



THE INVESTMENT FUNDS INSTITUTE OF CANADA  
L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

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October 1, 2009

Helen McDonald  
Assistant Deputy Minister  
Spectrum, Information Technologies and Telecommunications Branch  
Industry Canada  
300 Slater Street, 20<sup>th</sup> Floor  
Ottawa, ON K1A 0C8

**Dear Ms McDonald:**

**Re: Electronic Commerce Protection Act (Bill C-27)**

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Further to my letter to you of September 24<sup>th</sup>, attached are draft amendments to address the issues of concern to members of The Investment Funds Institute of Canada.

We believe these amendments will allow the industry to continue to serve the interests of their current and prospective clients without diluting the intent of the bill to punish illegal and harmful activities that damage the reputation and trust surrounding electronic commerce.

I would be pleased to discuss these amendments in greater detail with you at your convenience. I can be reached at [jdelaurentiis@ific.ca](mailto:jdelaurentiis@ific.ca) or 416-363-1743.

Yours truly,

**THE INVESTMENT FUNDS INSTITUTE OF CANADA**

By: Joanne De Laurentiis

**PROPOSED LEGISLATIVE PROVISIONS**  
**Investment Funds Institute**

**Section 6(5)**

1) Revise section 6(5), adding new paragraphs (c), (d) and (e), and renumbering former paragraph (c), as follows: (NB. in all cases, changes presented in bold face).

- “(c) that is sent to a person as an individually addressed message as a result of a referral given to the person who sends, causes or otherwise permits to be sent, the message, by another person who has an existing business relationship or an existing non-business relationship, as defined in section 10, or a personal or family relationship, as defined in the regulations, with the person to whom the message is sent;**
- (d) of which the sole purpose is to convey information regarding a bona fide employment or independent contractor opportunity offered by the person who sends, causes or otherwise permits to be sent, the message, in the circumstances specified in the regulations;**
- (e) that is sent, caused or permitted to be sent, by a person who is a member of, registrant under or participant in an industry or profession which is subject to comprehensive regulatory oversight pursuant to applicable laws of Canada or of a province or territory of Canada, or pursuant to the requirements of a prescribed self-regulatory organization, that includes regulation of the communications between the persons sending, causing or permitting to be sent, the message, and members of the public; or”**

**Section 10(3)**

2) Revise section 10(3) to break out into paragraphs, adding paragraph (b) as follows:

“Consent is implied for the purpose of section 6 only:

- (a) where the person who sends the message, the person who causes it to be sent or the person who permits it to be sent has an existing business relationship or an existing non-business relationship with the person to whom it is sent;**
- (b) where the following circumstances apply:**
  - i) an electronic address has been conspicuously published by a person in a business or official capacity;**

- ii) the publication of the address is not accompanied by a statement to the effect that the relevant electronic address-holder does not want to receive unsolicited electronic messages at that electronic address; and
  - iii) the message sent to that address is relevant to the business, role, functions, or duties of the person in a business or official capacity; or
- (c) where consent can be reasonably inferred from the conduct of the person to whom the message is to be sent or the nature of the business provided that the person who sends, causes or otherwise permits to be sent the message can explain to the person to whom the message was sent the basis on which such consent was inferred; or
- (d) in the circumstances set out in the regulations.”

#### **Section 10(4)**

- 3) Revise section 10(4) to add a new paragraph (d), and renumber subsequent paragraphs:

“(d) an ongoing fiduciary, advisory or professional relationship in respect of which applicable laws, rules of professional conduct or requirements of a prescribed self-regulatory organization require or encourage communication by the person who sent or caused or permitted to be sent the message, with the person to whom the message is sent, if the relationship is currently in existence or expired within the period referred to in paragraph (a);”

#### **Section 10(6)**

- 4) Revise section 10(6)(c) to read as follows and add new section 10(7):

“(c) voluntary participation by the person to whom the message is sent, in a social networking facility, where the other person is, or also participates in, such social networking facility.

**10(7) For the purposes of subsection (6), a "social networking facility" means a voluntary grouping of persons organized in relation to a matter of common interest of any nature, commercial, personal or otherwise, which facilitates communication in any form between or among the persons participating in the grouping, and includes:**

- (a) a club, association or voluntary organization as defined in the regulations;
- and

**(b) an electronic social networking facility, as defined in the regulations.”**

**Section 11(3)**

5) Revise section 11(3) to provide for a longer period to implement an opt-out:  
“11(3) ..., and in any event no later than **31** days after the indication has been sent or given ...”

**Section 20(4)**

6) Revise section 20(4) to separate into two paragraphs, the first being for a violation of section 7 or 8, having the maximum penalties currently provided, and the second for the maximum penalties for a violation of section 6, in lesser amounts, as follows:

**“20(4) The maximum penalty for a violation:**

- (i) under sections 7 and 8 is \$1,000,000 in the case of an individual, and \$10,000,000 in the case of any other person; and**
- (ii) under section 6 is \$100,000 in the case of an individual, and \$1,000,000 in the case of any other person.”**

**Sections 47 and 48**

7) Revise sections 47 and 48 to refer to sections **“7 to 9”**, rather than **“6 to 9”**.

**Section 63**

8) Revise section 63, the regulation power, to incorporate the power to make regulations as contemplated in the above proposals.

**General**

9) Review possible need for conforming changes elsewhere in the Bill to reflect the foregoing.