



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

April 7, 2010

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

Dear Mr. Morin:

**Subject: Telecom Notice of Consultation 2010-130: Call for Comments on
Unsolicited Telecommunications Rules – Financial and insurance products
and services offered to existing clients - Commission File Number 8665-C12-
201004101**

Pursuant to paragraph 10 of Telecom Notice 2010-130, The Investment Funds Institute of Canada (“IFIC”) hereby submits its comments on the following questions:

- 1) Should telecommunications by investment or financial advisors to existing clients regarding financial products or services constitute telemarketing under the Rules? If so, under what circumstances?
- 2) Should telecommunications by insurance agents or brokers to existing clients regarding insurance products or services constitute telemarketing under the Rules? If so, under what circumstances?

IFIC is the national association of the Canadian investment funds industry. Our membership comprises mutual fund management companies, retail distributors and affiliates from the legal, accounting and other professions from across Canada. IFIC’s mutual fund manager members represent nearly \$550 billion in mutual fund assets under administration in Canada; mutual funds represent approximately 30% of Canadian’s financial wealth.

Q. Should telecommunications by investment or financial advisors to existing clients regarding financial products or services constitute telemarketing under the Rules? If so, under what circumstances?

A. The Investment Funds Institute of Canada (“IFIC”) position is that telecommunications by investment or financial advisors to existing clients regarding financial products or services **should not** constitute telemarketing under the Unsolicited Telecommunications Rules (the “Rules”).

IFIC agrees with the Commission determinations at paragraphs 10 and 11 of Telecom Circular CRTC 2008-3:¹

10. The Commission understands that the nature of the service of providing investment and/or financial advice requires that the advisor communicate with the existing client on an ongoing basis in response to changing circumstances and that, in some circumstances, communication with an existing client is required by regulation. For example, an existing client may be called about a change in the market or a change in the status of an investment fund. As such, the Commission considers that clients would expect to be contacted on an ongoing basis by their investment or financial advisor.
11. In light of the above, the Commission considers that, taking into account the nature of the relationship, telecommunications made by an investment or financial advisor to an existing client do not constitute telemarketing within the meaning of the Unsolicited Telecommunications Rules. Therefore, the Unsolicited Telecommunications Rules do not apply to such calls.

The sale of mutual funds in Canada is highly regulated in all provinces and territories under the Securities Act. In order to sell mutual funds in Canada it is necessary to be a registered salesperson selling on behalf of a registered dealer. There is a responsibility for an advisor to maintain contact and inform a client/customer on a regular basis. The regulatory bodies that govern the mutual fund industry require industry participants to provide a wide range of regular communication with clients. The dealer is responsible for ensuring the compliance of their agents with all applicable rules.

There are two recognized self-regulatory organizations (SROs) governing dealers, and their representatives in the Canadian investment industry: the Investment Industry Regulatory Organization of Canada (IIROC), and the Mutual Fund Dealers Association of Canada (MFDA). It is important to note that the rules and policies of the SROs are reviewed and approved and direction given in the rule-making process by the securities commissions in each of their respective jurisdictions.

¹ *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to investment dealers, mutual fund dealers, and investment and financial advisors, Telecom Circular 2008-3, issued 16 December 2008.*

The MFDA is a national SRO charged with the responsibility of regulating the conduct of mutual fund dealers in Canada.² The MFDA Rules have national reach as all the representatives of a dealer registered in a recognizing jurisdiction are required to comply with MFDA Rules. The MFDA is responsible for regulating the operations, standards of practice and business conduct of its Members and their representatives with a view to enhancing investor protection and strengthening public confidence in the Canadian mutual fund industry. MFDA Rules govern all aspects of the relationships between dealers, approved persons and clients, including, for example, Conflicts of Interest (MFDA Rule 2.1.4), Know Your Client (MFDA Rule 2.2.1), and Advertising and Sales Communications (MFDA Rule 2.7), among others.

