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October 22, 2008

The Hon. Diane Ablonczy, P.C.  
Secretary of State (Small Business and Tourism)  
Ministry of Industry  
C.D. Howe Building  
235 Queen Street  
Ottawa ON K1A 0H5

Sent by Mail and Email: [SofS.Industry@ic.gc.ca](mailto:SofS.Industry@ic.gc.ca)

Dear Madam:

**Subject: CRTC Announcement relating to the National Do Not Call List**

Let me begin by congratulating you on your recent re-election. Although the ministerial appointments have not yet been publicly announced, it is my hope that you will either maintain your position with responsibility for small business or, if you do not, that you will forward this letter to your successor.

The purpose of this letter is to identify our concerns related to the latest announcement from the CRTC requiring all telemarketers to share the cost of investigations related to the national Do Not Call Rules and List (DNC). Independent Financial Brokers of Canada (IFB) has been actively involved in the development of the Rules since they were first proposed in 2004. It is our position that, while the Do Not Call program offers an attractive option for Canadians who wish to limit the number of unsolicited telemarketing calls they receive at home, there are some unfortunate ramifications for small financially-oriented businesses in the Rules as they are currently written.

As you may not be familiar with our organization, I would like to start by providing some background information that will better acquaint you with our perspective.

IFB is a not for profit Association comprised of approximately 4,000 professional advisors who are appropriately licensed and regulated to allow them to provide financial products and advice to Canadians. Most are licensed to distribute mutual funds and life/health insurance. As our name suggests, our members must have an independent

relationship with the companies they represent, in that they must be able to offer consumers a choice of products from a range of providers. Our Association was founded over 20 years ago by a handful of such independent brokers because they believed that consumers are best served by a more competitive model. IFB serves its membership by providing a comprehensive errors and omissions insurance plan, continuing education events, compliance guidance and advocacy with various government and industry stakeholders. We invite you to peruse our website to learn more about our organization.

It is important to note that our members are self-employed small business men and women who serve clients in the same communities in which they live. As you know, small business is often referred to as the engine of Canada's economy. These individuals not only make an economic contribution, but are a significant force in keeping services, in this case financial services, local and accessible to residents in their own community.

We must ensure that these business men and women are not disadvantaged by government policies which were developed to respond to a wider situation – a situation in which these businesses share only a peripheral involvement. This latest announcement from the CRTC falls into a string of such policies they have issued.

Originally, the CRTC set out to design a do not call program to protect consumers from unwanted telemarketing calls that they found to be intrusive and annoying, and to reduce fraudulent activities. We have no issue with their objectives in this regard and indeed support them. The problem we identified from the beginning is the broad interpretation of what constitutes 'telemarketing'. Telemarketing under this legislation is defined as "the use of telecommunications facilities to make telephone calls or send faxes to consumers for the purpose of solicitation".<sup>1</sup> While this definition was aimed at the large telemarketing campaigns which often use random calling techniques, unfortunately it also captures the activities of individual financial advisors, like our members, who build their business by contacting prospective clients, generally by following up on personal referrals.

In view of this, we asked the CRTC to exempt licensed financial advisors because they were not the target of this legislation and they are already subject to a great deal of regulation, including rules related to their market conduct, by virtue of the licensing process. Furthermore, consumers have, through the various regulatory bodies which oversee financial services, options to seek redress in the event of a complaint. The Do Not Call rules add to these existing and stringent regulations by adding another layer of regulation and additional consumer complaint mechanisms. We were disappointed that the CRTC decided not to exempt financial advisors or to exempt personal referrals.

Next, the CRTC decided that the cost of operating the DNC list should be borne by telemarketers, since the federal government had elected not to provide any funding. This means that each 'telemarketer' must first register as such and then pay a fee to access the numbers registered on the DNC List. These fees range from 50 cents (to check one

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<sup>1</sup> Solicitation is the act of selling or promoting a product or service – or requesting money or money's worth – directly or indirectly, for oneself or for another party.

telephone number) to \$600/year to access a single area code to over \$11,000/yr to access all area codes in Canada. Put in the context of our members, a life insurance broker doing business in the greater Toronto area, could be required to pay for upwards of 4 area codes, amounting to some \$2400/year. Many of our members are also licensed in multiple provinces. Again, they will be required to pay for multiple area codes.

We are asking you to consider the financial impact on an individual broker or small business to comply with these rules as compared to a large firm making thousands of telemarketing calls per year. Furthermore, the CRTC approved this cost structure without any public consultation. Had we had the opportunity to provide input to this process we would have, at a minimum, pressed for a threshold of materiality to be established, whereby a single owner-operated business does not pay the same subscription rate as a large institution employing many telemarketers and who can all share access to the same list. We believe that Bell Canada, which is the operator of the list, and the CRTC need to review these subscription rates with the occasional user and small business in mind. In the United States, for example, the cost to access a single area code is only \$54 per year with the first 5 area codes free.

To top matters off, this week we received notification that the CRTC will be requiring all telemarketers to pay for the costs of the investigator which will be responsible for investigating complaints lodged by consumers.<sup>2</sup> Currently, the legislation permits calls made to an existing client to be 'exempt', meaning these clients may be contacted even if their number is on the DNC List, so there is no requirement to pay for the List. However, under this latest requirement, even our members who only make exempt calls to their existing clients will still be required to pay for the investigator. Those who must access the DNC list to follow up on personal referrals or build their business will have to pay this cost in addition to the access fee. We have yet to hear what the fee(s) will be but we expect that the CRTC will take an approach similar to when it set the access fee where it does not distinguish between the small business person and large scale telemarketers.

We submit that these rules are fundamentally unfair, even prejudicial, to our members and many other small businesses. We are asking that you, or those with responsibility for the small business portfolio, review this situation and require more public accountability from the CRTC.

Small businesses, especially those situated in the financial services sector, are already experiencing a great deal of pressure due to the current volatile market conditions. Adding to this pressure where there is no identified reason to do so is unconscionable.

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<sup>2</sup> In this Decision, the Commission decides that the investigation of Unsolicited Telecommunications Rules complaints will be delegated to a third party (the Complaints Investigator delegate). The Commission will issue shortly a Request for Proposal to determine who that party will be. Further, the Commission amends the Unsolicited Telecommunications Rules established in Telecom Decision 2007-48, by adding a requirement that all telemarketers and clients of telemarketers, including those exclusively making unsolicited telecommunications that are exempt from the National Do Not Call List Rules, register with, and provide information to, the National Do Not Call List operator and pay applicable fees that may be charged by the Complaints Investigator delegate. This requirement will ensure that the costs related to investigations of violations of the Unsolicited Telecommunications Rules will be recovered from all telemarketers. The amendments to the Unsolicited Telecommunications Rules set out in this Decision will be effective the date the Complaints Investigator delegate becomes operational

We must ensure that these individuals are not forced out of business through anti-competitive or unfair government policies. Ultimately, it is the consumer who will pay the price in reduced competition and product choice.

I would welcome the opportunity to discuss this matter more fully at your convenience. Thank you for your time and attention and I wish you success in your next term in office.

Yours truly,

A handwritten signature in black ink, appearing to read 'John Whaley', with a stylized flourish at the end.

John Whaley  
Executive Director  
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