REGISTERED MAIL

Liberty Wellness Initiative
15 Allstate Parkway, Suite # 310
Markham ON L3R 5B4

MAR 1 1 2010

BN: 869197129RR0001
File #: 3013819

Attention: Mr. Amir Azimi

Subject: **Notice of Intention to Revoke**
Liberty Wellness Initiative

Dear Mr. Azimi:

I am writing further to our letter dated March 3, 2009 (copy enclosed), in which you were invited to submit representations as to why the Minister of National Revenue (the Minister) should not revoke the registration of Liberty Wellness Initiatives in accordance with subsection 168(1) of the *Income Tax Act*.

We have now reviewed and considered your written response dated May 4, 2009. However, notwithstanding your reply, our concerns with respect to Liberty Wellness Initiative's non-compliance with the requirements of the *Income Tax Act* for registration as a charity have not been alleviated. Our position is fully described in Appendix "A" attached.

Conclusion:

The Canada Revenue Agency's (CRA) audit has concluded that from August 15, 2004 to August 15, 2006, Liberty Wellness Initiative (the Organization) issued nearly $89 million in receipts for healthcare units received through the Universal Donation Program, a registered tax shelter. However, it is our position that donation receipts were issued for amounts far in excess of the actual value of the healthcare units. Our audit has revealed that the value of the healthcare units was artificially established and constructed to be five times a participants' cash contribution thereby facilitating the tax advantages promoted by the tax shelter.

For its participation and tax-receipting abilities, the Organization received a cash payment from another participating charity of nearly $15.4 million. All funds were directly transferred to a related third party company and used to pay the fees associated with operating and promoting the tax shelter. A small portion of these funds, $6.9 million, were used to acquire goods for use in the Organization's programs.

Our audit has also revealed insufficient separation between the Organization's operations and the personal business and financial interests of those responsible for its operation. In particular, the Organization has entered collusive contractual arrangements with

directors and related parties who are themselves promoting the tax shelter programs. These arrangements have resulted in substantially all of the actual cash received being diverted into the hands of the promoters and related companies rather than used for charitable purposes.

It is our position that Liberty Wellness Initiative has operated for the non-charitable purpose of promoting tax shelter arrangements and for the private benefit of its directors and the tax shelter promoters. Liberty Wellness Initiative has issued receipts for transactions that do not qualify as gifts; issued receipts otherwise than in accordance with the *Income Tax Act* (the Act) and its Regulations; and has failed to meet its annual disbursement quota. For all of these reasons, and for each of these reasons alone, it is the position of the CRA that the Organization's registration should be revoked.

Consequently, for each of the reasons mentioned in our letter dated March 3, 2009, I wish to advise you that, pursuant to the authority granted to the Minister in subsection 149.1(4) of the *Income Tax Act*, which has been delegated to me, I propose to revoke the registration of the Organization. By virtue of subsection 168(2) of the Act, revocation will be effective on the date of publication of the following notice in the *Canada Gazette*:

> *Notice is hereby given, pursuant to paragraphs 168(1)(b) and 168(1)(d) of the* Income Tax Act, *that I propose to revoke the registration of the organization listed below under section 149.1(4) and paragraph 149.1(4)(b) of the* Income Tax Act *and that the revocation of registration is effective on the date of publication of this notice.*
>
> | **Business Number** | **Name** |
> |---|---|
> | 869197129RR0001 | Liberty Wellness Initiative
Markham ON |

Should you wish to object to this notice of intention to revoke the Organization's registration in accordance with subsection 168(4) of the Act, a written Notice of Objection, which includes the reasons for objection and all relevant facts, must be filed within **90 days** from the day this letter was mailed. The Notice of Objection should be sent to:

Tax and Charities Appeals Directorate
Appeals Branch
Canada Revenue Agency
250 Albert Street
Ottawa ON K1A 0L5

A copy of the revocation notice, described above, will be published in the *Canada Gazette* after the expiration of 30 days from the date this letter was mailed. The Organization's registration will be revoked on the date of publication, unless the CRA receives an order, **within the next 30 days**, from the Federal Court of Appeal issued under paragraph 168(2)(b) of the Act extending that period.

Please note that the Organization must obtain a stay to suspend the revocation process, notwithstanding the fact that it may have filed a Notice of Objection.

Consequences of Revocation

As of the effective date of revocation:

a) the Organization will no longer be exempt from Part I Tax as a registered charity and **will no longer be permitted to issue official donation receipts.** This means that gifts made to the Organization would not be allowable as tax credits to individual donors or as allowable deductions to corporate donors under subsection 118.1(3), or paragraph 110.1(1)(a), of the Act, respectively;

b) by virtue of section 188 of the Act, the Organization will be required to pay a tax within one year from the date of the Notice of Intention to Revoke. This revocation tax is calculated on prescribed form T-2046 *Tax Return Where Registration of a Organization is Revoked* (the Return). The Return must be filed, and the tax paid, on or before the day that is one year from the date of the Notice of Intention to Revoke. A copy of the relevant provisions of the Act concerning revocation of registration, the tax applicable to revoked charities, and appeals against revocation, can be found in Appendix "B", attached. Form T-2046, and the related Guide RC-4424, *Completing the Tax Return Where Registration of a Charity is Revoked*, are available on our website at www.cra-arc.gc.ca/charities;

c) the Organization will no longer qualify as a charity for purposes of subsection 123(1) of the *Excise Tax Act* (ETA). As a result, the Organization may be subject to obligations and entitlements under the ETA that apply to organizations other than charities. If you have any questions about your GST/HST obligations and entitlements, please call GST/HST Rulings at 1-800-959-8287.

Finally, I wish to advise that subsection 150(1) of the Act requires that every corporation (other than a corporation that was a registered Organization throughout the year) file a *Return of Income* with the Minister in the prescribed form, containing prescribed information, for each taxation year. The *Return of Income* must be filed without notice or demand.

Yours sincerely,

Cathy Hawara
A/Director General
Charities Directorate

Attachments:

- Our letter dated March 3, 2009;
- Your letter dated May 4, 2009 (without attachments);
- Appendix "A" Comments on Representations; and

- Appendix "B", Relevant provisions of the Act

cc: David Rotfleisch - Rotfleisch & Samulovitch
121 Richmond St. West, Suite 803
Toronto ON M5H 2K1

CANADA REVENUE AGENCY | AGENCE DU REVENU DU CANADA

REGISTERED MAIL

Liberty Wellness Initiative
15 Allstate Parkway, Suite 310
Markham, Ontario. L3R 5B4

BN: 86919 7129RR0001
File #: 3013819

Attention: Mr. Amir Azimi

DATE March 03, 2009

Subject: Audit of Liberty Wellness Initiative

Dear Mr. Azimi:

This letter is further to the audit of the books and records of Liberty Wellness Initiative (the Charity) by the Canada Revenue Agency (the CRA). The audit related to the operations of the Charity for the period from August 15, 2004 to August 14, 2006.

At our meetings with Mr. Barry Goldsmith, you were advised CRA has identified specific areas of non-compliance with the provisions of the *Income Tax Act* (the Act) and/or its *Regulations* in the following areas:

AREAS OF NON-COMPLIANCE:		
	Issue	**Act References**
1.	Failure to Carry Out its Own Charitable Activities	149.1(1), 168(1)(b)
2.	Issuance of Donation Receipts for Non-Gifts	118.1, 168(1)(d), 248(32)
3.	Issuing Receipts not in Accordance with the Act	149.1(4), 168(1)(d), Reg. 3501
4.	Failure to meet its Disbursement Quota	149.1(4)(b), 168(1)(b)

The purpose of this letter is to describe the areas of non-compliance identified by the CRA during the course of the audit as they relate to the legislative and common law requirements applicable to registered charities, and to provide the Charity with the opportunity to make additional representations or present additional information. In order for a registered charity to retain its registration, legislative and common law compliance is mandatory, absent which the Minister of National Revenue (the Minister) may revoke the Charity's registration in the manner described in section 168 of the Act.

The balance of this letter describes the identified areas of non-compliance in further detail.

Identified Area's of Non-Compliance:

1. Failure to Carry Out its Own Charitable Activities:

The Charity is registered as a private foundation. In order to satisfy the definition of a "charitable foundation" pursuant to subsection 149.1(1) of the Act, "charitable foundation means a corporation or trust, "...operated exclusively for charitable purposes".

To qualify for registration as a charity under the Act, an organization must be established for charitable purposes that oblige it to devote all its resources to its *own* charitable activities. This is a two-part test. First, the purposes it pursues must be wholly charitable and second, the activities that a charity undertakes on a day-to-day basis must support its charitable purposes in a manner consistent with charitable law. Charitable purposes are not defined in the Act and it is therefore necessary to refer, in this respect, to the principles of the common law governing charity. An organization that has one or more non-charitable purposes or devotes resources to activities undertaken in support of non-charitable purposes cannot be registered as a charity.

a. Non-charitable Purpose:

It is our view, based on our audit, that the Charity is pursuing a non-charitable purpose and non-charitable activities in furtherance of this purpose. In our view, the Charity is primarily operating for the purpose of supporting, promoting and participating in a tax shelter donation arrangement. As outlined below, by engaging in a series of transactions, the Charity receipted nearly $222[1] million in tax-receipted donations while receiving and devoting a comparatively insignificant amount of resources to charitable activities.

