



## National Do Not Call List and Other Telemarketing Rules Life and Health Insurance Industry Practices

### INTRODUCTION

This document is adapted from a Reference Document on the CRTC Unsolicited Telecommunications Rules (Rules) that was prepared for life and health insurance companies (Companies) by the Canadian Life and Health Insurance Association.

The primary intent of this document is to provide Advisors with general advice to assist them in determining which, if any, of the Rules apply to them. It is not intended to provide legal advice.

### KEY CONCEPTS

#### Overview of Rules

The chart below identifies the key requirements for exempt and non-exempt telemarketing calls.

Responsibility	Rules	Exempt Calls	Non-exempt Calls
Subscribe to the National DNCL	Part II ss. 1-13	No	Yes
Register with the National DNCL Operator	Part III ss. 2-5	Yes	Yes
Maintain an Internal DNCL	Part III ss. 8-15	Yes	Yes
Provide caller identification	Part III ss. 16-18	Yes	Yes
Call only within the hours permitted	Part III ss. 23-24	Yes	Yes

#### Applicability of Rules

The first step in determining which of the Rules apply and how they apply is to answer questions that relate to key concepts in the Rules. The subsections below explain how to determine an appropriate answer to each of these basic questions.

1. Is the Advisor engaged in telemarketing?
2. If the Advisor is engaged in telemarketing, is the telemarketing exempt or non-exempt?
3. If the Advisor is engaged in telemarketing, is the telemarketing being done on behalf of the advisor or on behalf of a Company?

## **Telemarketing vs. Service Calls**

"Telemarketing" is defined in the Rules as "unsolicited telecommunications for the purposes of solicitation" and "solicitation" is defined broadly as "the selling or promoting of a product or service."

Not all calls about products or services are telemarketing calls. Depending on the circumstances, these calls might be service calls.

A service call (as opposed to a telemarketing call) is a call that:

- relates to insurance products or services that a client has purchased, applied for or made inquiries about; or
- is required by regulation and/or standards of professional conduct.

Without limiting the generality of this description, a service call is being made if, for example, an agent has prepared a financial needs analysis for a client and then later follows up by telephone to discuss products or services that address a need identified in the analysis.

If the call is a service call, it is outside the scope of the Rules. If the call is a telemarketing call, the next step is to determine if it is exempt.

## **Existing Business Relationship**

The exemption that will be most commonly applicable to Advisors is the Existing Business Relationship (EBR) exemption. Very briefly, this exemption permits a telemarketer to make telemarketing calls to telephone numbers that are on the National DNCL if the Telemarketer or Client of the telemarketer has an EBR with the person being called.

An EBR exists if the person being called has:

- purchased goods or services from the telemarketer (or its client) within 18 months of the call;
- made an inquiry or application within six months of the call; or
- a written contract that is in effect or expired within 18 months of the call.

The EBR (and all other exemptions in the Rules) only apply to the National DNCL Rules (i.e., Part II). Advisors engaged in telemarketing are still required to comply with all other requirements. In particular, Advisors relying on the EBR exemption to telemarket to their customers must still maintain an Internal DNCL and ensure that a customer has not placed his or her telephone number on that list.

In consultations on the Rules, the CRTC was asked to consider whether an EBR flows from the seller to the buyer in the sale of a business. In its decision, the CRTC declined to answer this question but noted that an introductory call from the buyer of the business to a customer of the business would not fall under the definition of telemarketing if no solicitation is involved (Telecom Decision CRTC 2007-48, paragraph 209).

## **Telemarketer vs. Client of a Telemarketer**

An Advisor can engage in telemarketing on his or her own behalf or on behalf of a Company. If the Advisor is calling on behalf of a Company, the Company is said to be a "Client of a telemarketer" and the Advisor is the Telemarketer.

Generally, an agent can be thought of calling on behalf of a Company if:

- the telemarketing only promotes the products or services of the Company;
- the Advisor explicitly identifies the Company on whose behalf he or she is calling; and
- the Company has authorized the Advisor to call on its behalf.

The distinction is important because several rules apply either to the Telemarketer making calls on its own behalf or to the Client of a telemarketer, but not both. More specifically, if the Advisor is calling on behalf of a Company, that Company will be able to share its National DNCL with the Advisor and it is the Company, not the Advisor, that is required to register with the National DNCL Operator. On the other hand, if the Advisor is making telemarketing calls on its own behalf, the Advisor must subscribe to the National DNCL and register with the National DNCL Operator.

It is important to note that, as the term "exclusive" agent is used in the industry, such agents may not always be telemarketing on behalf of the Company. Fairly common examples are agents who, in addition to representing a single life insurance company, also do financial planning for their clients or sell mutual funds. Similarly, there may be situations in which an "independent" agent can be said to be telemarketing on behalf of a Company.

## **OTHER MATTERS**

### **Record Keeping**

With a few exceptions, the Rules are silent on the matter of record keeping. The exceptions are that telemarketers or their clients must keep records of their subscription to the National DNCL, their registration with the National DNCL Operator and proof of payment of fees.

The CRTC does not view failure to keep proper records as a violation by itself. As a practical matter, however, the failure to keep records will hinder a telemarketer's ability to defend against a complaint (Telecom Decision CRTC 2007-48, paragraphs 464 and 465). There is, therefore, an incentive to keep records and at least indirect repercussions for failing to do so.

### **Referrals**

The central objective of the Rules is to provide individuals with a means to prevent unwanted telemarketing calls. Depending on the circumstances of a referral, it might be reasonable for the telemarketer to assume the individual being referred expects to be called. If that individual complains about the call, however, as is generally the case, the onus will be on the telemarketer to justify the call.

### **Express Consent**

If a consumer has placed his or her phone number on the National DNCL, a telemarketer may still call that individual if he or she has consented to be called. The consent can be in writing, oral or electronic but it must specify the number that may be called and the purpose of the call. The consent can only be given by the person being called so a referral, by itself, is not proof of consent.