



Telecom Circular CRTC 2008-3

Information bulletin

Ottawa, 16 December 2008

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

1. The purpose of this information bulletin is to clarify for investment dealers, mutual fund dealers, and investment and financial advisors (the investment industry) their obligations related to the National Do Not Call List (National DNCL), which was established on 30 September 2008. This information bulletin also clarifies the application of the Unsolicited Telecommunications Rules, which include the National DNCL Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device (ADAD) Rules, to the investment industry.¹

Introduction

2. In Telecom Decision 2007-48, the Commission established a comprehensive framework setting out rules governing the National DNCL and unsolicited telecommunications received by consumers. The Commission regulates unsolicited telecommunications pursuant to section 41 of the *Telecommunications Act* (the Act), which provides that

The Commission may, by order, prohibit or regulate the use by any person of the telecommunications facilities of a Canadian carrier for the provision of unsolicited telecommunications to the extent that the Commission considers it necessary to prevent undue inconvenience or nuisance, giving due regard to freedom of expression.

The investment industry

3. The investment industry encompasses a broad range of organizations that deal with, among other things, the trade of securities. Currently, each province and territory in Canada regulates the trade of securities in its jurisdiction through a government agency, usually known as a securities commission. These agencies have in turn recognized certain self-regulatory organizations, including the Investment Industry Regulatory Organization of Canada (IIROC) and the Mutual Fund Dealers Association of Canada (MFDA), which have the responsibility of regulating the conduct of their members.

¹ The Unsolicited Telecommunications Rules are set out in Telecom Decisions 2007-48 and 2008-6-1. The most recent version of the Rules is found in the Appendix to Telecom Decision CRTC 2008-6-1, and online at <http://www.crtc.gc.ca/archive/ENG/Decisions/2008/dt2008-6-1.htm>. Please note that Telecom Decision 2008-6 was reissued, with changes, as Telecom Decision 2008-6-1.

4. A person responsible for marketing and selling securities to consumers may be referred to as an agent, broker, advisor, or salesperson. For the purpose of this information bulletin, they will be referred to as investment advisors. Most often, these investment advisors, for the purpose of marketing and selling securities, act as agents or mandataries for investment offices or brokerages (which, for the purpose of this bulletin, will be referred to as investment dealers), although they can be employees.
5. Investment advisors may also offer insurance. For the 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.²
6. The Commission notes that the MFDA Rules provide that
 - members (i.e. mutual fund dealers) are liable to third parties (including clients) for the acts and omissions of employees and agents relating to the member's business (Rules 1.1.4(c) and 1.1.5(c)); and
 - member business conducted by employees and agents must be conducted in the name of the member, subject to limited exceptions (Rule 1.1.7(a)).
7. Similarly, the IIROC Rules provide that
 - it is the investment dealer that is liable to clients (and other third parties) for the acts and omissions of the investment advisor relating to the investment dealer's business (Rule 39.4(d)); and
 - subject to limited exceptions, all securities related business conducted by the investment advisor is in the name of the advisor's investment dealer (Rule 39.4(j)).
8. The Commission further notes that section 72.02 of the Act provides that a person is liable for a violation that is committed by an employee, or an agent or mandatary, of the person acting in the course of the employee's employment or the scope of the agent's or mandatary's authority.

Application of the Unsolicited Telecommunications Rules to telecommunications made by advisors to existing clients

9. Telemarketing, as defined in the Unsolicited Telecommunications Rules, means "the use of telecommunications facilities to make unsolicited telecommunications for the purpose of solicitation." "Solicitation" includes "the selling or promoting of a product or service... whether directly or indirectly" (Part I, Definitions, section 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

² The Commission intends to issue an information bulletin regarding the application of the Unsolicited Telecommunications Rules to the insurance industry in the near future.

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.

