



# HeadQuarters REPORT

CHARTER  
ACCREDITED ASSOCIATION MANAGEMENT COMPANY

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## Users Inboxes No Longer a Feast for Would-be Spammers

The scourge of any e-mail user is an inbox full of messages promising miracle weight-loss schemes, adult entertainment and credit repair opportunities. A recent survey stated that almost 60% of all e-mail received is considered spam. With Internet users approaching 700 million worldwide, the need to intervene on behalf of the consumer was necessary.

President George W. Bush has enacted the Controlling the Assault of Non-Solicited Pornography and Marketing (CAN SPAM) Act (S.877), which officially went into effect on January 1, 2004. The Act's focus is to eliminate SPAM e-mails, reducing the strain on company network servers.

The law is worded to allow SPAM marketers to send one unsolicited e-mail, but it must meet a series of stringent criteria to be legal. Consumer watchdog groups such as Spamhaus.org have been vocal in saying that this law completely misses the target and ultimately opens the door for further barrages on our inboxes.

The impact on the world of associations continues to be measured. The wording of the law does not provide a definitive direction for professional associations to follow. For now, many associations are using the Federal Do Not Call Registry as the rule of thumb for their communications. The Registry allows charitable organizations and companies that

have received "affirmed consent" to continue to use the telephone as a marketing vehicle.

The government has also imposed a Do Not Fax Law, which goes into effect on January 1, 2005. The law requires associations to seek prior written consent of each recipient before transmitting any faxes considered commercial in nature.

The Do Not Call and Do Not Fax Acts put a cramp on more efficient and lower-cost means of marketing.

The allure of using e-mail and fax for marketing purposes is the ability to send a mass-marketing piece without the high costs of printing and postage, along with avoiding hours of staff time for labeling and fulfillment.

As the rules within these laws become more defined, associations may begin to see postage and printing budgets rise to meet associations' marketing needs.

In response to the question of a Do Not E-mail Registry, the FTC was given six months to report to Congress with a plan for such a Do Not E-mail Registry.

Association Resources (AR) continues its policy of honoring requests for removal and will continue to honor opt-out requests on all types of communications.

With overall opinions mixed regarding this new legislation, many feel that even if this was not the type of law they envisioned, it is still a large step in the right direction.

### *The Bottom Line*

#### *What organizations must do to comply with the CAN-SPAM Act:*

- **Header information must be correct and accurate. The originating e-mail address, domain name and IP address must be legitimate.**
- **The subject line must be accurate.**
- **The return e-mail address must be functional so recipients can opt out of the mailing. The return address must function for no less than 30 days after the transmission of the original message.**
- **Opt outs must be removed within 10 business days.**
- **Advertisement or solicitation e-mail must contain a conspicuous identifier.**
- **The postal address of the sender must be included in commercial e-mail.**
- **Also note that once someone opts out of receiving future commercial e-mail messages, the new law prohibits the sender of the e-mail from transferring or releasing that opted out e-mail address to anyone for any purpose.**

# Risk and Asset Allocation in Investment Policies

By Gary C. Rooth, MBA, CFP

The development and maintenance of a well-constructed investment policy statement is among the most important fiduciary responsibilities of an association's board and staff. When developed thoughtfully, and communicated to all relevant parties, the investment policy statement goes a long way toward managing investment risk and avoiding investment disasters long before creep up. While a qualified financial adviser can assist you in developing your own guidelines through the use of surveys and assessments, following are some suggestions to keep in mind to determining two of the most important parts of the investment policy: your risk tolerance and, based on that, your asset allocation strategy.

## Identifying Tolerance Levels

As with personal investors, associations must make investment choices based on the knowledge that the higher rates of return generally mean higher risk. Thus, it is important to establish your risk tolerance before selecting

specific investment instruments. In fact, the decision regarding risk tolerance is one of the most important investment decisions an association can make. An organization needs to consider various factors in order to make sound risk tolerance decisions.

**Consider revenues.** It is important to view the risk decision within the context of the overall fiscal health of the organization. For those associations that enjoy varied and stable sources of revenue and have regular budget surpluses, the tolerance for volatility is higher than for associations in different circumstances.

**Know your reserve fund's purpose.** Some organizations might use their investment income as an operating budget revenue line item. Therefore, they would be unable to tolerate high-risk investments, as the budget could not handle such volatility and would have a lower risk tolerance. Others might not touch their funds unless a true emergency arose; they would have a higher tolerance for volatility.

**Envision worst-case scenarios.** In setting appropriate risk levels, I recommend that association decision makers consider hypothetical scenarios using the organization's asset levels, thinking in terms of actual dollar losses in addition to percentage losses.

When evaluating the risk tolerance for, say, a \$1 million reserve fund, a 15% loss in value may not sound terribly harmful to some ears, but a \$150,000 loss may conjure up images of dues increases, discontinued programs, or staff layoffs.

The process of documenting an investment policy forces all those involved to carefully consider the validity of current practices. The ongoing process of policy reviews helps to ensure that the correct investment approach is being used to meet the objectives of your organization.

*Gary C. Rooth, MBA, CFP is First Vice President – Investments at Legg Mason Wood Walker, Inc. in Raleigh, NC.*

## Tips & Tidbits

### AR Welcomes Tom Desjardins

Tom Desjardins has joined the Association Resources Financial Department.

Tom has an extensive background in finance and administration, including being a Certified Public Accountant and earning a Masters in Business Administration.