The Charity was registered as the Liberty Sardiscean Church of God, a private foundation effective August 15, 2000. The Charity's object was "To preach and advance the teachings of the Pentecostal faith and the religious tenets, doctrines, observances and culture associated with that faith" and was governed as an internal branch of the Scardicean Church of God.

On February 21, 2005, a resolution was passed authorizing a name change to Liberty Wellness Initiative. The Charity also came under new control when all the former Directors of the Charity resigned and a new Board of Directors was elected. Mr. David Singh was appointed as president and Ms. Uriel Wilson assumed the position of vice-president.

The CRA was provided a copy of the Charity's newly drafted bylaws on March 2, 2005 and advised of the name change on May 26, 2005. The CRA reviewed the bylaws submitted and noted the submission did not indicate if the Charity had replaced their arrangement with the Scardicean Church of God. The CRA also noted the governing documents submitted failed to contain statements about the objects or purposes of the organization. CRA wrote to the Charity on July 27, 2005 seeking clarification on the Charity's arrangement with the

[1] Total tax-receipted donations reported in fiscal periods ending August 14, 2005 to August 14, 2007.

Scardicean Church of God, statement of objects or purposes and the Charity's statement of activities to be undertaken in furtherance of each object/purpose. The revised bylaws submitted contained no indication of the Charity's involvement in a tax shelter or that the Charity was going to begin an international humanitarian project involving the distribution of multi-vitamins. To date, the Charity has not responded to our letter of July 27, 2005 nor has it submitted the documentation requested. We also note a review of the Charity's corporate minute book does not reveal details on board meetings held or the actions undertaken by the Board with respect to the Universal Donation Program.

In its first year following the change of name, change in board of directors and change in activities, for the fiscal period ending August 14, 2005, the Charity immediately received over $2.5 million in "gifts" from donors and a registered charity. In the second year, the Charity received over $102 million in "gifts" from donors and registered charity.[2] All "gifts" were received from participants in the Universal Donation Program, a registered tax shelter. Prior to its participation in the Universal Donation Program tax shelter, the Charity reported gross average income of approximately $10,000 and gross average expenses of approximately $9,850.[3]

The Charity participated in the Universal Donation Program tax shelter (TS07493), promoted by Universal HealthCare Group Inc., for fiscal periods 2005, 2006, 2007 and 2008 by agreeing to accept cash and property from Canadian participants and another registered Canadian charity that also participated in the tax shelter. A description of the tax shelter, as per our understanding and interpretation of the information presented, is contained in Appendix "A".

Including the August 14, 2007 fiscal period, the Charity has issued official donation receipts for "gifts" received from participant donors and a registered charity of nearly $260 million as a result of its participation in this tax shelter. This amount is comprised of $222.4 million of in-kind "gifts" and over $37.4 million in cash from the only other registered Canadian charity participating in the tax shelter, Destiny Health & Wellness Foundation (Destiny). During the audit period, the Charity reports it has distributed the in-kind "gifts" as part of its charitable activities and paid management and administration fees to Pinnacle Financial Strategies Inc. (Pinnacle) of $28 million. Pinnacle is the management company which provides administration, processing and fundraising services to the Charity and Destiny, and is compensated based on 19.8% (inclusive of GST) of each charity's tax-receipted revenues – gifts in kind donations receipted by the Charity and cash donations receipted by Destiny. The sole shareholder of Pinnacle, Mr. David Singh, was also a director/president of each charity during the audit period.

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[2] Amounts reported for fiscal period ending August 14, 2005 and August 14, 2006 based on amounts reported on form T1240 "*Registered Charity Adjustment Request*" prepared and submitted by Ms. Jean Benedict, secretary/treasurer on December 28, 2007. Amounts recorded on the T1240 to be used throughout the letter unless specifically noted.

[3] Average calculated based on Total Income and Total Expenditures reported by the Charity on its annual information returns for the periods ending August 14, 2001 to August 14, 2004.

Our review of the cash "gifts" received by the Charity from Destiny reveals that the Charity did not actually receive the "gifts" but rather the funds were transferred directly to Pinnacle which utilized the funds to pay the various expenses incurred for promoting and administering the tax shelter, including payments to Universal HealthCare Group Inc. The agreement with Pinnacle is structured in such a manner that Pinnacle is to act as the banking agent for the Charity. Per discussions with the Charity's accountants, funds were transferred directly to Pinnacle to prevent the directors of the Charity from having access to the funds.

Based on this, and our findings discussed below, it appears substantially all of the Charity's funds are directed primarily to the benefit of the tax shelter promoters and to the promotion of the tax shelter arrangement. In our view, the conduct of the Charity with respect to the arrangements described in Appendix "A", demonstrates the Charity's willingness to lend its receipting privileges for the inappropriate private benefit of the tax planning donation arrangements and its promoters, which is not charitable at law.

The Charity, in our view, was acquired by Mr. David Singh solely for the purpose of a promoting tax shelter. Given the manner in which the Charity has structured its financial affairs for the private benefit of the tax shelter promoters along with its proportionally high levels of involvement and collusion in these financial arrangements, it is our view a collateral purpose, if not primary purpose of the organization is, in fact, to support and promote the tax shelter arrangement. Operating for the purpose of promoting a tax shelter is not a charitable purpose at law. As such it is our view that the Charity does not meet the test of "charitable foundation", as defined in 149.1(1) in that it was constituted for charitable purposes but since 2005 has failed to be operated for exclusively charitable purposes. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Liberty Wellness Initiative under paragraph 168(1)(b) of the Act.

b. Personal Benefit:

Paragraph 149.1(1)(b) of the Act stipulates that no part of a charity's income is payable or otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settler thereof. The CRA considers the meaning of the term "trustee", for registered charity purposes, to include those persons who stand in a fiduciary relationship to the charity, having general control and management of the administration of a charity, including directors of corporations established for charitable purposes. This is a rule against self-dealing. A trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with it. As per the Charity's bylaws, those passed December 15, 2004 and effective January 2005, sections 3, 4 and 7 of the section entitled "Finances" state:

> "3. The directors shall serve without any remuneration and no director shall directly or indirectly receive any profit from their positions as such, provided that directors may be paid reasonable expenses incurred by them in the performance of their duties
>
> 4. The power to invest the funds of the foundation in such a manner as determined by the directors, and in making such investments the directors shall not be subject to the trustees Act, but provided that such investments are reasonable, prudent and

sagacious under the circumstances and do not constitute, either directly or indirectly a conflict of interest.

7. The power to hire and pay such assistants, clerks, agents, representatives and employees and to procure, equip and maintain such offices and other facilities and incur such reasonable expense. As may be necessary, provided that the foundation shall not pay any remuneration to a director in any capacity whatsoever."

Under the Act, a registered charity that confers on a director/trustee an undue benefit is liable to a penalty equal to 105% of the amount of the benefit. This penalty increases to 110% and the suspension of tax-receipting privileges for a repeat infraction within 5 years.

The CRA's position regarding the remuneration of directors is that *bona fide* payments for actual services rendered do not constitute a "personal benefit" of the type prohibited by the Act for the directors of registered charities. Accordingly, a registered charity may remunerate its directors or entities controlled by its directors for other services actually performed on behalf of the charity, as long as those payments are reasonable under the circumstances, and in the normal course of operations. The Charity has entered into agreements with various corporations who share common ownership with the directors of the Charity whereby the corporations are remunerated for administrative and fundraising services rendered.

As described above, the Charity has paid in excess of $28.0 million to Pinnacle, a corporation also solely controlled by Mr. David Singh. The payments were management and back office processing fees and are calculated as a percentage of total donations received from the Charity's participation and promotion of the Universal Donation Program.

The contract with Pinnacle is structured in such a manner that little, if any, funds would revert back to the Charity. As per above, the contact requires the Charity to pay Pinnacle a fee equivalent to 19.8% of gross in-kind and cash donations and that Destiny transfers this amount directly to Pinnacle. Our audits have revealed this amount "gifted" to the Charity from Destiny coincidently approximates the product of purported value of in-kind gifts multiplied by 19.8%. Once the funds are paid to Pinnacle, they are further diverted into other related entities such as Universal HealthCare Group Inc., and so forth.

