



Serving the Bulk Vending Industry since 1950

**NBVA Submission to the FDA
Regarding Section 4205 of the
Patient Protection and
Affordable Care Act of 2010**

The National Bulk Vendor's Association would like to thank the FDA for the opportunity to present information crucial to the decision making process around the implementation of guidelines for nutrient content information disclosure and labeling. The NBVA shares the concerns of the Administration over the crisis of obesity in the United States and the dire consequences it has on our health care system and society as a whole. As a non-profit organization that has looked out for the needs of the bulk vending industry since 1950, and whose bylaws are specifically designed for legal protections and the best representation of its membership, the NBVA has a clear insight into the particular needs and capabilities of this unique industry. The NBVA wholeheartedly agrees that nutritional labeling, even given the possible limits to its effectiveness¹, is a sound practice that can be implemented by most of the groups affected by section 4205 of the Patient Protection and Affordable Care Act of 2010. However, as we will show below, bulk vending is neither a significant contributor to obesity, nor is it practicable to implement the requirements of the act, nor is implementation at all likely to provide any measurable reduction in obesity. Implementation of the guidelines may, however, result in the death of an already struggling traditional American industry.

It will become clear through this document that not only the membership of the NBVA, but also all the "Mom and Pop" bulk vendors occupy a very specific niche in the vending industry. Let us show you how the critical data will give clear guidance regarding the need for nutrient content labeling on bulk vending machines. This data must be closely examined as it pertains to the prevention of obesity and the reversal of associated trends in weight-related health issues. It is our contention that bulk vending merits exemption from the labeling guidelines based on several clear and demonstrable factors detailed below.

The NBVA was provided the opportunity to discuss, in an informal setting with many esteemed panel members, many of the important elements that will go into the FDA's evaluation process. We were asked to provide the answers to six specific questions (please see the detailed responses in Appendix A). In the preparation of these answers and the accumulation and analysis of the pertinent data, it became quite clear that bulk vending is not a significant cause of obesity. Thus, as we examine the intent behind section 4205, namely the prevention and reduction of obesity by means of labeling

¹ Studies have suggested that labeling has achieved at best, mixed results. See "**FOOD LABELING**: FDA Needs to Better Leverage Resources, Improve Oversight, and Effectively Use Available Data to Help Consumers Select Healthy Foods": <http://www.gao.gov/new.items/d08597.pdf>

with nutrient content in the attempt to influence consumer choice, we find that bulk vending is neither the intended target, nor will labeling on bulk vending machines be an effective means of preventing obesity.

All of the FDA reference studies, as well as the verbiage of the relevant sections of the act itself, refer to either “fast food chains” or “retail food establishments offering for sale substantially the same menu items”². McDonald’s (and other similar chains that form the nexus of the fast food –obesity connection) was not only the specific object of study in one of the primary references, but also has become the ubiquitous culprit in the obesity debate. It is our contention that bulk vendors provide a completely different service, in a completely different manner than any of these fast food chains.

Furthermore, and more specifically, one vending machine is clearly not identical to another in either function or form. It is the NBVA’s position that the unique nature of the bulk vending machine sets it apart from not only “retail food establishments”, but also more modern types of vending machines. A simple image conveys the point quite well (see fig. 1). Note the dramatic difference in size, function, and nature of products dispensed. In fact, bulk vending sales make up less than 1% of all vending machine sales in the US³. Indeed, one could argue that much of the connection between vending and obesity was brought to the fore by articles such as that published by the **Center for Science in the Public Interest**.⁴ This article, along with other studies, and the subsequent media attention they drew, led to many changes that the NBVA applauds. The NBVA would also be quick to point out that ***none of the products or machines mentioned is part of bulk vending***. In fact nearly half (42%) of bulk vending does not even involve edible products, but rather capsuled toys, novelties and flat products such as popular tattoos and stickers (see fig. 2). One can see that there is a clear distinction between an antiquated hand-cranked bulk vending machine and a micro-processor driven behemoth that grills a fattening hot dog for the customer (see figs. 3 and 4). One should not lump bulk vending machines, dispensing gumballs, together with soft drink machines that dispense the high fructose corn sweetener-laced beverages that have become such a concern to the health of our children. It does not serve the intended purpose of section 4205.

