protecting and promoting consumer welfare. In this regard, pyramid sales schemes will be redefined to better establish the boundaries of their illegality. In so doing, the limits within which multilevel marketing schemes may operate will consequentially be set, paving the way for the continuance of the evolution of direct selling in our country. Finally, the solution: to provide for a clearer definition and proscription of pyramid schemes through amendatory legislation.