It is our view that the Charity has been established and operated for the private gain of Mr. David Singh. Mr. David Singh, in his capacity as president of the tax shelter promoters, president of each participating charity and shareholder of all four corporations involved in the tax shelter, as well as the involvement of his family members, puts himself in a position to direct the movement of funds received from participant donors between and into his corporate entities within and outside Canada. The Charity, whether directly or indirectly via Pinnacle, has also operated for the private gain of Ms. Uriel Wilson. We draw this conclusion from the following findings:

a) Mr. David Singh became president of the Liberty Sardescean Church of God, later renamed Liberty Wellness Initiative, on February 21, 2005. The directors of the Charity are Mr. David Singh and Ms. Uriel Wilson. The Charity does not maintain a bank account, and all cash donations and expenditures were controlled by Pinnacle.

b) Ms. Uriel Wilson received a taxable residence allowance (originally recorded as rent payments) of $37,134, paid by Pinnacle on behalf of the Charity during 2006. The Charity was operated by Pinnacle from its 15 Allstate Parkway, Markham address. Ms. Uriel Wilson also received $11,680 in sales agent commissions from Pinnacle for promotion of the tax shelter program.

c) Mr. David Singh established Destiny Health & Wellness Foundation, which was registered effective January 1, 2005. The directors of the Charity are Mr. David Singh, Ms. Elesha Singh – Mr. David Singh's daughter, and Ms. Lori Valente – Mr. David Singh's common law spouse.

d) The Universal Donation Program tax shelter was registered effective May 2, 2005. Mr. David Singh controls the tax shelter as President.

e) Each charity entered into a service contract with Pinnacle on April 30, 2005 to provide administration, processing and fundraising services. Pinnacle is owned solely by Mr. David Singh and was incorporated November 23, 2004.

f) Pinnacle pays the expenses incurred by each charity for promotion and administration of the tax shelter programs. Of note, Pinnacle pays amounts to Universal HealthCare Group Inc. (0.1% of total tax-receipted gifts from the Universal Donation Program) with the remaining funds, after all expenses have been paid, retained for itself. In 2006, Pinnacle received over $22.8 million in fees from the Liberty and Destiny and used the funds as follows:

Fees to Universal Healthcare Group Inc	$ 137,400
Fees to Destiny Marketing Solutions Inc	72,700
Storage & Distribution	609,200
Administration (Legal, Accounting)	311,900
Contract Personnel	306,700
Commission Fees to Sales Agents	10,755,000
Fees to Autumn Trust (Healthcare units acquisition)	4,209,000

Pinnacle earned over $6.4 million after fees were paid.

g) Mr. David Singh wholly owns Universal Healthcare Group Inc.

h) In 2005, Pinnacle has transferred $2.7 million to another St. Lucian entity, Autumn Trust, controlled by Mr. David Singh's St. Lucian lawyer, Mr. Nicholas John, LLB, for the acquisition of healthcare units. In 2006, $4.2 million was transferred to Autumn Trust for the acquisition of the healthcare units.

Our review of the information provided indicates there has not been sufficient separation between the director's affairs, the financial and business interests of individuals responsible for administration and management of the Charity's programs. It is our position the Charity's programs have been operated in such a way as to benefit those interests. It is our conclusion, based on the evidence before us, that the Charity and the related parties identified above have been controlled and operated by the same group of individuals; the Charity exists as little more than a shell with the capacity to issue donation receipts for income tax purposes; and this capacity has been exploited as a means by which revenues are generated as fees paid to the related entities. We are unconvinced that these payments are for *bona fide* services rendered. The terms of the contracts between the related persons are such that, of the actual cash

received, a significant portion is siphoned off as management, processing and investment fees after fees have been paid to the sales agents responsible for soliciting donors to the tax shelter.

In our view, the Pinnacle directs the out-of-pocket funds contributed by participant donors (who are rewarded with official donation receipts for income tax purposes for many times their out-of-pocket expenses) towards management and processing fees paid to Pinnacle. From the fees paid to Pinnacle, funds are disbursed to Universal Health Care Group, thereby moving actual cash donations amongst the related group of companies and thereby benefiting their shareholders. Mr. David Singh, while serving as president and director of the Charity respectively, derived significant direct and indirect financial benefit from the related corporation's contracting arrangements with the Charity. It also confirms that the affairs of the Charity have been principally under the control of Mr. David Singh, acting simultaneously as executive director of the Charity, and the sole shareholder of Pinnacle.

It is our view that the fee structure adopted by the Charity is one that directly links compensation to the total value of the official donation receipts issued regardless of whether the Charity actually receives property equivalent to the receipts issued. Further, the fee structure is clearly designed to benefit the persons and related persons favourably as a significant portion of the cash contributions made by the participant donors are returned to the Charity's directors and related corporations in the form of fees leaving little, if any, to be used within the charitable sector. As per above, after paying management and administration fees to Pinnacle, the Charity retains 0.02% of gross cash contributions for all its other administrative and charitable disbursements.

Given the manner in which the Charity has structured its financial affairs, it is our view the Charity is operating primarily for the personal benefit of its directors or the promoters of the tax shelter, to the detriment of its charitable purpose. As above, it is our view the primary purpose of the Charity is to promote a tax shelter gifting arrangement established by Mr. David Singh. The Charity's activities to-date, have largely, if not solely, consisted of being the receipting arm of the tax shelter arrangement, with little regard for the genuine pursuit of the Charity's mandate which is to preach and advance the Pentecostal faith. In this regard, it is our view that a primary purpose of the promotion of this scheme appears to be to personally enrich the promoters and directors.

It is our position by pursuing this non-charitable purpose, and by operating for the private gain of its directors, the Charity has failed to demonstrate it meets the test for continued registration under 149.1(1) as a charitable foundation "operated exclusively for charitable purposes" or as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, it appears there may be grounds for revocation of Liberty Wellness Initiative's registered charity status under 149.1(4) of the Act.

2. Issuance of Donation Receipts for Non-Gifts:

It is our position that the Charity has contravened the *Income Tax Act* by accepting and issuing receipts for transactions that do not qualify as gifts. We offer the following explanations to support our position.

a. No *Animus Donandi*

Gift is not defined in the Act however, a common law definition of the word "gift" has developed. 92 DTC 6031; Her Majesty the Queen (Appellant) V. Albert D. Friedberg (Respondent) provides the following definition:

> "...a gift is a voluntary transfer of property owned by a donor to a donee, in return for which no benefit or consideration flows to the donor."

An essential element of a gift is that there be an intent to give. It must be clear the donor intends to enrich the donee, by giving away property, and to grow poorer as a result of making the gift.

Justice J. Pinard of the Federal Court, Trial Division, 88 DTC 6101, Her Majesty The Queen (Plaintiff) v. Dr. F Bruce Burns (Defendant) discussed the concept of *animus donandi:*

> "I would like to emphasize that one essential element of a gift is an intentional element that the Roman law identified as animus donandi or liberal intent.. : The donor must be aware that he will not receive any compensation other than pure moral benefit; he must be willing to grow poorer for the benefit of the donee without receiving any such compensation".

Justice J. Bowie further clarifies in 2004 UDTC 18, Dwight Webb (Appellant) v. Her Majesty the Queen (Respondent),

> "These cases make it clear that in order for an amount to be a gift to charity, the amount must be paid <u>without benefit or consideration flowing back to the donor</u>, either directly or <u>indirectly</u>, or anticipation of that. The intent of the donor must, in other words, be entirely donative." [Emphasis added].

It is our position, based on the transactions outlined in Appendix "A" and above, that the primary motivation of the donors was not to enrich the charities involved and assist in their humanitarian aid relief but rather, through a series of transactions, to make a profit from the tax credits so obtained. In the tax shelter donation arrangement, donors are generally out of pocket no more than 20 - 25% of the total aggregate receipted value of their "gifts". The promotional material highlights the "*tax program will play the role in* ***reducing your income***", that donors will receive an immediate "*cash on cash*[4]" returns and reduce taxes by 20 - 40%.

In support of this position, we note that:

- The advertising and promotional literature emphasizes the positive return on the participant's initial cash investment as a result of participation in the donation program. We also note the promotional materials inform the participants of an

[4] Ontario residents benefit from at least an 86% cash-on-cash return. Amount varies by province.

option to file Form T1213 "*Request to Reduce Tax Deductions at Source*" based on the participant's projected reduction in income tax payable made possible as a result of the donation tax credits forthcoming. Taking advantage of this option enables participants to participate by making further donations "*at the full discount rates*" and enjoying "*even more savings and a larger return*".

- Transactions are pre-arranged and handled entirely by promoters or other pre-arranged third parties. Participants complete a series of forms for the tax shelter program (application forms, information forms, deed of gift and authorization forms) and provide the promoters with the necessary cheques.
- Participants in this arrangement are merely expected to put forward a minimal investment to receive generous tax receipts in return. Participants do not see or inspect the nutritional supplements received from the Trust nor has evidence been provided to indicate any of the participants chose to retain the nutritional supplements.

These points, in our opinion, evidence the transactions are primarily motivated by the participant's intent to enrich himself rather than an intent to make a gift to charity. As such, it is our position there is no intention to make a "gift" within the meaning assigned at 118.1 of the Act and these transactions did not qualify for tax receipting purposes. For this reason, it appears to us that there may be grounds for revocation of the charitable status of Liberty Wellness Initiative under paragraph 168(1)(d) of the Act.

b. Cash Payments and Gifts in Kind:

In our view, based on the above, we do not recognize the cash contributions or the value of the gifts in kind donations received as gifts made to the Charity. Further, the cash contributions represent the charge levied by the tax shelter promoter to participants to participate in the tax shelter. While the cash contribution "gifted" from Destiny to the Charity was transferred directly to Pinnacle, it is clear this amount, at no point, was available to be used by the Charity for its programs. We acknowledge Pinnacle did acquire some healthcare units with the funds however it appears this acquisition was at the request of the tax shelter and not of the Charity's own involvement and purpose.

To be considered to be a gift to a charity, it must truly be a donation in support of the Charity's programs. The donee should have the discretion as to how to use the funds or at a minimum to apply these to its charitable purposes. Transactions which are, in reality, disguised payments earmarked for non-charitable purposes are not gifts. We are of the view the Charity received gifts which were, in reality, payments from individuals to participate in the tax shelter. Substantially all of the payments were not used for charitable purposes, but were retained by the promoter and other third parties. In fact, it would appear, in the Universal Donation Program that the funds paid to Destiny and the Charity were in fact used to acquire the drugs purportedly held by the trust.

