



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

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August 31, 2011

Robert A. Morin  
Secretary General  
Canadian Radio-television and Telecommunications Commission  
Ottawa, Ontario, K1A 0N2

Dear Mr. Morin:

**Re: Electronic Commerce Protection Regulations**

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1. We are writing to provide the comments of The Investment Funds Institute of Canada ("IFIC") with respect to the Canadian Radio-television and Telecommunications Commission's ("CRTC") draft regulation entitled the Electronic Commerce Protection Regulations ("draft Regulation"), which was made pursuant to Canada's Anti-Spam Legislation ("the Act"). IFIC is the national association of the Canadian investment funds industry. IFIC's membership includes fund managers, retail distributors of funds and service organizations that work together in a co-operative forum to enhance the integrity and growth of the industry. IFIC's mutual fund manager members represent approximately \$790.5 billion in mutual fund assets under management in Canada and mutual funds represent approximately 31.25% of Canadians' financial wealth.

#### General Comments

2. The Department of Industry has stated that the Anti-Spam Legislation "was enacted to encourage the growth of electronic commerce by ensuring business confidence and consumer trust in the online market place. To do so, the Act prohibits damaging and deceptive spam, spyware, malicious code, botnets and other related network threats". The CRTC has reiterated that, in regard to commercial electronic messages, "the fundamental underlying principle is that such activities can only be carried out with consent".
3. While we and our members are supportive of the intentions with regard to unsolicited commercial emails and the other damaging practices described above, we submit that certain aspects of the draft Regulation require amendment to balance the need to protect individuals and businesses from unwanted emails, with the need for legitimate businesses

to be able to provide responsible communication about products and services to their markets. This is especially critical to the hundreds of thousands of small businesses across Canada, which cannot reasonably bear the expenses of designing and implementing complicated compliance regimes. Our members, many of whom are independent financial advisors, are just one example of such small businesses.

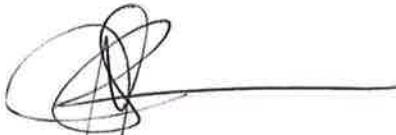
#### Request for Consent

4. Section 4 of the draft Regulation prescribes that a request for consent must be in writing and must include a number of prescribed items including addresses, numbers, email addresses, and a statement with respect to the right to withdraw consent. In our submission, this requirement is impractical and represents an unreasonable impediment to legitimate commerce, in many real-world contexts. For example, a financial advisor who has a discussion with a person at a social event, culminating in the person's request to be sent some information, would apparently not qualify. The draft Regulation suggests the consultant would be obliged to pull out a comprehensive request form and hand it to the individual.
5. Similarly, the Regulation as drafted would appear to foreclose the obtaining of consent at an information booth at a trade fair or other public event, unless each person who provides contact details is first provided with a comprehensive written request.
6. We suggest that these unintended consequences could be addressed by a new subsection within Section 4 of the draft Regulation to the effect that:  
"Notwithstanding subsection 4(1), a request for consent need not be in writing if
  - (a) the consent of the individual to whom the message is sent was given in an in-person meeting between that individual and the individual who sends the message, and
  - (b) the information prescribed in subsection 4(1) is included in the first commercial electronic message sent by the individual who obtained the consent, to the individual whose consent was provided."
7. In this regard, we note that under the Commission's implementation of the Do Not Call Rules, there is no requirement for a request for consent to be made in writing in any prescribed form, and the forms that a consent may take are defined in a flexible manner, provided that the onus is on the telemarketer to demonstrate that a valid express consent has been given. In our submission, there is no public policy reason the treatment of consents to communication should be more restrictive in the case of commercial electronic messages. The consent process adopted by the Commission for purposes of the Do Not Call Rules was the result of an extensive public process, review and analysis by the CRTC as to what would be satisfactory to protect consumers and balance all interests. More restrictive rules for electronic communications would cause confusion and additional compliance challenges for legitimate businesses, and confusion for consumers familiar with existing Do Not Call Legislation practices.

8. Thank you for providing our Members with an opportunity to comment. Should you have any questions or wish to discuss these comments, please contact me directly by phone at 416-309-2300 or by email at [jdelautentiis@ific.ca](mailto:jdelautentiis@ific.ca) or Jon Cockerline, Director – Policy and Research by phone at 416-309-2327 or by email at [jcockerline@ific.ca](mailto:jcockerline@ific.ca).

Yours truly,

**THE INVESTMENT FUNDS INSTITUTE OF CANADA**



By: Joanne De Laurentiis  
President & Chief Executive Officer

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