A quick review of figures 3 and 4 also shows that the space for any proposed labeling requirements is not adequately provided for by the very nature of the bulk vending machines’ space efficient design. While quite extensive and complex labels may be possible on large electronic

² **Federal Register**, Vol. 75, No. 129, pp. 39026-30928

³ **Vending Times**, *Census of the Industry 2009*, p. 3

⁴ [“Dispensing Junk: How School Vending Undermines Efforts to Feed Children Well”](#); May 2004.

machines, which may even be equipped with digital displays easily altered to the task, it is simply not possible on bulk vending machines. Bulk machines may also be filled with any type of product that will fit inside of it, while having severely limited or no space for labeling. This does not even take into account the need to frequently change labels based on the wide variety of products it is capable of delivering, all without any labeling on the individual items.

This brings us to a particularly critical area in which bulk vending has a distinct issue that warrants scrutiny; serving size. The FDA uses RACC's⁵ to determine serving sizes for a variety of product types. One product in particular could be used as an example for bulk vending: peanuts. Below is an excerpt from the [FDA Food Labeling Guide, Section VII](#):

L78. How do we state the serving size for peanuts with shells?

Answer: The RACC for nuts is 30 grams edible portion. The serving size for peanuts with shells would be the household measure closest to 30 grams of nuts without shells. In order to reduce consumer confusion regarding the serving size, a clarifying statement can be used. For example, the serving size statement for your product might read: "½ cup nuts without shells (30 g/ about 1 cup nuts with shells)."

This is particularly illustrative. 30 grams or ½ cup of shelled nuts is considered a serving. In the bulk vending industry, this has little relevance, since for more than 100 years the critical measure for bulk vending has been the amount that will fit easily into a child's hand. This is, in general, far less than the FDA's standard of measure. (See Appendix A: question #6 for a more detailed breakdown). Somewhere between 8-15 grams would encompass the heavier products, while the most numerous products, the ubiquitous gumballs, rarely top 2 grams per vend. The bulk vending industry is distributing amounts of edible products well below any reasonable measure of a serving, as described by the FDA itself. Thus bulk vendors are providing neither snacks, like a large vending machine, nor meals like McDonald's or other fast food chains. Bulk vendors distribute tiny amounts of edible products, not at all likely to be a significant cause of obesity. One has to stretch credulity rather far to imagine a child sitting in front of a gumball machine dispensing piece after piece to get himself in the type of situation that would be caused by even a single high fructose corn-sweetened beverage. Serving size analysis simply does not support the idea that requiring bulk vendors to label their machines would reduce obesity.

Finally, one other factor affects the bulk vending industry's ability to meet any type of major labeling requirement; industry health. This time-honored industry, with its 100-plus year history, has

⁵ 'Reference Amounts Customarily Consumed'

been in a state of decline for some time. An analysis of the most recent census of bulk vending shows the number of traceable machines in operation has declined steadily in the last few years⁶. In addition, the competition amongst edible products is very tough. Large electronic machine vendors are able to offer a larger variety of products, of larger sizes, and with heating and refrigeration. Bulk vended edibles have been marginalized. The imposition of an extensive labeling requirement would be financially impossible for a great number of operators who barely manage to squeeze a profit from their machines. (See Appendix A: questions #4 and 5 for relevant data). In addition, were a labeling requirement enacted, it would be very difficult to police and track. Unlike large electronic machines, bulk vending machines do not have registration numbers or barcodes, and are not tracked as such. Many machines are completely untraceable, serviced by unknown operators. (See Appendix B: a letter from the president of Beaver Machine Corporation). This would make the practical application of any labeling requirement extremely difficult at best. Even if the distributors were made to comply, so many of the small “Mom and Pop” operators just buy their products from Costco, Sam’s Club or Wal-Mart; it would have little to no effect. This industry cannot support a drastic change such as the proposed requirements, nor would any requirement be easily enforced.