Of the approximately $37.4 million in cash received from Destiny, the Charity reports incurring management and processing fees in excess of $28 to Pinnacle. Pinnacle then seemingly utilized the funds to purchase the same healthcare units distributed to capital

beneficiaries of the Trust. As stated above, Pinnacle transferred $2.7 million in 2005 and $4.2 million in 2006 to Autumn Trust for the acquisition of healthcare units.

c. Fair Market Value

"Fair market value" is not defined by the Act, however, a standard definition generally accepted is, the highest price, expressed in dollars, obtainable in an open and unrestricted market between informed, prudent parties dealing at arm's length and under no compulsion to buy or sell[5].

As outlined by Rothstein, J.A. in *AG (Canada) v Tolley et al 2005 FCA 386*, in applying the Henderson definition of fair market value, the first step is to accurately define the asset whose fair market value is to be ascertained. Rothstein, J.A. discusses the relevance of donating a group of items versus an individual item and states that because the items were only acquired and donated in groups, the relevant asset was the group of items, and not the individual items in the group.

It is our position the conclusion made by Rothstein, J.A. also applies to the donations of healthcare units. Based on the quantities donated, the relevant asset is considered to be the group of goods donated, not the individual items within each group. Rothstein, J.A. continues by stating it is wrong to assume that the fair market value of a group of items is necessarily the aggregate of the price that could be obtained for the individual items in the group.

The second step in applying the Henderson definition is to identify the market in which the merchandise was traded. Rothstein, J. A. identifies this group of items might not be sold in the same market as individual items, and highlights this distinction through a comparison of the wholesale versus retail markets.

In Klotz v The Queen 2004 TCC 147, Bowman, A.C.J. stated "It is an interesting questions that I need to consider here whether the price paid for something is truly indicative of fmv [sic-fair market value] where the predominant component in the price paid is the tax advantage that the purchaser expects to receive from acquiring the object."

Based on our findings, the fair market value assigned on the donation receipts issued is not indicative of the fair market value of the goods donated. No formal fair market value opinion was obtained by the Charity but only market research and a methodology report. This was used in part to create the fair market value assigned to the healthcare units internally. The CRA has requested the Charity's basis for the assigned fair market value; however, to date, the CRA has been advised that the pricing binder is missing. In this regard, it appears that the assigned fair market value is essentially inflated. We are of the opinion the retail market is not the relevant market as the goods were acquired, sold and donated in blocks of goods and that the fair market value of the healthcare units is the last known arm's length price paid for the goods.

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[5] *Henderson Estate & Bank of New York v M.N.R. 73 D.T.C. 5471 at 5476.*

Under paragraphs 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and its Regulations. It is our position that the Charity has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of Liberty Wellness Initiative's charitable status.

d. Benefit Received:

As we have previously outlined, a participant donor contributes a fee, guised as a donation, to Destiny under the Universal Donation Program and suddenly becomes eligible for a distribution of "*essential medicines, vitamins and nutritional supplements*" from the Universal Healthcare Trusts. The marketing materials state, *"There is no requirement to make a donation of cash in order to be eligible to be a beneficiary of one of the Trust"* yet the next declaration made on the materials state, *"For administrative purposes, the minimum cash donation that Destiny will entertain is $1,000."* It is clear a donor is recommended to make a cash contribution and that this cash contribution is the direct link to the donors' eligibility to receive some form of property from a trust. This is clear both from the promotional materials and the audit evidence with respect to the pattern of transactions of the donors.

It is the position of the CRA that it is, in fact, the cash contribution to Destiny that pre-determines whether the individual will become a "beneficiary" of the trust or eligible to receive the amount of healthcare units the individual is eligible to receive. We note, for example in the Universal Donation Program, that the Deed of Gift to the Charity, Application to Become a Capital Beneficiary and Deed of Gift of Property to Liberty are submitted, with applicable cheques, at the same time. Based on our review of the years in question, the Trust, without exception or variation, distributes healthcare units to individuals who donate to Destiny at an average rate of 400%[6] of the value of their "donation". And without variation, 100% of the individuals "choose to donate" the healthcare units to the Charity. By way of further example, none of the material presented indicates what will be done with a donor's cheque to the Charity should the donor be refused as a capital beneficiary or should they receive less than the desired amount of healthcare units. In short, it is clear that there is a direct link between the cash contribution "donated" to Destiny and the eligibility and value of the benefits received. We have identified limited instances whereby a donor became a "beneficiary" of the trust or eligible to receive healthcare units without making the required initial cash contribution to Destiny. These instances are limited and do not alter the fact that substantially all participants became "beneficiaries" of the trust after making their recommended cash contribution to Destiny.

With respect to the Charity's agreement with Pinnacle, the relationship between the cash contributions made to Destiny and the in-kind "gifts" to the Charity are equally clear. The value of the cash contribution made to Destiny, in all transactions, predetermines the amount of healthcare units the individual becomes eligible to receive from the trust (the average ratio

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[6] Ratio of in-kind to cash contribution fluctuates throughout the calendar year. For example, gifts made up to June 2006 had an in-kind to cash ratio of 5:1. This ratio declined to 3.5:1 for gifts made between November 1 and December 31, 2006.

is 1:4[7] for cash contributions made to Destiny). Substantially all donors become eligible to become beneficiaries of the trust and receive property in a ratio determined by the amount they give. As per above, the amount paid to Pinnacle by the Charity conveniently equals 100% of the "gifts" received from Destiny calculated as 19.8% of the purported value of the in-kind and cash donations received from participant donors. This further evidences the link between the cash contribution and the advantage, or the medicine units, received by participant donors. This advantage so received is sufficient in and of itself for the CRA to find that the Destiny and Liberty issued receipts for a transaction that do not qualify as a gift.

It is our position the representations with respect to the tax shelters are simply not credible. The CRA is asked to believe that despite the healthcare units being worth hundreds of millions of dollars, the trust has settlers that have charitably agreed to distribute these units to the capital beneficiaries without compensation or with minimal compensation. The CRA is then told individuals "choose" to donate to the Charity and there is no link between their eligibility to receive property and their cash contributions – this is despite the fact that participants have little to no knowledge or connection to the Charity, the Charity has no history of international pharmaceutical distributions but has a short history of operating as a church, and there is a clear (and pre-advertised) correlation between how much participants give and how much they receive. In the Universal Donation Program, neither the Charity nor the donor ever physically see or physically receive the property that has been donated. The purported fair-market value of the healthcare units, which has been pre-established by the promoters of the arrangements, is many-times higher than the donor's cost to participate in the arrangement.

It is, for the reasons expressed above, our position that these transactions do not qualify as gifts, the participants are fully aware that they will receive, and do receive, a benefit (i.e., the distribution from the trust) from the trust for making a cash contribution to Destiny and that the payments to Destiny are in reality participation fees.

e. Proposed Legislation:

On December 5, 2003, the Department of Finance introduced new legislation with respect to charitable donations and advantages. These rules allow a taxpayer to make a gift to a charity and receive some advantage in return, however the value on the receipt must reflect the eligible amount of the gift made (i.e., the value of the receipt must reflect the gift less any advantage received by the donor). This legislation is applicable in respect of gifts made after December 5, 2003.

It is our view that the participant donor received an advantage, as defined at proposed subsection 248(32), as a result of the cash contribution to Destiny, in the form of receiving healthcare units from their participation in the Universal Donation Program. As such, the fair market value of the subsequent gift of that property to the Charity is deemed, by virtue of proposed subsection 248(35), to be no more than the amount of the initial cash contribution. Consequently the amount that the Charity was required under the *Income Tax Act* to record

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[7] Ibid.

on its official donation receipts as the deemed fair market value of the gift is significantly lower than what was actually recorded by the Charity.

It is further our assertion the Charity knew, or ought to have known, the value the advantage received by the participant donors given the relationship among the closely held group of companies and individuals involved.

Under paragraphs 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position that Liberty Wellness Initiative has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of its charitable status.

3. Issuing Receipts not in Accordance with the Act:

The law provides various requirements with respect to the issuing of official donation receipts by registered charities. These requirements are contained in Regulations 3500 and 3501 of the Act and are described in some detail in Interpretation Bulletin IT-110R3 *Gifts and Official Donation Receipts*.

The audit reveals that the donation receipts issued by the Charity do not comply with the requirements of Regulation 3501 of the ITA and IT-110R3 as follows:

- Receipts issued to acknowledge gifts received as a result of the Charity's participation in the tax shelters were not valid gifts under section 118.1 of the Act. Under the *Income Tax Act*, a registered charity can issue official donation receipts for income tax purposes for donations that legally qualify as gifts. Our position is fully explained above.
- The Charity's name as recorded with CRA is Liberty Wellness Initiatives, the donation receipts were issued in the name of Liberty Wellness Initiatives Foundation.
- The address of the appraiser, SF Valuations Inc., was not recorded on the donation receipts issued.
- The appraisal reports received from the Charity does not support the value for which the donation receipts were issued. The report states "*We are not providing an opinion as to the fair market value of the products. We are reporting solely on the consensus of the results of our research.*"
- The Charity issued donation receipts for more than the fair market value of the goods received.
- "Lost" or "Cancelled" donation receipts were not properly cancelled or replaced in accordance with Regulation 3501(4) and IT-110R3, paragraph 20.

