



National Association of Insurance & Financial Advisors

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April 9, 2002

Office of the Secretary
Room 159
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Re: Telemarketing Rulemaking ? Comment. FTC File No. R411001.

Dear Secretary:

These comments relating to the Federal Trade Commission's ("FTC's") Proposed Telemarketing Sales Rule ("Proposed Rule") are submitted on behalf of the National Association of Insurance and Financial Advisors ("NAIFA"). NAIFA (formerly the National Association of Life Underwriters) is a federation of nearly 1,000 state and local associations representing almost 80,000 insurance and financial advisors. Originally founded in 1890, NAIFA is the nation's oldest and largest trade association of insurance and financial advisors. NAIFA's mission is to improve the business environment, enhance the professional skills and promote the ethical conduct of its members who assist the public in achieving financial security and independence.

NAIFA agrees with the FTC that companies engaged in the business of insurance should be exempt from the coverage of the Proposed Rule.¹ As the primary regulators of the business of insurance, the states have extensive expertise and experience with respect to insurance. In fact, all of the states have enacted unfair trade practices statutes that are insurance specific. These statutes reach, among other things, telemarketing practices for the purpose of protecting consumers from fraudulent and abusive marketing of insurance products and services.

The Background section of the Proposed Rule states that "companies engaged in the business of insurance are not covered by the Rule because they are specifically exempt from coverage under the FTC Act."² Although this language indicates that companies engaged in the business of insurance are fully exempt from the Proposed Rule, this language is not included in the text of the Proposed Rule itself.

¹ The Background section of the Proposed Rule states: "In addition to these exemptions, certain entities including banks, credit unions, savings and loans, companies engaged in common carrier activity, non-profit organizations, and companies engaged in the business of insurance are not covered by the Rule because they are specifically exempt from coverage under the FTC Act." 67 Fed. Reg. 4493, n. 17 (2002).

² Id.

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NAIFA is especially concerned that this language does not appear in the text of the Proposed Rule itself because the FTC is not the only entity that will be able to enforce the Final Telemarketing Sales Rule. While the FTC Act exempts companies involved in the business of insurance from FTC enforcement, State Attorneys General and private citizens are authorized to bring civil actions to enforce compliance and obtain damages for breaches of the FTC's telemarketing rules. We believe these other entities could hold insurance and financial advisors responsible for compliance with the Final Rule, if not clarified, even though the FTC cannot bring an enforcement action against them.

The FTC should clarify this by explicitly stating in the text of the Final Rule that companies engaged in the business of insurance are fully exempt from the Final Rule. Clarification of the insurance exemption in this manner would give insurance and financial advisors, as well as individual consumers certainty regarding the applicability of the FTC's telemarketing regulations.

Thank you for your consideration.

Sincerely,

David A. Winston
Vice President – Government Affairs

Heather Eilers-Bowser
Director – Legislative Affairs