In conclusion, by carefully analyzing a variety of elements, it is clear that the NBVA and bulk vendors in general, are not the intended targets of the campaign against obesity in the US. Bulk vending is not the problem. Causing the death of bulk vended edibles will in no way alleviate the multitude of health problems that obesity presents to our society. Bulk vendors do not meet the criteria for causation; we are neither fast food chains, nor are we the “chain vending machine operators” that are singled out. We are different. Even the specific manner of labeling required as it is applied to “chain vending machine operators” in the Federal Register⁷ is not applicable to bulk vendors : “operators must provide a sign ‘in close proximity’ to each article of food or to the **selection button**”. Clearly that is not a bulk vending machine being described. **Selection button**? Our products are randomly dispensed. There is no selection button. There is no choice to be influenced by the presence of a label. Clearly bulk vendors are not indicated. Whether it is based on the intent of the act to reduce obesity, the availability of space for the proposed nutrient information labels, the very small serving sizes, the tiny amounts of calories per vend (see Appendix A: question 6), or the ability of the industry to absorb the financial impact, bulk vending simply does not meet the requirements for the proposed changes.

⁶ **Vending Times**, *Census of the Industry 2009*, p. 12.

⁷ **Federal Register**, Volume 75, No. 129, p. 39027, Column B, Section B.

Based on this information, and on any additional information the FDA may require, the NBVA humbly requests that bulk vending operators be exempted from the requirements for disclosure of nutrient content information. We would be more than happy to discuss the issue further, and answer any other questions that may arise. Please read through the appendices and figures, and I am sure that you will find all of the aforementioned arguments both compelling and objectively presented.

Thank You.

Sincerely,

The National Bulk Vendor's Association

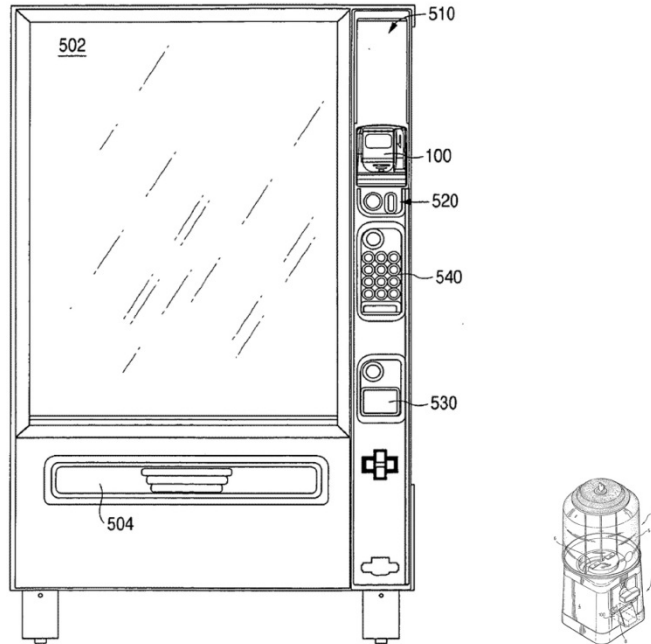


Figure 1. Vending machine basic comparison (to scale).