  Regulation 3501(4) of the Act stipulates that an official receipt issued to replace an official receipt previously issued shall clearly show that it replaces the original receipt and, in addition to its own serial number, shall show the serial number of

the receipt originally issued. Regulation 3501(5) requires that a spoiled official receipt form shall be marked "cancelled" and such form, together with the duplicate thereof, shall be retained by the registered organization as part of its records. The Charity did not properly cancel receipts nor did it obtain the erroneously issued receipts from the donors thereby providing donors the opportunity to claim their "gift" more than once.

Additionally, we would like to inform you that certain amendments to the Act were introduced as part of Bill C-33 tabled in Parliament on March 23, 2004, that came into force May 13, 2005. As part of the amendments, a registered charity that issues an official donation receipt that includes incorrect information is liable to a penalty equal to 5% of the eligible amount stated on the receipt. This penalty increases to 10% for a repeat infraction within 5 years.

A registered charity that issues an official donation receipt that includes false information is liable to a penalty equal to 125% of the eligible amount stated on the receipt, where the total does not exceed $25,000. Where the total exceeds $25,000, the charity is liable to a penalty equal to 125% and the suspension of tax-receipting privileges. We do not believe that this is an appropriate alternative, given the serious nature of the matter of non-compliance.

In conclusion, it is our view that the Charity has not complied with the requirements of the Act in that it has issued receipts for gifts or donations otherwise than in accordance with the Act and the Regulations. Under paragraph 168(1)(d), the Minister may, by registered mail, give notice to a registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is our position the Liberty Wellness Initiative has issued receipts otherwise than in accordance with the Act and the Regulations. For each reason identified above, there may be grounds for revocation of Liberty Wellness Initiative.

4. Failure to meet its Disbursement:

In order to maintain its status as a "private foundation" within the meaning of paragraph 149.1(4)(b) of the Act, a registered charity must, in any taxation year, expend amounts that are equal to at least 80% of the aggregate amounts for which it issued donation receipts in its immediately preceding taxation year or in the case of enduring property, 3.5% of the average value of property not used for charitable activities. A charity is allowed by virtue of 149.1(20) of the Act to offset any shortfalls in its disbursement quota by applying any excesses in its disbursement quota from its immediately preceding taxation years and the five or less of its immediately subsequent taxation years.

In considering the application of expenditures used to meet the disbursement quota a charity must ensure that it is expensed directly on charitable activities and/or programs. This would include such payments as salaries to persons performing duties directly related to a charitable program, but would not include amounts paid for purely administrative expenses such as fundraising costs, legal or accounting fees, and the like.

In our view, the Charity reported revenue in excess of over $104.7[8] million during the audit period and has reasonably incurred only $6.9 in charitable expenditures (the acquisition of healthcare units). As discussed above, it is our view the fair market value assigned to the healthcare units was inflated and consequently the value the Charity reports as distributions is inflated. The Charity reports it has received "gifts" from Destiny despite the fact that the "gifts" were never made directly to the Charity nor did the Charity have unfettered access to the "gifts" made by Destiny. It is also our position that the Charity, if it did in fact receive the cash "gifts" from Destiny, was required to distribute 19.8% of the in-kind "gifts" to Pinnacle as payment for fundraising costs. The payment to Pinnacle was structured in such a way that 100% of gross cash "gifts" received from Destiny were required to be paid to Pinnacle. Therefore, the Charity is not spending sufficient funds towards its disbursement quota.

The Charity has not expended amounts in satisfaction of its disbursement quota for the fiscal periods ending August 14, 2005 and August 14, 2006. Per paragraph 168(1)(b) of the Act, the Minister, may by registered mail give notice to the charity that he proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, it appears to us that there may be grounds for revocation of the charitable status of the Liberty Wellness Initiative.

The Charity's Options:

a) No Response

You may choose not to respond. In that case, the Director General of the Charities Directorate may proceed with the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

b) Response

Should you choose to respond, please provide your written representations and any additional information regarding the findings outlined above **within 30 days** from the date of this letter. After considering the representations submitted by the Charity, the Director General of the Charities Directorate will decide on the appropriate course of action, which may include the issuance of a Notice of Intention to Revoke the registration of the Charity in the manner described in subsection 168(1) of the Act.

If you appoint a third party to represent you in this matter, please send us a written authorization naming the individual and explicitly authorizing that individual to discuss your file with us.

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[8] Including fiscal period ending 2007, the Charity has reported receiving $259.8 million in total income of which 100% is received as a result of its participation in the Universal Donation Program.

If you have any questions or require further information or clarification, please do not hesitate to contact the undersigned at the numbers indicated below.

Yours sincerely,

G. J. (Gerry) Veitch
Kitchener/Waterloo Tax Services Office
166 Frederick Street
Kitchener, ON N2G 4N1
Ph: (519) 896-3549

Appendix "A"

Universal Donation Program:

- Participant donors apply to become a capital beneficiary of the Universal Healthcare Trust (the Trust). The donors then make a cash "gift" to the Destiny Health & Wellness Foundation (Destiny). All, or substantially all, of the donors who make a cash "gift" to Destiny were accepted as capital beneficiaries of the Trust;
- As a capital beneficiary of the Trust, participant donors received a free capital distribution in the form of vitamins, nutritional supplements, essential medicines and/or supplies (healthcare units). The donors never saw nor took physical possession of the property;
- Participant donors immediately "donated" these healthcare units to a second related registered Canadian charity, Liberty Wellness Initiative (Liberty); and
- Official donation receipts were issued by Destiny for 100% of the cash "gift" and by Liberty for the purported fair market value of the healthcare units. The fair market value of the healthcare units was purported to be approximately five times the cash "gift". For example, if a donor gave a cash donation of $1,000, they received one tax receipt for $1,000 and a second tax receipt for $5,000 represented to be the fair market value of the healthcare units donated.

Appendix "A"

LIBERTY WELLNESS INITIATIVE

COMMENTS ON REPRESENTATIONS OF MAY 4, 2009

Failure to Devote Resources to Charitable Activities

The Canada Revenue Agency's (CRA) audit of Liberty Wellness Initiative (the Organization) revealed that the Organization primarily operates for the purpose of furthering the Universal Donation Program tax shelter by agreeing, for a fee, to act as a receipting agent in the tax shelter. Per our previous letter, it is CRA's position that the Organization is operating as a conduit for the tax shelter. In operating as such, the Organization has entered into agreements with persons associated with the tax shelter program to facilitate the Organization's acceptance, and subsequent receipting, of all healthcare units contributed by participants and to accept cash "gifts" received from another participating charity. The Organization reports distributing the healthcare units at their inflated receipted values and pays fundraising fees equivalent to 19.8% (inclusive of GST) of the healthcare units' purported value in fundraising and administrative expenses from the cash "gifts" received. For its role in the entire donation arrangement, the Organization retains 0.2% of the total cash "gifts" received from the other participating charity.

The submissions of May 4, 2009 argue that "[t]here is no prohibition in (the "Act") against a charity participating in, that is receiving donations in the course of, a charitable donation program that is registered as a "tax shelter"...The participation by the [Organization] in the Universal Program, a registered "tax shelter", by receiving donations of healthcare units from individual participants in the Universal Program and gifts of cash from Destiny [Health & Wellness Foundation], was properly part of the [Organization's] charitable activities."[1] The submissions are correct that there is no explicit prohibition in the Act against a charity participating in a tax shelter. However, at law, where an activity becomes so predominant it becomes an end in and of itself, it may cause an organization to cease to qualify as an organization operating for exclusively charitable purposes. As described in our letter of March 3, 2009, it is clear that, from our audit, the Organization has operated for the purpose of furthering a tax shelter arrangement by agreeing, for a fee, to act as a receipting agent in the arrangement. Given that substantially all of the property and cash received by the Organization are received from and devoted to its participation in this arrangement, and the manner in which the Organization has structured itself to accommodate this arrangement, undoubtedly demonstrates that this activity has become an end in itself. Operating for the purpose of promoting a tax planning donation arrangement is not a charitable purpose at law and, for this reason alone, we are of the position that the Organization does not operate for exclusively charitable purposes as required by subsection 149.1(1) of the *Income Tax Act* (the Act).

In support of this we note that based on the Organization's annual information returns, the Universal Donation Program tax shelter is the Organization's primary activity. During the

[1] The number assigned to a particular tax shelter is an identification number and should not be construed as the Minister's validation and acceptance of the tax shelter's particular claims.

period audited, the Organization issued official donation receipts for "gifts" received from participant donors and a registered charity of over $104.3[2] million as a result of its participation in this tax shelter. This amount is comprised of nearly $89 million of healthcare units and over $15.4 million in cash from the only other registered Canadian charity participating in the tax shelter, Destiny Health & Wellness Foundation (Destiny). During this same period, the Organization received negligible non-tax shelter income of $2,200 and made gifts of $12,525 to qualified donees unaffiliated with the tax shelter program. It remains our position that, rather than pursuing its own charitable activities, the Organization's involvement and promotion of the Universal Donation Program tax shelter has become its primary purpose.

