

February 6, 2013

Bruce Wallace  
Director, Electronic Commerce Policy, Electronic Commerce Branch  
Department of Industry  
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18th Floor, Room 1891D  
300 Slater St.  
Ottawa, ON K1A 0C8  
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Dear Mr. Wallace:

**Re: Revised draft Electronic Commerce Protection Regulations**

Advocis, The Financial Advisors Association of Canada, welcomes the opportunity to provide its comments on the revised proposed Electronic Commerce Protection Regulations (the "Revised Proposed Regulations") under Canada's Anti-SPAM Legislation ("CASL") that were published in the Canada Gazette (Vol. 147, No. 1, January 5, 2013).

**Advocis: Who We Are**

Advocis, The Financial Advisors Association of Canada, is the oldest and largest voluntary professional membership association of financial advisors in Canada. Through its predecessor associations, Advocis proudly continues a century of uninterrupted history of serving Canadian financial advisors, their clients, and the nation. With over 11,000 members organized in 40 chapters across Canada, Advocis serves the financial interests of millions of Canadians.

As a voluntary organization, Advocis is committed to professionalism among financial advisors. Advocis members adhere to an established professional Code of Conduct, uphold standards of best practice, participate in ongoing continuing education programs, maintain appropriate levels of professional liability insurance, and put their clients' interests first.

Across Canada, no organization's members spend more time working one-on-one on financial matters with individual Canadians than us. Advocis advisors are committed to educating clients about financial issues that are directly relevant to them, their families and their future. Almost all Advocis members are regulated under provincial insurance regulators and securities commissions.

## **Our Comments**

### **Referrals**

We support the goals of the federal government of boosting confidence in the electronic marketplace and protecting Canadians from spam.

We welcome the revisions to the earlier draft regulations that will permit financial advisors to send a single email to a prospective client who has been referred by someone with whom both the advisor and the prospective client have an existing relationship. We believe these revisions are a reasonable and appropriate accommodation to the needs of Canadian businesses, that will make it possible for financial professionals to continue to reach out to consumers who need and will benefit from access to the financial advice that they have to offer.

### **Broader exemptions are needed**

However, we believe the Regulations also should permit financial advisors to send a single unsolicited email to anyone, without a referral, to introduce themselves, outline their services and request consent to communicate further.

We believe that permitting such outreach to consumers by financial professionals will strike an appropriate balance between the needs of the public to access professional financial advice and educate themselves, and the aim of protecting consumers from unwanted “SPAM”.

Those consumers who would not be within the scope of the proposed exemption for referrals because they do not have an existing relationship with someone who could refer them to a financial advisor, would be particularly likely to benefit from financial advice and the financial education that they would derive from dealing with a financial advisor. Arguably, without a broader exemption to make it easier for financial advisors to reach out to consumers, and not only to those who are referred, the result will be that ‘the rich get richer, and the poor get poorer,’ as those consumers with the greater need will be more difficult to reach with financial advice.

### **Outreach by financial advisors promotes financial literacy**

The Government of Canada has made the promotion of the financial literacy of Canadians one of its priorities. In 2011, the Task Force on Financial Literacy issued a report, entitled *Canadians and Their Money*, with recommendations for a cohesive national strategy to support initiatives across Canada aimed at improving financial literacy for all Canadians. Minister of Finance Jim Flaherty welcomed the Report and noted that Canada's national strategy on financial literacy will leverage efforts to empower Canadians to act knowledgeably and with confidence in managing their personal financial affairs.

There is no greater source of financial literacy and education in Canada than the thousands of financial advisors who reach out every day to ordinary Canadians to help them address their long-term financial challenges.

The requirement in the CASL for financial advisors to have the recipient's prior consent before they may send an introductory email will erect barriers to increasing the financial literacy of Canadians. We believe an exemption to permit financial advisors to send a single introductory email, will increase the odds of Canadians reaching their financial goals

We do not believe that the further exemption that we are recommending would expose consumers to a flood of SPAM and undermine CASL. We submit that introducing such a

measure into the scheme of CASL would actually facilitate appropriate business communication with consumers, consistent with the aims of the legislation.

**Exemption needed for long-term business relationships**

Life insurance contracts provide consumers with long-term protection that usually covers periods that are much longer than two years. It is not unusual for an insurance agent to have reason to contact a client who has purchased life insurance, after more than two years have passed since the last contact. Renewal of coverage, changes to coverage options and exercise of conversion options might arise, prompting the agent to have reason to contact the client at a time that is more than two years after the client secured the life insurance policy. It also is possible that regulators could expect the life insurance agent or the insurer to initiate contact with a client, with whom a contract has been in force for more than two years, who has not been contacted in the past two years. However, the definition of “existing business relationship” in the CASL only deems implied consent to the sending of a commercial electronic message to exist if the policy was entered into during the preceding two years.

We submit that the Regulation should be revised to extend the application of implied consent in existing business relationships, to cover such situations where ongoing long-term contracts may reasonably warrant the sending of electronic communications more than two years after the contract was entered into.

Advocis appreciates this opportunity to provide comments on the Proposed Regulations and would be pleased to address any concerns or answer any questions. Please feel free to contact the undersigned or Ed Skwarek, Vice President, Regulatory and Public Affairs, at 416-342-9837 or [eskwarek@advocis.ca](mailto:eskwarek@advocis.ca).

Sincerely,



Greg Pollock, M.Ed., LL.M., C.Dir., CFP  
President and CEO



Harley Lockhart, CFP, CLU, CH.F.C  
Chair, National Board of Directors