

*U.S. house of Representatives*  
*Committee on Energy and Commerce*

SUBCOMMITTEE ON TELECOMMUNICATIONS AND FINANCE

*Washington, DC 20515-6119*

July 28, 1994

Mr. William H. Donaldson  
President and CEO  
New York Stock Exchange  
11 Wall Street  
New York, NY 10005

Dear Mr. Donaldson:

Pursuant to Rules X and XI of the House of Representatives, and its ongoing legislative and oversight responsibilities for regulation of interstate and foreign communications, the Subcommittee currently is examining how securities companies are complying with the requirements of the Telephone Consumer Protection Act of 1991 (TCPA).

Pursuant to requirements of that law, the Federal Communications Commission (FCC) adopted final rules on September 17, 1992, to protect the rights of telephone consumers while permitting legitimate telemarketing practices. These rules went into effect on December 20, 1992.

The Securities and Exchange Commission has determined that securities companies that use the telephone to market their products are subject to the TCPA and FCC rules implementing that law.

The FCC rules require all commercial telemarketers, *inter alia*, to maintain lists of residential telephone subscribers who do not wish to be contacted by phone, and to have a written policy for maintaining such "do-not-call" lists. To ensure compliance, the FCC rules further require that personnel engaged in telephone solicitations be informed and trained in the existence and use of such a list.

The TCPA provides for a private right of action on the part of an individual who has been called within twelve months by an organization violating the requirements of the Act. The individual may bring an action in state court to enjoin the violation and/or to recover for actual monetary loss from each violation or receive up to \$500 in damages for each violation (whichever is greater), depending upon the applicable laws of the states.

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The law also contains a ban on the use of recorded messages. Though a district court in Oregon has ruled that provision unconstitutional, the FCC is appealing that decision. The balance of the TCPA remains in effect.

Accordingly, the Subcommittee seeks information on what the New York Stock Exchange has done to ensure compliance with the TCPA and the corresponding FCC rules by your member firms. For example, what specific steps has your organization taken to educate member firms about the TCPA and FCC rules? How does your organization gauge compliance? To further assist the Subcommittee's investigation of the TCPA's implementation, please respond to the following questions by close-of-business on Monday, August 29, 1994.

1. Do your member firms maintain "do-not-call" lists? When were these instituted? Who is responsible for maintaining such lists?
2. What mechanisms to collect telephone subscriber data for their "do-not-call" lists do your member firms have in place? How does one go about requesting to be put on their "do-not-call" lists? Once a request is made, what steps are taken by your organization's member firms to ensure that the requesting party is not called again in the future?
3. When and how are your member firms' employees educated with regard to the lists? Please provide the Subcommittee with any training materials or scripts used as part of the education process by your member firms.
4. If your member firms' telemarketing operations are not centrally located, how do they ensure that all of their offices do not call the individuals on the "do-not-call" list compiled at their offices?
5. Currently, how many names do your member firms have on their "do-not-call" lists? How do they ensure that the lists are completely up-to-date?
6. Please provide the Subcommittee with copies of your member firms' written policies, as required by FCC regulations, for maintaining a "do-not-call" list. Also indicate the date these policies were drafted and went into effect.
7. How many telephone solicitations do employees of your organization's member firms make in an average week? How many persons in a firm routinely make telephone solicitations? At what hours of the day do employees make telephone solicitations?

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8. Please provide the Subcommittee with any additional information you feel would be helpful in showing compliance with the TCPA by your organization's member firms.

I look forward to hearing from you and learning how your organization is furthering the goals of the Telephone Consumer Protection Act among its members, to protect consumers from unwanted phone calls and to permit legitimate telemarketing practices.

If you or your staff have any questions with regard to this request, please contact Gerry Waldron, Jeff Duncan, or Jim Daly of the Subcommittee staff at (202) 226-2424. Thank you for your cooperation in this matter.

Sincerely,

Edward J. Markey  
Chairman