The representations find that statements made in our letter "manifestly distort the nature of the [Organization's] otherwise proper participation in the Universal Program, a registered tax shelter, and are each wrong in fact and in law." The representations assert that "[t]he [Organization] did not "support" or "promote" the Universal Program" but go on to further state "[t]he [Organization] voluntarily agreed to participate in and at all times voluntarily participated in the Universal Program in support of the Universal Program's extraordinary charitable aims and accomplishments." We do not dispute that the donation arrangement did ultimately deliver and distribute healthcare units to needy persons; however, we find the mechanism utilized to accomplish this abusive to the spirit of the *Income Tax Act*. Our audits have revealed, of the over $37 million paid to Pinnacle Financial Strategies Inc. (Pinnacle), only $7 million was utilized to purchase healthcare units for distribution and the majority of the funds were utilized to compensate commissioned sales agents for referring participants to the tax shelter programs.

The Organization agreed to voluntarily participate in the program by retaining Pinnacle to fundraise on its behalf and it is in this one regard, that we consider the Organization involved in the promotion of the program. The Organization's involvement in, and promotion of the Universal Program, provide the facts to support our statements that:

- " the [Organization] is primarily operating for the purpose of supporting, promoting and participating in a tax shelter donation arrangement;
- by engaging in a series of transactions, the [Organization] receipted nearly $222[3] million in tax-receipted donations while receiving and devoting a comparatively insignificant amount of resources to charitable activities; and
- the conduct of the [Organization] with respect to the arrangements described in Appendix "A" [of our March 3, 2009 letter], demonstrates the [Organization's] willingness to lend its receipting privileges for the inappropriate private benefit of the tax planning donation arrangements and its promoters, which is not charitable at law."

The submissions further state, "[t]he Act contains no prohibition upon the [Organization] entering into such a services agreement with Pinnacle, nor against the [Organization] paying Pinnacle the said services fees in the course of carrying on its charitable activities." We do not disagree that the Act permits a charity to engage in fundraising contracts. However, it is

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[2] Including 2007 and 2008 figures, the Organization has issued over $289.5 million in tax-receipted donations from tax shelter participants, reported receiving over $36.7 million from Destiny and has become involved in the Universal Barter Group tax shelter.

[3] Total tax-receipted donations reported in fiscal periods ending August 14, 2005 to August 14, 2007.

our conclusion that Destiny's primary purposes of making "gifts" to the Organization were merely orchestrated steps in the overall Universal Donation Program tax shelter. The "gifts" were not intended to be used for charitable purposes of the Organization but rather to pay the administration, processing and fundraising services owing to Pinnacle. Additionally, given the relationships between the charities and fundraising company, the Organization knew, or ought to have known, that the funds "gifted" from Destiny or transferred to Pinnacle were not used for charitable purposes. It is our position the steps entered into by the participants, Destiny and the Organization were undertaken to disguise the true intent and purpose of the "cash" contributions, which was to pay service fees owing to Pinnacle as well as other related parties. We also disagree that the Organization "was at all times in control of the funds so distributed to it by Destiny". It remains our position that cash "gifts" made to the Organization from Destiny were directly made available to and paid to Pinnacle and were done to prevent the directors of the Organization from having access to the funds.

In this regard, it is difficult to see how the Organization's participation can be characterized in any other way but as being paid to act as the receipt issuing entity in a tax shelter arrangement. Beyond its promotion of and participation in tax shelter donation arrangements, the Organization has virtually no other activities. The representations submitted do not alter this finding. We note the Organization continually argues it merely issued official donation receipts "equal to the fair market value of the gifted healthcare units" yet it fails to substantiate that a valuation was actually obtained for the healthcare units. Per the information and representations provided, the Organization obtained a market research and methodology report outlining what the healthcare units would be valued based on certain factors. As discussed below, and in our March 3, 2009 letter, the certain factors the methodology report utilized to determine a value of the healthcare units is not reflective of the asset quantities and market in which the healthcare units were acquired.

The Organization has abandoned its original registered purposes and has operated solely to participate in the Universal Donation Program tax shelter. Accordingly, it remains our position that the Organization has willingly lent its name and tax receipting privileges to the Universal Donation Program tax shelter in exchange for monetary compensation and has participated in a program designed to abuse the charitable gift incentive provisions of the Act. The Organization's participation in this program is to issue receipts for the purported value of the healthcare units and to utilize substantially all cash "gifts" so received to pay management and administrative costs calculated as a percentage of the healthcare units' purported value. In conclusion, the Organization's participation in these programs has become an end in and of itself. Accordingly, it is our position that the Organization has operated for the non-charitable purpose of promoting and participating in tax shelter arrangement and, therefore cannot be considered to be a charitable foundation *operated exclusively for charitable purposes*. For this reason, there are grounds for revocation of the charitable status of Liberty Wellness Initiative under paragraph 168(1)(b) of the Act.

Non-charitable Purpose

Our letter of March 3, 2009 advised the Organization that its draft bylaws, received on March 2, 2005, failed to indicate if the Organization had replaced its arrangement with the Sardiscean Church of God and failed to indicate the Organization's objects or purposes. We also stated that the CRA requested further information from the Organization on July 27, 2005; however, the Organization claims not to have received this written request for

clarification. Per our review, the CRA sent the written request to the personal residence of Mr. Uriel Wilson, an address that was used by the Organization up to March 2006. Therefore, it is simply insufficient for the Organization to state it did not receive our written request for clarification and its failure to address these issues in its representations of May 4, 2009.[4]

Additionally, the Organization states it applied to the CRA to amend its objects on March 16, 2005. In conjunction with the above, the CRA has no record of the Organization's amended objects as the draft bylaws received on March 2, 2005 fail to contain a statement of objects or purposes. As such, we cannot conclude the Organization amended its objects to include:

> "(a) To help people to live healthy lives, free from illness and disease, by providing them with vitamins and other nutritional supplements,
> (b) To fight child malnutrition by providing children with multivitamins,
> (c) To support AIDS/HIV victims by providing multivitamins to strengthen the immune systems of individuals who have contracted AIDS/HIV."

Therefore, the CRA disagrees with the Organization's submission that its involvement and promotion of the Universal Donation Program falls within its objects and we conclude that the Organization has undertaken non-charitable activities. Furthermore, we do not have sufficient information to enable us to determine whether the provision of vitamins and nutritional supplements would be considered charitable. The Organization has not demonstrated the relief it would be alleviating or the vitamins and nutritional supplements it would be providing to enable the CRA to verify whether this activity is, in fact charitable.

The Organization has failed to demonstrate that it meets the test for continued registration as a charitable foundation under subsection 149.1(1) of the Act, "...operated exclusively for charitable purposes". Therefore under paragraph 168(1)(b) of the Act, the Minister may, by registered mail, give notice to the organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, there are grounds for revocation of the charitable status of Liberty Wellness Initiatives under paragraph 168(1)(b) of the Act.

Provision of Personal Benefits:

To clarify a query in your submission, the "agreements with various corporations" refers to the Organization's agreement with Pinnacle. Also, Pinnacle did pay fees to Destiny Marketing Solutions Inc. (1.59% of total tax-receipted gifts from the Destiny Gifting Program) but did not pay fees to Richmond Investment Management Inc. (Richmond).

Per our previous letter, we outlined the various related parties involved in and receiving remuneration as a result of their participation in the Universal Donation Program. Our review indicates there has not been sufficient separation between the director's affairs and the financial and business interests of individuals responsible for administration and management of the Organization's programs. Your representations concede that the Organization did enter into

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[4] Additionally, the Organization's corporate minute books do not reveal a change, Board approved or otherwise, in objects and purposes or the Organization's involvement in the Universal Donation Program.
[5] *Vancouver Society*, supra, footnote 1 at p. 131 (paragraph 194)

agreements with various related parties, yet find that the amounts paid to each of these entities was reasonable and therefore appropriate. Your basis is rooted in your submission that the amounts paid were consistent with amounts paid for administrative services by other Canadian registered charities. We disagree with the Organization's submission. As per our previous letter, the amounts paid to the related entities are based on a percentage of the healthcare units' alleged fair market value. As stated throughout this response, the alleged fair market value presented by the Organization was found to be, on average, 5 times the participants' cash contribution. As such, the amounts paid to the related entities involved in the promotion, administration, processing and so forth of the tax shelter arrangement are considered to be at least 5 times the amount the Organization states is reasonable. In the Organization's submissions, it continually repeats that the amounts paid to Pinnacle were 11.3% of total donations received. We agree that the Organization has reported it directly paid Pinnacle $29.4 million in fundraising fees and purchased $7 million in healthcare units. However, it remains our position that the total fees paid to Pinnacle, by each participating charity, were in excess of $37 million in 2005 and 2006. Per above, the Organization acquired nearly $7 million in healthcare units yet it devoted over five times that amount to administrative expenses. We do not find these amounts reasonable.

The representations also clarify that amounts were not paid to Mr. David Singh directly but to the various entities to which he controls or are controlled by persons related to him. We recognize that while the amounts were not directly paid to Mr. Singh, the end result is that Mr. Singh, in his capacity as owner of these remunerated entities or related to the owners of these remunerated entities, financially benefited from the contracts entered into with the Organization. Our March 3, 2009 letter indicated that a trustee must not profit out of his position of trust, nor must he place himself in a position where his duties as a trustee conflict with his own interests. It is also a statutory embodiment of the common law test that individuals with ties to a charity should not profit from their association with it. Our audit has revealed that Mr. Singh has financially benefited from his association with the Organization. It is our position that the Organization has been established and operated for the private gain of Mr. David Singh. Mr. Singh, in his capacity as president of the tax shelter promoters, president of each participating charity (at the time of the audit) and shareholder of all four corporations involved in the tax shelter, as well as the involvement of his family members, puts himself in a position to direct the movement of funds received from participant donors between and into his corporate entities within and outside Canada.