Application of the Unsolicited Telecommunications Rules to telecommunications made by advisors to prospective or former clients

12. The Commission notes that investment or financial advisors may also make telecommunications to prospective or former clients for the purpose of selling or promoting a product or service. The Commission considers that, in these circumstances, consumers would not expect to be contacted by the advisor. As such, these telecommunications would constitute telemarketing and would therefore be subject to the Unsolicited Telecommunications Rules, including the National DNCL Rules.

Responsibility for subscribing to the National DNCL, paying fees, and registering and providing information to the National DNCL operator

13. To the extent an investment or financial advisor is making telemarketing telecommunications as an employee, agent, or mandatary of an investment dealer, pursuant to section 72.02 of the Act, the investment dealer would be liable for violations of the Unsolicited Telecommunications Rules committed by the advisor. Therefore, in this situation the investment dealer, and not the advisor, is responsible for registering with, and providing information to, the National DNCL operator (Part III, Telemarketing Rules, section 2), becoming a registered subscriber of the National DNCL, and paying all applicable fees (Part II, National DNCL Rules, section 6).
14. However, if an investment or financial advisor makes any telemarketing telecommunications on his or her own behalf, he or she is also responsible for registering with, and providing information to, the National DNCL operator, becoming a registered subscriber of the National DNCL, and paying all applicable fees. In addition, the advisor would be liable for violations of the Unsolicited Telecommunications Rules.

Application of the existing business relationship exemption

15. In some circumstances, a telemarketing telecommunication made by an investment or financial advisor to a prospective or former client will be exempt from the National DNCL Rules by virtue of the existing business relationship exemption (Part II, National DNCL Rules, section 3(b)).

16. The term “existing business relationship” is defined in subsection 41.7(2) of the Act to mean business relationship that has been formed by a voluntary two-way communication between the person making the telecommunication and the person to whom the telecommunication is made, arising from
- (a) the purchase of services or the purchase, lease or rental of products, within the eighteen-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made from the person or organization on whose behalf the telecommunication is made;
 - (b) an inquiry or application, within the six-month period immediately preceding the date of the telecommunication, by the person to whom the telecommunication is made in respect of a product or service offered by the person or organization on whose behalf the telecommunication is made; or
 - (c) any other written contract between the person to whom the telecommunication is made and the person or organization on whose behalf the telecommunication is made that is currently in existence or that expired within the eighteen-month period immediately preceding the date of the telecommunication.
17. In the Commission's view, where an investment or financial advisor acts on behalf of an investment dealer as an employee, agent, or mandatary, an existing business relationship is formed between the consumer and the investment dealer when a consumer deals with the advisor to purchase a service or product, make an inquiry or application, or enter into a written contract with the dealer. As such, any investment or financial advisor of the dealer, including an advisor with no prior relationship with the consumer, could benefit from the existing business relationship exemption from the National DNCL Rules when making telemarketing telecommunications to the consumer.
18. The Commission notes that telemarketing telecommunications that are exempt from the National DNCL Rules must nevertheless comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Business-to-Business exemption

19. A mutual fund management company may promote its funds to investment dealers. These companies may also be referred to as wholesalers. The Commission considers that telecommunications made by such companies to investment dealers to promote the funds the company manages are telemarketing telecommunications. The Commission considers that these telecommunications are exempt from the National DNCL Rules as they are business-to-business telecommunications. However, such telecommunications must comply with the other Unsolicited Telecommunications Rules, namely the Telemarketing Rules and the ADAD Rules.

Secretary General

Related documents

- *Delegation of the Commission's investigative powers with regard to Unsolicited Telecommunications Rules complaints*, Telecom Decision CRTC 2008-6, 28 January 2008, as amended by Telecom Decision CRTC 2008-6-1, 20 October 2008
- *Unsolicited Telecommunications Rules framework and the National Do Not Call List*, Telecom Decision CRTC 2007-48, 3 July 2007, as amended by Telecom Decision CRTC 2007-48-1, 19 July 2007

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