



INVESTMENT DEALERS ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DES COURTIER EN VALEURS MOBILIERES

March 27, 2006

Ms. Diane Rhéaume
Secretary General
Canadian Radio-television and
Telecommunications Commission
Ottawa, Ontario
K1A 0N2

Dear Ms. Rhéaume :

Proceeding to establish a national do not call list framework and to review the telemarketing rules, Telecom Public Notice CRTC 2006-4

1. These comments and recommendations are provided by the Investment Dealers Association of Canada (IDA) in response to *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4 (“PN 2006-4”).
2. The IDA is the national self-regulatory organization of the securities industry in Canada. Our members include more than 200 investment dealers who play an essential role in the Canadian economy by raising capital for governments and businesses and by helping individual Canadians and institutions invest with confidence in open and fair capital markets. Our member firms, employing more than 37,000 people in all provinces and abroad, play a key role in our national and provincial economies and account for over 97 per cent of the industry's revenue and capital.
3. The IDA regulates the business activities and financial integrity of its member investment dealers. The IDA also represents the Canadian securities industry on regulatory policy and on public policy matters related to the savings investment process.
4. Interactive telephone communication between investment advisors and clients is a critical component of the savings and investment process. Accordingly, the IDA has a strong interest in the development of practical and reasonable rules that will ensure responsible telemarketing practices. The IDA appreciates the opportunity afforded by this proceeding to provide recommendations to ensure that the intent of the DNCL is achieved without disrupting essential services to the public or undermining the efficiency of Canada's capital markets.
5. During its consideration of Bill C-37, Parliament was careful to establish a balance between preventing undue inconvenience and nuisance to Canadians and protecting the

responsible use of telecommunications services for legitimate business purposes. IDA members regularly use the telephone to advise their existing clients of developments that affect the clients' current or potential investments. Rather than being inconvenienced by these calls, individuals who have invested funds through an investment advisor or firm rely on and expect such calls from their investment advisors. In fact, there is often a duty on the advisor or firm to make such calls.

6. In specifically exempting telecommunications made to a person with whom the caller has an existing business relationship from the application of the DNCL rules, Parliament expressly recognized the need to preserve the responsible use of the telephone by businesses to communicate with their existing clients.

7. The IDA urges the Commission in its implementation of the DNCL to maintain the balance that Parliament struck in the legislation. In this regard, the Commission has noted in the Public Notice that "the DNCL rules will not apply to those persons identified in the amended *Act* as being exempt from any such rules."¹

8. Many of the IDA's members will be exempt from any requirements to access the DNCL by virtue of their existing business relationships with clients. However, some of our members do rely, to a limited extent, on telephone calls to build new client relationships. To the extent such firms may be required to pay fees to support the DNCL process, any such fees should reflect and be proportionate to the actual use of the DNCL by the firm or investment dealer.

9. In addition, IDA member advisors and firms that are exempt from the DNCL rules by virtue of the statutory exemption for existing business relationships should not be required to pay fees to maintain the DNC registry or otherwise made subject to burdensome compliance or reporting rules. To do so would render the existing business relationship exemption impractical and undermine Parliament's clear intent.

10. The *Act* requires those who are exempt from the DNCL rules to maintain their own internal do not call lists and to ensure that no telecommunication is made to any person that has requested not to be called. Since the statutory definition of existing business relationship is time limited, the *Act* also impliedly requires businesses to keep track of any expiry of their business relationships with customers. The IDA submits that the enforcement of such requirements should be done on a complaints basis rather than through resource-intensive mandatory reporting or filing obligations.

11. Under a complaints-driven approach, a business would be responsible for implementing measures internally to ensure that it does not violate the *Act*. Each company would be free to choose measures that are effective and practical in its particular circumstances. Since the *Act* provides for a due diligence defence in a proceeding relating to any alleged

¹ *Proceeding to establish a national do not call list framework and to review the telemarketing rules*, Telecom Public Notice CRTC 2006-4, dated February 20, 2006 at para. 40.

violation, there is an incentive for businesses to devise and implement systems that will enable them to demonstrate that they have exercised due diligence to prevent violations.² Accordingly, it will not be necessary for the Commission to develop rules that prescribe precise procedures for the maintenance of internal do not call lists. In addition, since the nature of business relationships varies across industry sectors, it would be impractical to implement rigid, uniform rules applicable to all businesses that make calls to existing customers.

12. If the record of this proceeding should indicate that there is some need for broad directions with respect to the maintenance of, and adherence to, internal do not call lists, the IDA recommends that such directions be provided by way of non-binding guidelines and best practices. The IDA also recommends that any such guidelines recognize the differences in business practices and client relationships across industry sectors.

13. In addition, the IDA submits that calls to persons with whom the caller has a personal or family relationship, referral calls, and calls between businesses should be excluded from the DNCL rules. In this regard, the IDA notes that in its Report on Bill C-37, the Standing Senate Committee on Transport and Communications stated that:

The [CRTC] will be engaging in wide-ranging consultations in preparation for the implementation of the legislation. As part of this exercise, the CRTC should gather information and prepare recommendations for ways in which the legislation could accommodate calls based on personal relationships, business-to-business calls, and calls based on referrals.³

14. In the IDA's view, the intent of the new legislation is to prevent Canadians from being subjected to inconvenience or nuisance by telemarketing. However, it was not intended to prohibit or regulate communications between family members, friends and acquaintances. The U.S. rules, on which the Canadian framework was based, clearly exempt calls to persons with whom the caller has a personal relationship, which is defined as "any family member, friend, or acquaintance of the telemarketer making the call."⁴ Similarly, allowing business-to-business calls would be consistent with the broad intent of the legislation. The U.S. Do Not Call framework allows calls between businesses by restricting the application of the Do Not Call rules to calls made to residential subscribers.⁵

15. In summary, the IDA urges the Commission to recognize the balance that Parliament clearly struck between preventing undue inconvenience and nuisance to Canadians

² Subsection 72.1(1).

³ *Observations to the Ninth Report of the Standing Senate Committee on Transport and Communications*, Proceedings of the Standing Senate Committee on Transport and Communications, Issue 23 – Ninth Report of the Committee, dated November 22, 2005. Online at <<http://www.parl.gc.ca>>

⁴ 47 C.F.R. § § 64.1200 (f)(11).

⁵ 47 C.F.R. § § 64.1200 (c)(1).

and protecting the responsible use of telecommunications services for legitimate business purposes. Parliament has provided an express exemption for existing business relationships. The intent of this exemption should not be frustrated by burdensome, costly and impractical rules. Onerous compliance rules are neither necessary nor helpful to achieving the intent of the DNCL. Furthermore, if adopted, such rules would risk disrupting critical financial services to the public and would undermine the efficiency of Canada's capital markets.

16. The IDA looks forward to the opportunity to comment further on these issues in this proceeding and to assist the Commission in developing a practical, balanced model for the Do Not Call regulatory framework.

Yours very truly,

A handwritten signature in black ink, appearing to read "Ian Russell", with a horizontal line underneath the name.

Ian Russell
Senior Vice President, Industry Relations and Representation
Investment Dealers Association