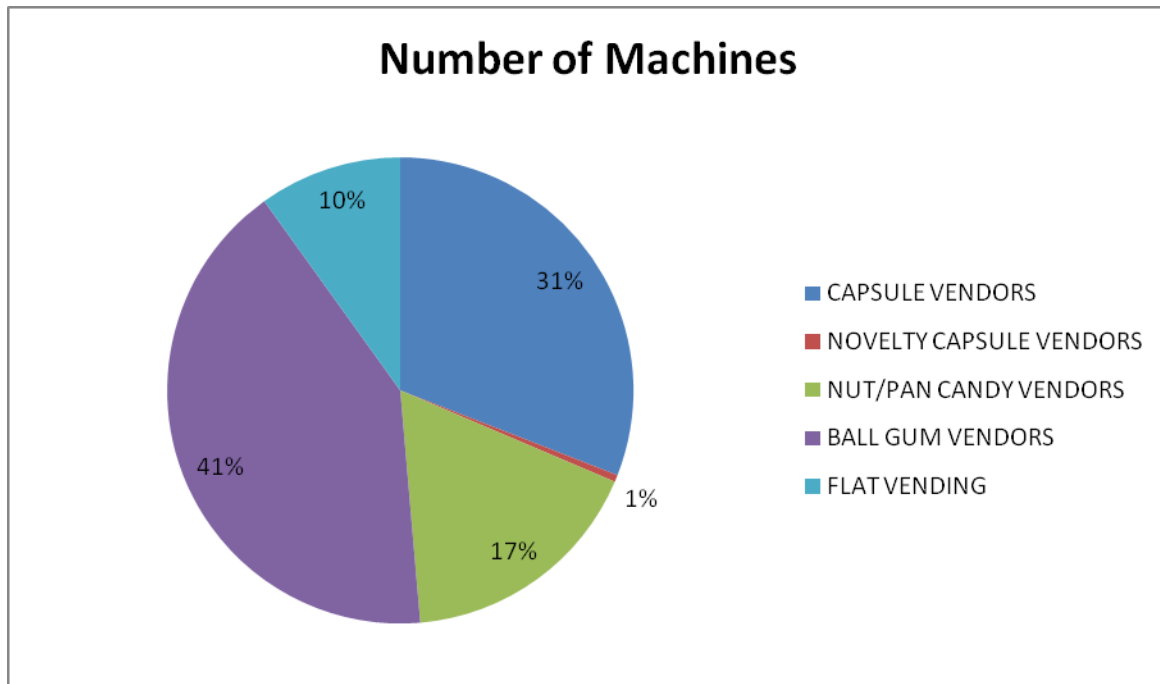


Figure 2: Breakdown of Bulk Vending Machines by type



Figure 3. The Behemoth. Note ample space for additional labeling.

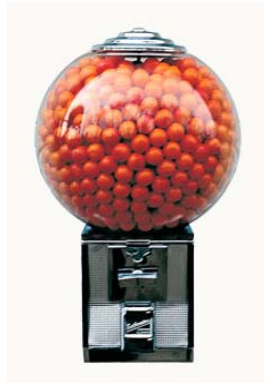


Figure 4. The diminutive typical gumball machine. Where to apply labels?

APPENDIX A: Specific detailed answers to the FDA’s Questions (supplied)

1. FDA Question: FORMAL DEFINITION OF BULK VENDING:

NBVA Answer: Bulk vending refers to the sale of unsorted confections, nuts, gumballs, encapsulated toys and novelties, dispensed randomly by predominantly mechanically-operated vending machines.

Source: Taken from National Bulk Vendors Association bylaws, written in 1950, maintained until today. The definition was presented on August 12th, 2010 to a group of Manufacturers, Suppliers, Vendors and Operators. It was agreed unanimously that the definition was correct.

2. FDA Question: NUMBER OF BUSINESSES IN THE BULK VENDING INDUSTRY:

NBVA Answer: USA Importers/Manufactures/Suppliers: 30; Vendors/Operators: 4431; Total: 4,461

Rationale: Because there is no available census data to pull from, we utilized the NBVA past and current members list to extrapolate numbers along with known Suppliers that distribute to operators of all sizes. Based on Suppliers having to distribute their goods to all types of Operators (including edibles), we feel this collective number is the best estimate that can be compiled from any source.

Source: National Bulk Vending Association members list (Past and Present). The three major Suppliers’ contributed the number of active Vendor/Operator customers.

Supporting Data:

2006-2010: NBVA Membership lists (table #1):

Year	Operator/Vendors	Suppliers
2006	261	67
2007	224	61
2008	180	45
2009	180	38
2010	107	30

NBVA Operators: (154) Average

NBVA Suppliers: (48) Average

The Three Major Suppliers (table #2):

A&A Global	6500 active customers
Brand Vending	3245 active customers
Cardinal Vending Supply	3550 active customers

$6500 + 3245 + 3550 = 13,295 / 3 (= 4431)$

3. FDA Question: NBVA MEMBERSHIP BREAKDOWN:

NBVA Answer: Operators: 107; Suppliers/Manufacturers/Distributors: 30; Total members: 137.

Rationale: The small number of NBVA members represents legitimate bulk vending businesses. However, there are a significant number of individuals that work out of their homes who do not generate any more than modest supplemental income. The NBVA does not believe that these individuals see the need to belong to a professional association. They may not feel that the goals of the association represent their own interests.

Source: National Bulk Vending Association, a non-profit, member-run organization continuously in operation since 1950. The NBVA is the only member association representing the Bulk Vending Industry.

