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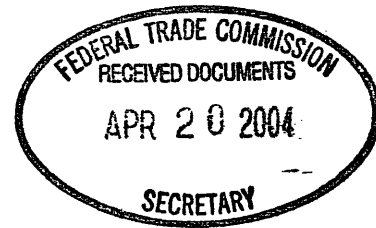
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April 19, 2004

Office of the Secretary  
Federal Trade Commission  
600 Pennsylvania Avenue NW  
Washington, DC 20580



RE: CAN SPAM ACT RULE MAKING, PROJECT R411008

Gentlemen:

The Independent Bankers Association of Texas ("IBAT") is a not for profit trade association representing over 600 independent community banks domiciled in Texas and Oklahoma. The trade association carries out certain exempt purposes including providing educational offerings to its members, promoting the best interest of the members with regard to legislative and regulatory issues, and providing other products and services. To some extent, products and services are offered through a for-profit subsidiary. The members themselves of IBAT are community banks, many of which offer online banking services. Our comments are addressed both to issues relating to the trade association itself and to use of email by our members.

**Transactional or Relationship Messages.** There are several specified items that are transactional or relationship messages in the law and regulation. The typical aspect for the request for comment is determining whether a particular communication has as its "primary" purpose one of these enumerated exceptions. Speaking as a trade association, IBAT believes that its newsletters to members should be exempt from the CAN SPAM rule either because the association is providing these educational newsletters about regulatory and legislative changes in furtherance of one its primary purposes or because the newsletter is primarily not a commercial message. However, the newsletter may include a reference to a product or service which the leader may wish to purchase. For example, a discussion about a change in federal banking laws may also mention that the association is offering a seminar to provide additional education on that topic. The primary purpose of the newsletter is to educate about the change in the law. However, there is a message as well suggesting that for more assistance, the leader might wish to participate in a seminar. We believe that this should not be considered a commercial message since the arguably commercial aspect of the newsletter is insignificant in comparison to the general purpose of the newsletter.

Similarly, the for profit subsidiary of IBAT may circulate educational newsletters to its members that have been prepared by endorsed service providers. There is no commercial message in these newsletters other than the mention of the name of the endorsed service provider. We believe that this sort of educational material does not have a commercial purpose but rather is educational and in furtherance of the relationship.

Likewise, banks with online banking programs may provide newsletters to their online customers that provide valuable information about retirement planning, use of IRA's, or other helpful information. The fact that the newsletter may also include a suggestion that the reader may wish to explore purchasing a product after reading the article should not change the primary purpose of that newsletter from educational to a commercial message.

One very simple safe harbor test that might be considered is a purely mechanical one. In other words, if the number of lines dedicated to the educational message significantly exceeds the number of lines for the commercial message, then the message is not a commercial one.

Next, IBAT would suggest that an additional exemption is implicitly appropriate with regard to certain information found in exempt statements. As highly regulated financial institutions, banks are required to provide disclosures to customers from time to time. These include privacy notices, billing error rights notices, and change in terms notices.

Your Community Bankers

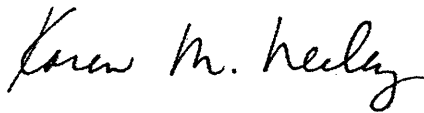
**Re: CAN SPAM ACT**

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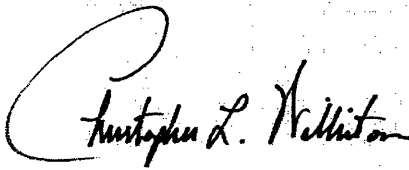
Delivery of these electronically are governed by specific provisions in the appropriate federal regulations. We would suggest that these should clearly be excluded from the definition or concept of a "commercial" message regardless of the fact that they are not a notice of a change in terms, notice of recipient standing or status, or account balance information. These kinds of disclosures fall within the ambit of information necessary to facilitate the transaction and are required to comply with other law.

Thank you for the opportunity to comment.

Sincerely,



Karen M. Neeley  
General Counsel



Christopher L. Williston  
Chief Executive Officer

/dac