



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

Joanne De Laurentiis
PRESIDENT AND CEO
Tel: (416) 309-2300
E-mail: jdlaurentiis@ific.ca

BY ELECTRONIC MAIL: Bruce.Wallace@ic.gc.ca

August 31, 2011

Bruce Wallace
Director, Electronic Commerce Policy
Electronic Commerce Branch, Department of Industry
Jean Edmonds Tower North, 18th Floor, Room 1891D
300 Slater Street, Ottawa, Ontario, K1A 0C8

Dear Mr. Wallace:

Re: Electronic Commerce Protection Regulations (Canada Gazette, Part I, July 9, 2011)

We are writing to provide the comments of The Investment Funds Institute of Canada ("IFIC") with respect to the Electronic Commerce Protection Regulations ("draft Regulation"), which were 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

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".

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.

Personal Relationships

We are concerned by the two-pronged test in the definition in section 2(b) of the draft Regulation, of "personal relationship". The definition requires both "an in-person meeting and, within the previous two years, a two-way communication". The meaning of this phrase is unclear: if individuals have had an in-person meeting it would seem they have necessarily had a two-way communication. If the suggestion is that a "two-way communication" is separate and different from an in-person meeting we are not certain what that means and what form the two-way communication could permissibly take. For example, if individuals meet at a social function and their conversation concludes in an exchange of business cards or other contact details, would the draft Regulation be read to require some additional communication between the individuals, at a later time and in a different form? Equally, if a personal relationship is developed by online means, and is otherwise compliant with the definition, must the parties; in addition, have an "in-person meeting", before the relationship qualifies as a "personal relationship"? In our submission the concerns we have could be met easily by making the definition disjunctive ("an in-person meeting or ... a two-way communication") rather than conjunctive.

Social Networking

Canadians are world leaders in the use of social networking sites such as Facebook, Twitter, LinkedIn and similar electronic clubs and associations. Individuals voluntarily join these groups based on a common affiliation and members encourage the open, and often unrestricted, sharing of opinions, ideas, experiences, and preferences on a wide variety of topics. Each group establishes its own parameters on acceptable and relevant topics of interest as a condition of membership. Electronic social networking sites have become an important forum in which small businesses, particularly in the professional and personal services sector, can make other voluntary participants in the network aware of their services, in a cost effective and non-intrusive manner.

The proposed treatment of clubs, associations or voluntary organizations in section 4 of the draft Regulation would have the practical effect of prohibiting small businesses from making participants in voluntary social networks aware of their services. All current, major social networking sites, which individuals voluntarily join, are ultimately for-profit organizations, and hence excluded by the definition in subsection 4(2) of the draft Regulation.

In our submission, a failure in the Act and the draft Regulation to define and permit what have become ubiquitous electronic social networking facilities and legitimate business practices would create a major impediment to the viability of innumerable small businesses across Canada.

In our submission, the provisions of section 4 should be expanded to contemplate specifically that a voluntary organization includes a "social networking facility by which a voluntary grouping of persons organized in relation to a matter of common interest of any nature, commercial, personal

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or otherwise, may engage in two-way electronic communication between or among the persons participating in the facility".

Employment Opportunities

Electronic communications are a convenient, quick, and cost effective way to communicate employment opportunities. One way our members grow is by recruiting new financial advisors, and electronic communication is a very effective way to make people aware of employment opportunities in the financial services sector. However, neither the Act nor the draft Regulation makes provision for such communication.

Subsection 6(6)(g) of the Act permits the draft Regulation to specify purposes for a communication, to which section 6(1)(a) shall not apply. In our submission, pursuant to this regulation power, the draft Regulation should exempt a commercial electronic message:

"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, provided:


- (a) the message is an individually addressed message; and
- (b) the message is sent as a result of a referral given to the person who sends, causes or otherwise permits to be sent, the message by another individual person, identified by name in the message, who has an existing business relationship, an existing non-business relationship, a personal relationship or a family relationship, with the person to whom the message is sent."

This carefully drafted exemption, in our submission, would dispel any concern about creating a possible "loophole" for mass email "spammers".

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 jdelarentiis@ific.ca or Jon Cockerline, Director – Policy and Research by phone at 416-309-2327 or by email at jcockerline@ific.ca.

Yours truly,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Joanne De Laurentiis
President & Chief Executive Officer