Supporting Data: As of 08/24/2010, from NBVA database (table #3):

LEVEL	# of Machines	# of Member – Companies
OP1	1-500	81
OP2	501-1000	13
OP3	1001 – 2500	6
OP4	2501 – 5000	2
OP5	5001 – 7500	1
OP6	7501 - 10,000	1
OP7	10,001 - 15,000	1
OP8	15,001 - 20,000	0
OP9	20,001 - 25,000	0
OP10	25,001 and up	2
Supplier	Supplier/Manufacturer/Distributor	30
Total		137

4. FDA Question: SALES VOLUME OF INDIVIDUAL OPERATORS:

NBVA Answer: \$38,366 annually

Rationale: There are approximately 4431 Operators in the bulk vending industry with many being small businesses that operate in excess of 20 machines. In order to arrive at an average sales volume that represents the majority of our members, one should factor out the sales of the top few Operators, as they are atypical. This yields an annual sales volume for edible products of \$170,000,000, or an annual average per Operator of \$38,366.

Source: The number of Operators/Vendors derived from an average supplied by the three leading suppliers in the industry. Total volume of edibles was sourced from the 2009 Vending Times Census of the industry.

Supporting Data: The top few Operators account for approximately \$30,000,000 of the industry total of \$200,000,000 of edible products sold, but represent only a tiny fraction of our total membership.

$$\$200,000,000 - \$30,000,000 = \$170,000,000$$

$$\$170,000,000 / 4431 = \$38,366$$

5. FDA Question: AVERAGE VEND PER MACHINE, PER DAY:

NBVA Answer: 1.45 averages vends per day

Rationale: Nuts, candy and gum are generally and almost always a \$.25 vend. Using the ONLY Vending Industry statistics and calling on business that currently keep statistics, we concluded that the average vends would be under two vends per machine per location per day.

Source: Vending Times (VT) Annual 2009 Census of the Vending Industry.

Four well-known bulk vending Operators in good standing with the NBVA, who were asked to supply their company numbers, provided the following data (table #4):

Vendomatic	1.2 Vends per day
Theisen Vending	1.2 Vends per day
Capitol Vending	1.5 vends per day
National Entertainment Network	1.5 Vends per day

*this represents total vends, including toys and novelties, not only edible items.

Supporting Data:

In 2008: (VT)

664,000 total Bulk Vending machines

Nut/pan candy venders Annual Average per machine: \$220.00

(\$220 / 365 Days = \$0.60)

Gum vendor's annual average per machine: \$125.00.

(\$125 /365 days = \$0.34)

Finding average:

.60 + .34 = .94 / 2 (= .47)

.47 / .25 (= 1.88)

Contributing data from the four NBVA Operator/Vendors

1.2 + 1.2 + 1.5 + 1.5 + 1.88 = 7.28 / 5 (= 1.45)

6. FDA Question: MAXIMUM CALORIES IN A GIVEN VEND:

NBVA Answer: 59.4 maximum calories per vended serving. 25-50 calories per vended serving typically

Rationale: The highest calorie candy that is frequently vended is a peanut M & M. According to M & M, their average serving of peanut M & M's is 250 Calories/ 1.74 ounces (49.3 g). The average peanut M & M weighs 1.7 grams, so a single peanut M & M is approximately 9 calories each. A typical M & M vend will dispense between 5 and 8 pieces, or 8.5-13.6 grams (depending on individual candy shape and spring tension.) Thus an average vend of the highest calorie food product is 58.5 calories, far less than an M & M average standard serving.

Please note: The number of calories per vend varies widely according to the item dispensed. The majority of the vended product are **gumballs**, which are approximately 30 calories per vend. Some vended candies have slightly higher calories per vend and are in the 50 calorie per vend range.

Source: Vending Times (VT) Annual 2009 Census of the Vending Industry.

M&M Candy company: <http://www.mms.com/us/about/products/peanutmms/>
Hershey's company: <http://www.hersheys.com/products/details/bubbleyum.asp>

Concord Confections, a Division of Tootsie Roll Inc.: http://www.tootsie.com/health_info.php

Three NBVA-member Vending route operations currently vending Nut/pan, candy and gum presented the following information on August 12th 2010 to a group of NBVA Members: Bulk Vending Manufacturers,

Suppliers, Vendors and Operators. It was agreed unanimously that the rationale and contributing numbers are correct.

