



Telecom Regulatory Policy CRTC 2010-599

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Route reference: Telecom Notice of Consultation CRTC 2010-130

Ottawa, 19 August 2010

Unsolicited Telecommunications Rules – Financial and insurance products and services offered to existing clients

File number: 8665-C12-201004101

In this decision, the Commission amends its interpretation of the Unsolicited Telecommunications Rules (the Rules) and finds that they apply equally to the financial industry and the insurance industry, and that unsolicited calls by members of these industries to existing clients to sell or promote products or services are telemarketing calls under the Rules.

Introduction

1. On 16 December 2008, the Commission issued Telecom Circular 2008-3 (the financial bulletin) to clarify certain obligations under the Unsolicited Telecommunications Rules (the Rules) for persons involved in selling and promoting financial products and services (investment or financial advisors).¹ In the financial bulletin, the Commission concluded that taking into account the nature of the service of providing investment and/or financial advice, and the expectations of clients, telecommunications by investment or financial advisors to existing clients do not constitute telemarketing under the Rules; therefore, the Rules do not apply to such calls.
2. On 15 May 2009, the Commission issued Telecom Information Bulletin 2009-282 (the insurance bulletin) to similarly clarify certain obligations under the Rules for persons involved in selling and promoting insurance products and services (insurance agents or brokers). In the insurance bulletin, the Commission concluded that telecommunications by insurance agents or brokers to sell or promote insurance products or services, including telecommunications to existing clients, constitute telemarketing under the Rules.
3. In Telecom Notice of Consultation 2010-130, the Commission invited interested parties to comment on whether telecommunications by investment or financial advisors and insurance agents or brokers to existing clients regarding their respective products or services constitute telemarketing under the Rules.

¹ The Unsolicited Telecommunications Rules consist of the National Do Not Call List Rules, the Telemarketing Rules, and the Automatic Dialing-Announcing Device Rules.

4. The Commission received submissions from Advocis, the Canadian Association of Mutual Insurance Companies; the Canadian Bankers Association; Canadian Life and Health Insurance Association Inc.; the Independent Financial Brokers of Canada; the Insurance Brokers Association of Canada; the Insurance Brokers Association of Ontario; the Insurance Bureau of Canada; the Investment Funds Institute of Canada; the Investment Industry Association of Canada; MBNA Canada Bank; the Mouvement des caisses Desjardins; the Public Interest Advocacy Centre (PIAC); the RESP Dealers Association of Canada; Patrick Boucher, Financial Security Advisor; and Mr. Gilles Thouin.
5. The public record of this proceeding, which closed on 19 May 2010, is available on the Commission's website at www.crtc.gc.ca under "Public Proceedings" or by using the file number provided above.

Should telecommunications by investment or financial advisors and insurance agents or brokers to existing clients to sell or promote their respective products or services constitute telemarketing under the Rules?

6. Parties from both the financial and insurance industries supported a consistent application of the Rules. They stated that, as part of the service they provide, their clients expect to be contacted about changes to their existing products or services. The parties also submitted that they have contractual and regulatory obligations to communicate with their clients and that, accordingly, telecommunications to existing clients should not constitute telemarketing.
7. PIAC submitted that the application of the Rules as set out in the financial bulletin is inconsistent with what currently applies to other industries. It argued that any telecommunication to offer a product or service to existing clients constitutes telemarketing and should be subject to the Telemarketing Rules and the Automatic Dialing-Announcing Device (ADAD) Rules.
8. The Commission considers that, after re-examining the issue, not all telecommunications by financial or investment advisors to existing clients fall outside the definition of "telemarketing" under the Rules since existing clients may not expect to be called in all circumstances, whether in relation to existing or new products or services.
9. The Commission therefore notes that the existing application of the Rules to the financial industry allows an investment or financial advisor to lawfully make calls to sell or promote products or services without having to abide by the Telemarketing Rules and the ADAD Rules, even though the client may not expect such calls. Extending this same application to the insurance industry would allow insurance agents or brokers to also make calls to existing clients, who do not expect to be called, without having to comply with the Rules.

10. The Commission notes that while investment or financial advisors and insurance agents or brokers have an obligation to communicate with their clients in certain circumstances, there is no obligation to do so exclusively by telephone. Furthermore, the Commission notes that there is no evidence on the record of this proceeding that investment or financial advisors and insurance agents or brokers have an obligation to communicate with their clients in a manner that would violate the Telemarketing Rules or the ADAD Rules – for example, calling outside calling hours, not identifying themselves during the call, and not accepting do not call requests from their clients.
11. The Commission notes that every other industry is subject to the Telemarketing Rules and the ADAD Rules when making unsolicited calls to sell or promote products or services to existing clients. The Commission therefore considers that there is no compelling reason, policy or otherwise, for the financial and insurance industries to be subject to a different application of the Telemarketing Rules and the ADAD Rules.
12. In light of the above, the Commission amends its interpretation and finds that unsolicited telecommunications made by investment or financial advisors and insurance agents or brokers to existing clients to sell or promote their respective products or services constitute telemarketing telecommunications under the Rules. Consequently, the Rules are to apply equally to the financial and insurance industries, and in the same way they apply to all other industries.
13. The Commission notes that members of the financial and insurance industries can still contact existing clients who are registered on the National Do Not Call List pursuant to the existing business relationship exemption, but they will have to abide by the Telemarketing Rules and the ADAD Rules when making telemarketing and other unsolicited telecommunications to such clients.
14. Consistent with the revised interpretation of the Rules set out in this decision, the Commission has reissued the financial bulletin (Telecom Information Bulletin CRTC 2010-600).

Secretary General

Related documents

- *Amendment and re-issuance of Telecom Circular CRTC 2008-3 regarding the interpretation of the Unsolicited Telecommunications Rules as they apply to investment dealers, mutual fund dealers, and investment and financial advisors, Telecom Information Bulletin CRTC 2010-600, 19 August 2010*
- *Call for comments – Unsolicited Telecommunications Rules – Financial and insurance products and services offered to existing clients, Telecom Notice of Consultation CRTC 2010-130, 4 March 2010*
- *Unsolicited Telecommunications Rules and the National Do Not Call List Rules as they relate to the insurance industry, Telecom Information Bulletin CRTC 2009-282, 15 May 2009*

- *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 CRTC 2008-3, 16 December 2008*