



**Canadian Life
and Health Insurance
Association Inc.**

**Association canadienne
des compagnies d'assurances
de personnes inc.**

February 4, 2013

DELIVERED VIA E-MAIL: Bruce.Wallace@ic.gc.ca

Mr. Bruce Wallace
Director, Security and Privacy Policy,
Digital Policy Branch, Department of Industry
Jean Edmonds Tower North, 18th Floor, Room 1891D
300 Slater St.
Ottawa, Ontario K1A 0C8

Dear Mr. Wallace:

Consultation on Proposed Electronic Commerce Protection Regulations

The Canadian Life and Health Insurance Association (CLHIA) is pleased to provide comments on the proposed Electronic Commerce Protection Regulations published in the Canada Gazette Part I on January 5, 2013. The life and health insurance industry very much appreciates the important clarifications and adjustments that have been made to the Regulations, as compared to the version on which we provided input on August 2, 2011. The comments below are suggestions for providing additional clarity to help with the implementation of Canada's Anti-Spam Legislation (the Act).

In regard to social media, the CLHIA appreciates the statement in the Regulatory Impact Analysis Statement (RIAS), found on p. 35 of the Canada Gazette, indicating that "*the publication of blog posts or other publication on micro blogging and social media sites is not within the intended scope of the Act*". However, unless this intention is specifically reflected in the Regulations, even if discussed in a guideline, we are concerned that others, including the Courts, could interpret the Act as applying to social media. Therefore, please consider reflecting in the Regulations the statement that is now in the RIAS.

The inclusion in the proposed Regulations of section 4 regarding third party referrals, along with the related statements in the RIAS, are most helpful. In the context of our industry, we take section 4 along with the phrase "*and the existing client refers a prospective client, provided he or she has an existing relationship (family, personal, business or non-business) with the prospective client*" of the RIAS (found on p. 31 of the Canada Gazette) to mean that an insurance agent can rely on the referring person to have the required relationship with the prospective client. For greater certainty, it would be helpful if the Regulations specifically indicate in section 4(2) that a person receiving a referral can rely on the representations from the person making the referral as to the status of his/her relationship with the prospective client.

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Still in relation to section 4 of the proposed Regulations, we note that it refers to "individual" whereas section 6(1)(a) of the Act applies to "persons", which is defined in the Act. Please consider replacing the word "individual" with the defined term "person" to maintain consistency with the Act.

In respect of the new business to business exemption, found in section 3 of the proposed Regulations, we understand, based on the explanations given in the RIAS (found on p. 30 of the Canada Gazette), that all regular business to business communications are to be excluded from the Act. However the Regulations, as written, may lead to some confusion as to the concept of "business". For example, although the spirit of the exemption suggests that communications in a business context by sole proprietors, crown corporations and governments would be excluded from the application of the Act, this may not be as clear as it could be when reading section 3(a). This section states that section 6 of the Act does not apply to a commercial electronic message "sent by an employee, representative, contractor or franchisee of an organization". Consequently, we suggest that the meaning of the term organization be defined accordingly in the Regulations.

Turning now to the implementation of the new regime, once the Regulations are finalized, it will be very important for life and health insurers and other entities that will be subject to the new regime to have sufficient time to make the changes needed to their systems and processes and to provide ample and appropriate training to their staff in order to be compliant with the new requirements. A minimum of 12 months from the date the Regulations are finalized is necessary to ensure such preparations. We strongly recommend that the Act be proclaimed to come into force at a future date that is at least 12 months from when the final Regulations are published. Such an approach would also allow for the related Interpretation Guidelines to be issued during the implementation phase, which would further assist in providing clarity.

In conclusion, the life and health insurance industry supports the efforts made towards combating threats to the digital economy. At the same time, we believe that further adjustments to the proposed regime would make the requirements clearer and easier to implement. We have made the above mentioned recommendations with that in mind.

We would greatly appreciate your consideration of, and support for, the industry's proposed amendments and other suggestions outlined above. We would be most willing to provide you with any further information and to meet with you to discuss these important matters.

Yours very truly,

"Anny Duval"

Anny Duval
Counsel
Canadian Life and Health Insurance Association Inc.