



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

Susan Copland, B.Comm, LLB.
Director

Secretary General
Canadian Radio-television and Telecommunications Commission
Ottawa, Ontario
K1A 0N2

April 6, 2010

Dear Sir/Madam:

Re: Telecom Notice of Consultation – CRTC 2010-130 – *Unsolicited Telecommunications Rules – Financial and insurance products and services offered to existing clients* (the “Notice”)

1. The Investment Industry Association of Canada (the “IIAC”) appreciates the opportunity to comment on this issue. The IIAC advances the position of the Canadian investment industry on regulatory and public policy issues. As the professional association for the industry, the IIAC’s mandate is to promote efficient, fair and competitive capital markets for Canada and assists its 200 member firms across the country succeed in the securities business.

2. In the Notice, the Commission invites comments on two specific questions, to which the IIAC responds as follows:

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?*

3. The IIAC strongly supports the CRTC’s position articulated in Telecom Circular 2008-03, 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.”

4. Prior to the implementation of the rules governing the National Do Not Call List and unsolicited telecommunications, the IIAC had ongoing discussions and meetings with CRTC staff to explain the nature of the relationship between investment and financial advisors (“Advisors”) and their clients, and how characterizing Advisor initiated telecommunication between them as telemarketing would violate the Advisors’ professional obligations and ultimately be harmful to their clients.
5. The relationship between Advisors and their clients can be clearly distinguished from other relationships to which the Rules would generally apply. Advisors are chosen by their clients to assist them in achieving their objectives in respect to their financial situation. These objectives could be short, medium or long term in nature. An Advisor works with their clients to develop investment strategies and make specific investment choices to achieve the clients’ objectives.
6. It is critical that Advisors communicate with their clients on an ongoing basis in order to respond to changes in the economy, the market, the particular securities held by the client, as well as any changes in the client’s circumstances and needs. In addition, Advisors must also consult with their clients in respect of any number of external threats and opportunities that could impact the client’s portfolio. These communications may or may not lead to commercial transactions (ie: the purchase and sale of securities).
7. The communication between Advisors and clients in furtherance of this relationship cannot be viewed as individual unsolicited telecommunications for the purposes of solicitation, rather they are part and parcel of a larger service to which the client has contracted with the Advisor to receive. In fact, if the Advisor did not actively undertake this form of telecommunication, s/he would likely be in breach of his/her regulatory and contractual duties pursuant to the Advisor-client relationship.
8. The Advisor-client relationship is distinguishable from other commercial relationships in that it is directly governed by a comprehensive regulatory code of conduct that governs the degree to which Advisors are to be familiar with their clients’ financial needs and preferences, ongoing duties to ensure that the Advisors act in their clients interests throughout the relationship, as well as the penalties and other professional implications to which the Advisors acting outside of these duties are subject.
9. This regulatory framework is imposed at the provincial and national level by the securities commissions and the Investment Industry Regulatory Organization of Canada (IIROC). See Appendix A for IIROC Rule 1300 Supervision of Accounts and Rule 2500 Minimum Standards for Retail Account Supervision.
10. In addition to the applicable regulatory requirements, the amount, and nature of client contact will also be driven by the needs and expectations the specific clients, based on their investment objectives and strategies, knowledge, and the degree to which they wish to actively manage their portfolio. Despite any differences in these factors, all clients expect that their Advisor will contact them when necessary and advisable to obtain permission and input to make the

transactions to ensure that their portfolio is being managed appropriately for their needs.

11. The IIAC strongly objects to changes to the application of the Unsolicited Telecommunications Rules to include communications between existing clients and their Advisors, as this would have significant negative consequences for clients that rely on their Advisors to help them manage their investments to achieve their financial goals.
 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?*
12. The IIAC supports a consistent application of the Unsolicited Telecommunications Rules for insurance agents and brokers that are also licensed as IIROC advisors. (“DL Advisors”) These DL Advisors are qualified to sell both insurance products and securities, and should not be subject to different communication standards based on the categorization of the product that is sold to meet their clients’ investment objectives. Clients choose their advisors based on the products and services they can provide. The role of an Advisor is to provide investment advice and products that will assist their clients in achieving their financial objectives. In providing this advice, DL Advisors will consider all of the products they are qualified to provide, in the context of optimizing their clients’ portfolio. Clients may benefit, therefore, by having a DL Advisor with access to a wider variety of products. There are many insurance products, such as segregated funds which form the basis, or are an appropriate component of clients’ financial portfolio. It is unreasonable and impractical to apply different rules relating to DL Advisor-client communications based on the classification of the product that a duly qualified and licensed DL Advisor is discussing with their client. The objective of the DL Advisor-client relationship does not vary by product, and creating such a distinction would be confusing and prejudicial to clients, particularly in a quickly moving market where timely communication is essential.
13. The regulatory regime for insurance advisors and brokers differs from IIROC Advisors, in that it is provincially governed and not subject to a single and consistent code of conduct. Insurance advisors are, however, subject to several similar codes of conduct originating from the provincial regulators as well as by the insurance companies that employ and develop products to be sold by insurance advisors. We have attached a selection of these codes of conduct for your information as Appendix B. This prevalence of similar codes of conduct from several industry sources has formed the basis of a generally accepted standard of professional conduct among insurance advisors. The common elements of these codes includes a duty of care owed to the client, such that the clients’ interests take priority over the advisor, a duty to establish the suitability of every product recommended to the client, and a general duty to act in good faith. Other common provisions deal with documentation, conflict of interest and confidentiality. Several of the codes published by insurance companies also include a requirement to undertake periodic reviews of client circumstances to ensure their needs are being met.

14. The nature of the DL Advisor–client relationship, as well as the regulatory and professional obligations to clients imposed on DL Advisors through IIROC regulation and the codes of conduct applicable to insurance advisors support a consistent treatment under the Unsolicited Telecommunications Rules without regard to whether the DL Advisor – client communication relates to securities or insurance related products. As such we support an interpretation of the definition of telemarketing that would exclude communication between existing clients and insurance advisors that are dually licensed as IIROC Advisors.

If you have any questions or comments, please do not hesitate to call

Yours truly,

Susan Copland
Encl.

*****End of Document*****