The representations state that Mr. Uriel Wilson received a clergy residence allowance of $37,134 as determined per paragraph 8(1)(c) of the Act. We disagree with your analysis and application of paragraph 8(1)(c). The Organization was not engaged in, nor was Mr. Wilson in charge of a diocese, parish or congregation; ministering to a diocese, parish or congregation; or engaged exclusively in full-time administrative service by appointment of a religious order or religious denomination. Per the Organization's own submissions, it was engaged in international humanitarian relief and provided no submissions on the Organization's religious activities, to which Mr. Wilson would be employed from and therefore entitled to a deduction under 8(1)(c). As such, it remains our position Mr. Wilson financially benefited from his position on the Organization and that the Organization is in contravention of subsection 149.1(1) of the Act.

It is our conclusion, based on the evidence before us, that the Organization and the related parties involved have been controlled and operated by the same group of individuals; the

Organization exists as little more than a shell with the capacity to issue donation receipts for income tax purposes; and this capacity has been exploited as a means by which revenues are generated as fees paid to the related entities. We are unconvinced that these payments are reasonable given the services rendered. The terms of the contracts between the related persons are such that, of the actual cash received, substantially all is siphoned off as management, processing and investment fees.

Given the manner in which the Organization has structured its financial affairs, it is our position the Organization is operating primarily for the personal benefit of its directors or the promoters of the tax shelter, to the detriment of its charitable purpose. As above, it is our view the primary purpose of the Organization is to promote a tax shelter gifting arrangement established by Mr. Singh. The Organization's activities to-date, have largely, if not solely, consisted of being the receipting arm of the tax shelter arrangement, with little regard for the genuine pursuit of the Organization's mandate, which is to preach and advance the Pentecostal faith. In this regard, it is our view that a primary purpose of the promotion of this scheme appears to be to personally enrich the promoters and directors.

It is our position that by pursuing this non-charitable purpose, and by operating for the private gain of its directors, the Organization has failed to demonstrate it meets the test for continued registration as a charitable foundation under subsection 149.1(1) of the Act "operated exclusively for charitable purposes" or as a charitable organization that "no part of the income of which is payable to, or is otherwise available for, the personal benefit of any proprietor, member, shareholder, trustee or settlor thereof". For this reason, there are grounds for revocation of Liberty Wellness Initiative's registered charity status under paragraph 168(1)(b) of the Act.

Failure to Accept and Issue Receipts for Valid Gifts:

Animus Donandi

Our position remains that the healthcare unit contributions received by the Organization from participants are not valid gifts under section 118.1 of the Act due to the fact that the primary motivation of the participant was not to enrich the Organization, but through a series of artificial transactions and a minimal monetary investment, to enrich themselves from the aggregate tax credits so obtained. The representations are correct in stating that there are two conditions[6] which must be satisfied in order for a transfer of property to be considered a gift.

It is incumbent on a charity to determine whether a transaction qualifies as a gift before issuing a tax receipt given that a tax receipt can only be issued for gifts *at law*. We agree that the tax credit available with respect to a donation is not usually an advantage or benefit that would affect whether a gift is made. However, it is our position that mass-marketed donation arrangements promising participants that, through a series of artificial transactions (usually involving the bulk purchase of property, sight-unseen), the participant will be able to claim tax credits for charitable donations far in excess of the expenditures actually made, lack the

[6] The two conditions are: 1) a voluntary transfer of property by the donor, and 2) no benefit or consideration flowing in return to the donor.

requisite *animus donandi* for the transactions to be considered gifts. Accordingly, the charitable tax credit becomes the benefit or consideration received by the participant. Per our previous letter, promotional packages promise participants a substantial return on investments (i.e., profit) through the tax credits available. In the Universal Donation Program, for a fee guised as a donation to Destiny, participants become eligible for a distribution of healthcare units from a trust. Despite the units being worth *hundreds of millions of dollars*, the trust then charitably distributes these healthcare units to the worthy applicants. The participants "choose" to immediately donate these healthcare units to the Organization[7], despite having little to no knowledge or connection to the Organization. The alleged fair-market value of the healthcare units, which has been constructed by the promoters of the arrangements, is many-times higher than the participants' cost to participate in the arrangement.

It therefore remains our position that participants entered into the Universal Donation Program as a result of the estimated income tax saving benefits and positive return on investment promoted; income tax savings and return on investment which are based on the participant's aggregate "gift" of cash and healthcare units, which have been valued at amounts many times higher than the participant's cost to participate in the arrangement. The participants fully intend to recoup their out-of-pocket cash outlay and to profit from the tax shelter through the artificial manipulation of the charitable gifting provisions. Your representations state that a participant was out of pocket the healthcare units they received as beneficiaries of a trust; however, it remains our position that the participants true out of pocket cost was only their cash contribution. The participants, on paper, received a distribution from the trust yet had little alternative other than gifting the healthcare units to a pre-determined charity participating in the tax shelter. Based on the type, quantity and Canadian licensing and regulatory requirements, it is extremely unlikely a participant would have a use for or the means to import the healthcare units for use or distribution in Canada. It is for this reason, we do not believe the participants were out of pocket the healthcare units – the participant is neither enriched nor impoverished by the receipt and ultimate donation of the healthcare units.

The Organization's role in the donation arrangement was to facilitate the acceptance of the healthcare units from the participants and to accept the constructed value that was five times the participants' cash contribution for receipting purposes. Your submissions erroneously assume CRA's definition of "profit" is limited to the charitable tax credit available. As it applies to these transactions, "profit" is defined as the financial gains a participant receives as a result of participating in the tax shelter program. The financial gains are based on the fact that a participant makes minimal cash investment, receives goods valued at five times their cash investment and receives a refund/reduction in taxes payable in excess of the cash investment[8].

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[7] We would also note that the" voluntariness" of the transaction is questionable given that the a majority of the healthcare units could not be imported into Canada without the appropriate government issued licences and the quantities and nature of the healthcare units would be beyond a prudent persons use.

[8] Per the Application for Tax Shelter Identification Number and Undertaking to Keep Books and Records submitted by Universal Donation Program, a cash contribution of $1,250 equates to receiving healthcare units of $3,750. By claiming charitable tax credits of $5,000, an individual in Ontario would receive a refund/reduction in taxes payable of $2,320.50. The Ontario individual would realize a profit or financial gain of $1,070.50 (2,320.50 – 1,250.00).

Accordingly, it is our position the Organization issued receipts for transactions that do not qualify as gifts at law.

Cash Payments and Gifts in Kind

The representations have not provided new evidence to support their opinion that cash contributions made by participants in the Universal Donation Program to Destiny were not a charge levied by the tax shelter promoter. Additionally, the representations have not demonstrated that the Organization had unfettered access to, use of and control over the funds it purportedly received from Destiny. As discussed above and in our previous letter, it is clear that a participant's cash contribution is the single factor that determines whether a participant can participate in the tax shelter program, is "chosen" to become a beneficiary of a trust and therefore eligible to receive valuable healthcare units.

To be considered to be a gift to a charity, the gift must truly be a donation in support of the charity's programs. The recipient charity should have the discretion as to how to use these funds or at a minimum to apply these to its charitable purposes. Transactions which are, in reality, disguised payments earmarked for non-charitable purposes are not gifts. We are of the position the Organization received gifts which were payments from individuals to participate in the tax shelter. These gifts were cycled through the Organization by Destiny's "gift" to a qualified donee and ultimately utilized to pay administration, support service and fundraising fees. As such, it is our position the cash contributions and healthcare units received were not gifts made to the Organization.

Fair Market Value

We remain of the view that the fair market value expressed on the receipts does not accurately reflect the actual fair market value, even without reference to the proposed legislation.

In your letter, you note that the Organization reviewed a report prepared by Solursh Feldman Inc. (the SF Methodology Report) on the proper methodology for determining the fair market value of the healthcare units transacted in the course of the Universal Program. The SF Methodology Report states "We are not providing an opinion to the fair market value of the products. We are reporting solely on the consensus of the results of our research." The SF Methodology Report determined values according to the most common generic and branded markets in two destination countries only, for wholesale and retail sales, and on an item by item basis. The application of this report by the Organization failed to take into account certain factors. One of those factors was that the relevant asset to be valued was bulk units distributed to participants rather than the value of the individual units. A second factor was that the relevant market was the donation market as opposed to the retail market. Thirdly, the fair market value is what was actually paid for them. In 2006, healthcare units of $4.1 million were acquired yet were then assigned a fair market value of $115 million.

As such, for the reasons set out herein and in our previous letter we remain of the position that the appraised values constructed by the Organization are not accurate reflections of the fair market value of the property. Your representations also indicate that each trust purchased the healthcare units then utilized a St. Lucia-resident to apply the methodology outlined in the SF Valuations Inc. report to determine the purported fair market value of the units. The tax

result of an application to a Trust, distributions of healthcare units in amounts equivalent to the formulas outlined in the Universal Donation Program promotional materials.