Supporting Data: Gumballs are the number one vended consumable in vending. That is the essence of the ubiquitous gumball machine. We used one Supplier's nutritional facts to show caloric value. The most frequently used size is 850 counts at 1 per vend:

Dubble Bubble Assort Gumballs. 850 Count Calories 30 per serving or one piece vend

Dubble Bubble Assort Gumballs. 1080 Count Calories 25 per serving or one piece vend

Dubble Bubble Assort Gumballs. 3650 Count Calories 10 per serving or 3 pieces vend (30 total calories)

Contributing data from the 3 NBVA Operator/Vendors

Three Vending Operators [NBVA members] (table #5):

Vendomatic	Peanut M&M - 5 pcs per vend
Great Dane Vending Company	Peanut M&M - 7 pcs per vend
Farwest Distribution	Peanut M&M - 8 pcs per vend

Average for Maximum calories per vend:

5 pcs + 7 pcs+ 8pcs (= 20 pcs)

20 pcs /3 (= 6.6 pcs)

6.6 pcs X 9 calories (= 59.4)

APPENDIX B:



BEAVER MACHINE CORPORATION

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August 27, 2010

National Bulk Vendors Association
3240 E. Union Hills Drive
Suite #129
Phoenix, Arizona 85050
USA
Attn: Product Safety and Compliance Chairman
Dax Logue

Dear Mr. Logue,

As the NBVA prepares its informative submission to the FDA for review on the Nutritional Labeling requirements on vending machines, I would like to take this opportunity to voice our perspective on this topic as a manufacturer of bulk vending equipment. Beaver Machine Corporation has designed, engineered and manufactured bulk vending equipment in house for the past 47 years. Our products have been the 1st choice for many successful businesses in over 100 countries worldwide. We believe our 47 years in this industry gives us an overall perspective few others can claim.

In order for Nutritional Labels to be placed onto bulk vending machines, one must first find the owner/operator of these machines. Let me explain the monumental challenges we foresee in the attempt to legislate the placement of Nutritional Labels on bulk vending machines.

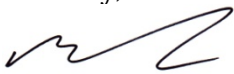
Traceability

- Unlike full line vending machines (coffee, sandwich, chocolate bars, soda etc.) that have serial numbers attached, bulk vending machines do not have that means of being traced. These small machines are easily and quickly moved from one location to another within minutes. They also can have numerous owners in a very short period of time as operators buy and sell these machines privately; many times on eBay.
- Bulk vending machines are made of very few parts and these parts can be interchanged with other similar machines; especially the Asian copies. If the machines could be serial numbered, one cannot guarantee that the serial numbered part may stay on the machine it was originally assigned too. Also to consider is the refurbishing of bulk vending machines. It cannot be assured that the replacement parts are serial numbered, especially when the replacement part is a copy from Asia.

- Manufacturers of bulk vending machines originate in many countries worldwide. Most of these companies sell their bulk vending machines through two channels; directly to the consumer and/or through a distribution system. Once the machines leave the factory, it is impossible to track the final destination of these units. For example; some mass distribution channels may include Sam's Club or Costco. Once the bulk machines leave these retailers, traceability is impossible.
- Asian imports of bulk vending machines are the most difficult to trace; mainly because they clone every North American manufacturers' machines to the point that one cannot tell the difference and because finding the source of origin is virtually impossible due to the numerous transient suppliers involved.
- Imported bulk vending machines can be imported with documentation that just reads "vending machines" and therefore cannot be distinguished from any other type of vending machines.
- An accurate inventory of bulk vending machines in the USA market is an unknown. Even though most North American bulk vending machine manufacturers may have some idea of the quantity of machines they have manufactured over the years, the true quantity of machines shipped is not attainable. One of our association manufactures has been manufacturing bulk vending machines since the early 1900's. Another prior to 1950. Production quantity records would not be available for most long term established manufacturers.
- The "underground market" of acquiring bulk vending machines is considered to be the flea markets and garage sales of distribution. It is common knowledge within the industry that many owners/operators of bulk vending machines purchase their equipment at flea markets and at garage or retail clearance sales. These "mom and pop" bulk vending businesses tend to purchase their machines wherever they can find them the cheapest. Traceability; futile.

Hopefully I have been able to convey to you the impossible task of tracking and locating the numerous bulk vending machines that are in our industry nationwide. If you require any further insight into our bulk vending industry from a seasoned bulk vending machine manufacturer, please to not hesitate to contact me.

Sincerely,



Bernie Schwarzli
President