



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

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November 2, 2010

To the Chair and Members
Standing Committee on Industry, Science and Technology
House of Commons
c/o Michelle Tittley, Clerk of the Committee
6th Floor, 131 Queen Street
Ottawa ON K1A 0A6

Dear Ms. Tittley:

Re: Fighting Internet and Wireless Spam Act (Bill C-28)

We are writing to provide the comments of The Investment Funds Institute of Canada ("IFIC") with respect to Bill C-28, the Fighting Internet and Wireless Spam Act ("FISA"). The Investment Funds Institute of Canada 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 \$630 billion in mutual fund assets under management in Canada and mutual funds represent approximately 27% of Canadians' financial wealth.

General Comments

It is widely accepted that with advancing electronic options for communication and business transactions there are tremendous new opportunities for small, medium and large businesses to operate more efficiently, and for individual Canadians to have easy access to competitive and comprehensive information about products and services prior to making their purchase decisions. The abundance of information means consumers are better informed and businesses are more competitive. Unfortunately, along with the positive benefits of electronic communication and commerce, a small percentage of individuals have exploited e-commerce opportunities to conduct illegal, fraudulent, and harmful activities while posing as legitimate businesses. Others have recklessly used mass generic e-mailings without regard to the costs and inconveniences that have resulted for the ultimate recipients.

Sections of Bill C-28 that develop and implement methods to combat and punish illegal and harmful activities that damage the reputation and trust surrounding electronic commerce are

necessary and welcomed by our members. We are also supportive of the recommendations that are outlined in sections 8 and 9 regarding the prohibition on the altering of transmission data and the unauthorized installation of computer programs on another's computer. We also are supportive of the proposed amendments to the Competition Act to prohibit misleading commercial emails and to the Personal Information Protection and Electronic Documents Act ("PIPEDA") regarding the use of emails collected through selected computer programs.

While we are supportive of the general intent of section 7 with regard to unsolicited commercial emails, **we believe that a number of changes in the drafting of this section 7 and related definitions are required 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.**

Individual Messages based on Referrals

IFIC supports the purpose of Bill C-28 set out in its name, and in the preamble to the legislation: electronic commerce needs appropriate regulation if it is to grow in Canada. Without such regulation the indiscriminate dissemination of millions of email marketing messages will undermine legitimate electronic communications by adding costs to businesses receiving such mass emails and individuals unable to differentiate spammers from legitimate service and product providers.

However, it is of substantial benefit to hundreds of thousands of small businesses across Canada, the drivers of our economy, that individually addressed electronic communication, based on referrals from friends, family, and business associates, be allowed to continue, as it is an efficient and cost effective method of offering services.

The net cast by proposed section 7 extends to prohibit one-to-one emails of specifically directed marketing communication based on third party referrals, which are not by their nature intrusive into the lives of recipients, do not create economic harm, and provide awareness of a business' products or services. An example would include a residential real estate professional sending an e-communication to an individual who the salesperson has been advised is in the market for a specific type of property that such a property is now available in their targeted neighbourhood. A second example is of a financial advisor sending an email as a follow-up to a referral from an existing client, to a friend or family member who is approaching retirement and looking for a trustworthy individual to help answer questions relating to their retirement income needs.

In many cases, referrals of this sort are the very lifeblood of small business, especially in the professional and personal services sectors, a growing segment of the Canadian economy.

Referrals from existing clients represent a significant source of business for IFIC's members. With the current 'Do Not Call' legislation prohibiting contacting referred individuals by phone, our members have turned to email in order to contact those referred to them as potential clients. Emails are an efficient means of reaching out to potential new customers, without being disruptive to the recipient – recipients can choose to deal with the email on their own timetable,

a simple click on the delete button removes the email if it is unwanted, and because the email comes from a referral there is no danger of the receiver being inundated with other unsolicited emails from this sender. The only alternative would be paper based mail and that is an unnecessary use of paper products when there is a meaningful alternate form of communications. In our view, legislation that simply increases business and environmental costs without any benefit to Canadians is misguided public policy.

By carefully drafting an applicable exemption and related regulations, the concern about possibly creating a "loophole" for mass email "spammers" can be avoided.

We propose that subsection 7(5) be amended to address this critical issue, by the addition of a new paragraph (c) (and renumbering of existing paragraphs) for a commercial electronic message:

"(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 individual person, identified by name in the message, who has an existing business relationship or an existing non-business relationship, as defined in section 11, or a personal or family relationship, as defined in the regulations, with the person to whom the message is sent;"

Employment Opportunities

Electronic communications have evolved to be 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.

We propose that subsection 7(5) be amended to add a new paragraph (d), (with resultant renumbering) to provide an exemption for a message:

"(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;"

Social Networking Relationships

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 sectors, can make other voluntary participants in the network aware of their services, in a cost effective and non-intrusive manner. The proposed definition of "existing non-business relationship" sits uneasily with electronic social network users, as it refers only to messages from "a club, association or voluntary organization". We are concerned this phrase could be interpreted not to include messages among participants in social networking facilities.

Accordingly, we propose that subsection 11(13) be amended so that paragraph 11(13)(c) reads as follows, and a new related definition be added in a new subsection 11(14), to establish an "existing non-business relationship" for:

“(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.

11(14) For the purposes of subsection (13), 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.”**

Penalties

IFIC supports the proposed penalties (maximum penalty for a violation is \$1,000,000 in the case of an individual, and \$10,000,000 in the case of any other person) for violations of sections 8 and 9 where prohibited actions have the potential to result in large scale system damage or fraud.

In the case of section 7, however, we believe that the penalties are excessive and out of proportion to the potential harm caused by a breach of the section, by comparison to the damage which may be caused by violations of sections 8 and 9.

We propose that subsection 21(4) be amended as follows:

“21(4) The maximum penalty for a violation:

- (i) under sections 8 and 9 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 7 is \$100,000 in the case of an individual, and \$1,000,000 in the case of any other person.”**

Thank you for providing us with an opportunity to comment. If you have any questions regarding this submission, please contact me directly by phone at 416-309-2300 or by email at jdelarentiis@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



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