IIROC is the national SRO which oversees all investment dealers and trading activity on debt and equity marketplaces in Canada. Created in 2008 through the consolidation of the Investment Dealers Association of Canada and Market Regulation Services Inc., IIROC sets high quality regulatory and investment industry standards, protects investors and strengthens market integrity while maintaining efficient and competitive capital markets. IIROC carries out its regulatory responsibilities through setting and enforcing rules regarding the proficiency, business and financial conduct of dealer firms and their registered employees and through setting and enforcing market integrity rules regarding trading activity on Canadian equity marketplaces. IIROC is recognized across Canada and, as such, its rules have national applicability.

As well, the Canadian Securities Administrators, which is a forum for the 13 securities regulators of Canada's provinces and territories provide direction to and review and approve the rules of the SROs and regularly collaborate in policy development, together with IIROC and the MFDA, to ensure a coordinated and high level of harmonization in the regulation of the investment industry in Canada.

The Commission is entirely correct in Telecom Circular CRTC 2008-3 that the nature of the service of providing investment or financial advice requires that the advisor, acting on behalf of an investment dealer, to communicate with the existing client on an ongoing basis should not constitute telemarketing. It is clear an existing business relationship is formed between the client and the investment dealer when a client deals with the advisor to purchase a service or product, make an inquiry or application, or enter into a written contract with the dealer. In addition, existing investment industry regulatory requirements require regular maintenance of complete, accurate and timely client information. This information is captured by an advisor through ongoing dialogue with a client. In addition, advisors as part of their obligations to an existing clients are expected to ensure that both the current portfolio, as well as each trade accepted and investment recommendation offered, is suitable to the client. Clients are entitled, require and benefit in hearing from their advisors about unexpected market changes, or changes in the status of their investments, that affects the value of their savings. That advice may, in certain

² Provincial securities commissions in Alberta, British Columbia, Nova Scotia, Ontario, Saskatchewan, New Brunswick and Manitoba have all formally recognized the MFDA. An application for recognition is pending before the Securities Commission of Newfoundland and Labrador. The MFDA has entered into a cooperative agreement with the Autorité des marchés financiers and actively participates in the regulation of mutual fund dealers in Quebec.

cases, necessitate a portfolio rebalancing strategy, to maintain a suitable client portfolio.

Q. Should telecommunications by insurance agents or brokers to existing clients regarding insurance products or services constitute telemarketing under the Rules? If so, under what circumstances?

A. IFIC's position is that telecommunications by insurance agents or brokers to existing clients regarding insurance products or services **should not** constitute telemarketing under the Rules.

The Commission is aware many financial advisors are dually licensed to sell both securities and insurance products. This fact has already been acknowledged by the Commission at paragraph 5 of Telecom Circular CRTC 2008-3:

5. Investment advisors may also offer insurance. For purpose of this information bulletin, such advisors will be referred to as financial advisors. This information bulletin does not deal with the application of the Unsolicited Telecommunications Rules to the marketing and selling of insurance by financial advisors.

There is no reason for communications with existing clients to be treated differently based on the product if an advisor is contacting an existing client. Consumers view insurance planning as an integral part of sound financial planning. IFIC proposes and would support the Commission revising Telecom Information Bulletin CRTC 2009-282 (the insurance bulletin)³ so that the application of the Rules for those advisors involved in selling and promoting insurance products and services to existing clients should not constitute telemarketing, on the same basis and circumstances as set out in Telecom Circular CRTC 2008-3. IFIC submits there would be no adverse impact of this proposed treatment on the Commission's existing framework for unsolicited telecommunications to consumers.

IFIC is pleased to provide these Comments to assist the Commission in its considerations. Should the Commission or its staff have any questions or require further discussion, please contact me directly by phone at 416-309-2300 or by email at jdelaurentiis@ific.ca or Jon Cockerline, Director, Policy – Dealer Issues 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

³ *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the insurance industry, Telecom Information Bulletin CRTC 2009-282, issued 15 May 2009*