Your letter states "... [a]s the owner of the healthcare units distributed to a participant by a trust, the participant was free to deal with the healthcare units as the participant chose, including gifting the healthcare units to the [Organization]." We disagree with this characterization of the voluntariness of the participants' gifting. First, it is our position the participants had no viable alternative or use for the healthcare units. The quantity and type of the units, combined with the fact that a participant was unlikely to possess the Canadian regulatory and licensing requirements to import the units to Canada, make it implausible that a participant could use the units for any other purpose. Additionally, in order to take advantage of the donation tax credit, and to profit from it, as promoted in the tax shelter materials, a participant would have had to "gift" the units to a participating charity. No evidence has been discovered that any participant chose to retain all or part of the healthcare units for personal use or for donation to another registered charity not participating in this particular tax shelter arrangement. Secondly, the value of the units was based on a methodology report which failed to consider the unique aspects of the units to be valued: 1) that the relevant asset to be valued was the bulk units distributed to participants rather than the value of the individual units; 2) that the relevant market was the donation market as opposed to the retail market; and 3) that the fair market value is what was actually paid for them.

It is as a result of these findings, that the CRA considers the healthcare units received by the participants to be the advantage, benefit or consideration received by a participant directly linked to the participant's cash contribution. As such, the Organization was not entitled to issue receipts to the participants given that the purported value of the healthcare units exceeded the participant's cash outlay.

Application of Proposed Subsections

Per our previous letter, proposed subsections 248(32), (35) and (38) of the Act apply to the transactions described in our March 3, 2009 letter. Regardless that the legislation remains proposed, once passed into law it will apply to all transactions covered by the audit period under review. The CRA's expectation of these provisions is that, once announced, donors and charities alike should have begun to follow this legislation as, when passed, would be applied retroactively and therefore provides grounds for the revocation of a registered charity.

The representations state the Auditor is wrong for stating that a distribution of healthcare units by a trust to a participant who had donated cash to the Organization is an "advantage" under proposed subsection 248(32). The representations consider the cash contribution and distribution of healthcare units as two distinct separate transactions. With respect, it is simply not sufficient to state that there is no link between the cash payment and the distribution from the trust where the audit evidence has revealed a clear link. From the information provided, it is evident that the healthcare units received by the participants were received as a result of the participant's cash contribution to Destiny. We refer you to the promotional materials. Our audits have revealed participants rarely become beneficiaries of a trust unless a cash contribution is made to a participating charity and, if they do make this contribution; they receive a distribution from a trust proportionate to the amount of cash contributed. In our view,

advantages promoted by the tax shelter would only be realized if the purported fair market value of the healthcare units exceeded the participants actual out of pocket (cash) contributions. Given that the trust acquired the healthcare units shortly before the units were distributed to their beneficiaries, it is reasonable to assume that the value of the units is no more than the amount they were acquired for.

Under paragraphs 168(1)(d), the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. For this reason, there are grounds for revocation of the charitable status of Liberty Wellness Initiatives under paragraph 168(1)(d) of the Act.

Benefits Received

Per our previous letter, the Universal Donation Program involves Canadian participants making a cash donation to a participating charity then applying to become a capital beneficiary of St-Lucian resident trusts. Upon acceptance as a beneficiary, the participant receives a capital distribution from a trust in satisfaction of his capital interest in a trust. The capital distribution is in the form of "*essential medicines, vitamins and nutritional supplements*", which the participant then "donates" to a participating charity in transactions facilitated by the promoter acting as agent for the participant. The constructed value of the healthcare units is 5 times the participant's cash contribution.

Your letter states that "[a]t no time did participants in the Universal Program who made a cash donation to Destiny and who applied to become beneficiaries of a trust have any "entitlement", that is any enforceable right, to (1) become a beneficiary of the trust, or (2) receive a distribution of any of the trust's property. Nor did the making by a participant of a cash gift to Destiny "pre-determine" a subsequent distribution of property to the participant by a trust of which the participant might subsequently become a beneficiary. Accordingly, the receipt by a taxpayer of a gift of property from an unrelated third party, in the participants' case a distribution without consideration of healthcare units from a resident Canadian trust, after making a cash donation to Destiny does not, in and of itself, constitute a "benefit" in return for the prior cash gift to Destiny which would render this prior cash gift invalid." We make no comment on whether participants had an "enforceable right" to become a beneficiary of a trust or to receive healthcare units but we disagree with the Organization's submission that the healthcare units so received by the participants is not a "benefit" or "consideration" received as a result of the cash gift.[9] It should be noted that the common law does not require there to be a legally enforceable right to receive property, but rather that a payment be made in expectation of return.[10] We note, however, that the promotional materials describe, in detail, how the scheme works, including the declaration that "*For administrative purposes, the minimum cash donation that Destiny will entertain is $1,000.*" We note that the distributions of healthcare units from the Trusts are proportionate to the amount given to Destiny. CRA audits have revealed substantially all donors participating in the Universal Donation Program and making a cash contribution to Destiny did receive, as a

[9] We also recognize the Organization's submission that in an infrequent number of transactions, participants in the Universal Donation Program applied to become beneficiaries of the Trust without making a cash contribution to Destiny. The infrequency of these transactions does not alter our findings that substantially all participants received a benefit of healthcare units as a result of their prior cash contribution to a participating charity.
[10] See, for example, McPherson v. the Queen (2007) DTC 326

the distribution from a trust is clearly an advantage in "consideration"[11], "gratitude"[12] or "in any other way related to the gift or monetary contribution"[13].

Our position remains that the Organization was required by the Act to reduce the value reflected on the official donation receipts by the advantage received regardless if the advantage was received directly from the Organization or from another third party.

Under paragraphs 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It remains our position that the Organization issued receipts for transactions that do not qualify as gifts at law. For this reason alone there are grounds for revocation of the charitable status of Liberty Wellness Initiative under paragraph 168(1)(d) of the Act.

Failure to Issue Receipts in Accordance with the Act

The representations state that it is the Organization's "view all of the receipts issued by it in respect of charitable gifts received by it in 2005 and 2006 complied with the applicable provisions of the Act and the Regulations" and that in your view, CRA's findings "do not constitute any grounds for revoking the [Organization's] registration under the Act." We disagree. The representations do not alter our findings or our position that the official donation receipts issued to acknowledge healthcare unit contributions received from participants in the Universal Donation Program tax shelter are not valid gifts under section 118.1 of the Act nor are the values recorded on the receipts representative of the healthcare units' factual fair market value. We have fully discussed our position on this subject above.

We accept the Organization's omission that it mistakenly recorded its name incorrectly on the official donation receipts issued and that the address of SF Valuations was not recorded on all receipts acknowledging receipt of non-cash gifts. However, the representations fail to address our findings that erroneous receipts issued by the Organization were not properly cancelled and replaced. The Organization acknowledges that it issued replacement receipts to donors accompanied by a letter advising the donor that previously issued receipts had been cancelled yet the replacement receipts failed to indicate it was replacing the previously issued receipt and the serial number of the previously issued receipt; the replacement receipts did indicate their own serial number.

As such, it is our position that the Organization has issued receipts otherwise than in accordance with the Act and its Regulations. Under paragraph 168(1)(d) of the Act, the Minister may, by registered mail, give notice to the registered charity that the Minister proposes to revoke its registration if it issues a receipt otherwise than in accordance with the Act and the Regulations. It is the CRA's position that the Organization issued receipts for transactions that do not qualify as gifts at law and breached Regulation 3501(4) and 3501(5). For these reasons alone there are grounds for revocation of the charitable status of Liberty Wellness Initiative under paragraph 168(1)(d) of the Act.

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[11] Ss. 248(32)(a)(i)
[12] Ss. 248(32)(a)(ii)
[13] Ss. 248(32)(a)(iii)

Failure to Meet Disbursement Quota:

Per our previous letter, and per our discussion above, we remain of the position that the Organization has failed to meet its annual disbursement quota. The Organization has been able to satisfy the CRA that it has reasonably incurred only $6.9 million in charitable expenditures (the acquisition of healthcare units) but has been unable to convince the CRA that the fair market value assigned to the healthcare units was factual and supported by an independent valuation. As per above, it remains our position that the primary motivation of the participants was not to enrich the Organization, but to enrich themselves from the aggregate tax credits available. It is also our position that the Organization's motivation was to enrich itself by agreeing to the pre-established terms of the tax shelter arrangement. The Organization was not obligated by the Act to acknowledge all healthcare unit contributions by issuing official donation receipts. Simply issuing official receipts containing the prescribed information contained in Regulation 3501 also does not deem the healthcare unit contributions to be valid gifts under section 118.1 of the Act.

Finally, the Organization is correct in stating that there is no provision in the Act prohibiting a charity from entering into a trust agreement; however, as detailed in our previous letter and above, the issue surrounding the cash "gifts" stems from the fact that the Organization received cash contributions from Destiny which were intended to be paid to Pinnacle as administration, processing and fundraising services. Despite the Organization's representations that it "was at all times in control of the funds so distributed to it by Destiny", it remains our position, based on our audit, that the agreement with Pinnacle and the lack of a bank account was designed to have funds directly transferred to Pinnacle to prevent the directors of the Organization from having access to the funds.

Accordingly, it remains our position that the Organization has not met its disbursement quota as per paragraph 149.1(2)(b) of the Act. Therefore under paragraph 168(1)(b), the Minister may, by registered mail, give notice to the Organization that the Minister proposes to revoke its registration because it ceases to comply with the requirements of the Act related to its registration as such. For this reason, there are grounds for revocation of the charitable status of Liberty Wellness Initiative under paragraph 168(1)(d) of the Act.