He will be serving as a Financial Manager for many AR clients.

### A Look Back at 1983/1984...

The phrase "the times have changed" is truer than ever as technology expands at an exponential speed, making the here and now today's tomorrow. With Association Resources (AR) celebrating 20 years of association success in 2003/2004, there has been a lot of reflection on what has been accomplished in two decades. With client members around the world, AR has been successful in meeting the needs of their clients with the help of technology.

Today, these items can ALL be purchased for a total of under \$1,000.



Computer

Actual Retail Value:  
\$9,995



Digital Camera

Actual Retail Value:  
Too high to calculate



Windows Mouse

Actual Retail Value:  
\$195



Cellular Telephone

Actual Retail Value:  
\$3,995

## AR's Financial Department Staff Is Money In The Bank

Every year around this time, we rummage through our shoeboxes full of receipts and try to balance a seemingly un-balanceable checkbook and we vow that, as of this day, we will get our financials organized and make sure every transaction is promptly noted in our checkbook, with the receipt filed safely in a labeled manilla folder. A year later, we are in the same disorganized situation, making the same promise to be more organized.

To properly manage personal finances, it takes a strong discipline and superior attention to detail. Now imagine managing the daily finances for 18 clients.

Association Resources (AR)'s Financial Department — Donna Cunard, Marcia Firetto, Tom Desjardins, Brendadeen Russell and Jessica Palumbo — are the antitheses to our hectic financial lives. The Financial Department provides client Executive Directors and Treasurers with accurate financial reports and analysis of their organization's finances.

Director of Client Financial Accounting Donna Cunard and Financial Managers Tom Desjardins and Marcia Firetto oversee the daily transactions of their respective clients.

Revenue Processors Brendadeen Russell and Jessica Palumbo process each transaction that flows through AR's offices. Their meticulous methods of handling any of the thousands of different types of transactions ensure that they will be processed quickly and correctly.

Their attention to detail has earned them many compliments from



*A staff you can bank on: Tom Desjardins, Jessica Palumbo, Donna Cunard, Marcia Firetto and Brendadeen Russell.*

Treasurers and members alike. A recent e-mail sent to an Executive Director from a meeting speaker commended AR's Financial Department for providing him with an accurate 1099 form with which to account for his speaker honorarium. As a member of a new client to AR, his thanks came after many years of receiving incorrect 1099s from the client's previous management firm.

The Financial Department's proactive approach to proper financial management is to work with each client to design a financial policy that ensures the fiscal future of their organization.

"My favorite part of working at AR is the almost daily contact with people in countries I have only heard of," says Donna Cunard. "We often compare phone calls or e-mails we receive from various countries. The other day, I got a phone call from Morocco."

To further the efficiency of financial reporting, the Financial Department has been migrating data to a new software package.

This new software will increase the functionality of data and improve the methods of sharing the information. This will in turn allow for better number crunching, which will ultimately provide the Executive Directors/Treasurers with a better analysis and real-time financial reporting.

The Financial Department provides their internal and external constituents with an unrivaled level of customer service. As the department looks to the future, Donna says she is developing a team approach to the department. By cross-training the staff, she feels this will better allow the staff to work together and interchange clients as busy times approach.

Accurate financial information is crucial to monitoring the success of any organization. The effort that AR's Financial Department puts into managing every detail of client budgets provides Executive Directors and Treasurers with the security of knowing where they stand and where they're going financially.

# Association Legal Briefs

## Association Not Liable for Failure to Adopt a Standard

If a nonprofit association in a particular industry knows of practices within the industry that may pose a public safety or health risk, or knows of defects in products manufactured or sold by companies in the industry, does the association have an affirmative obligation to take steps to somehow remedy the situation? According to a recent court decision, the answer is “no.” *People v. Arcadia Machine & Tool, Inc., et al*, 2003 WL 21184117 (Cal. Superior).

The plaintiffs alleged that several associations in the firearms industry were negligent in failing to develop standards requiring safer firearms design.

The court rejected this argument, saying that there is no case precedent for imposing a requirement on industry associations to promulgate standards. The court also distinguished the facts of this case from court rulings in which nonprofit organizations have been held liable for promulgating standards that are deficient or flawed in some way.

In those cases, the associations chose to develop standards, and therefore had an obligation to do so in a non-negligent manner.

## Nonprofit Not Liable for Injury Arising Out of Post-Meeting Socializing

A nonprofit organization has been absolved of responsibility for the conduct of its volunteers who, after a business meeting, went to a bar, became intoxicated, and caused an automobile accident. *Alms v. Baum*, 2003 WL 22070498 (Illinois App. 1 Dist.).

The court found that the organization’s official meeting had

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ended, and that the socialization afterward, while engaged in by the same meeting attendees, was not part of the meeting. Said the court: “The gathering at the [bar] was not an extension of the ... meeting. Attendance at the [bar] after the ... meeting was not mandatory.”

Comment: *Since many meetings of volunteers of nonprofit organizations often are directly followed by dinner or other socializing, this case should provide some comfort.*

## Refusal to Adopt a Standard Was Not Anti-Competitive

A standards organization that declined to adopt a standard addressing a new technology did not thereby violate the antitrust laws – despite injury to the owner of that technology – because there was an adequate, objective basis for the organization’s actions. *Heary Bros. Lighting Protection Co. v. Lighting Protection Institute, et al.*, 287 F. Supp. 2d 1038 (D. Az. 2003).

The plaintiff company claimed to have developed a lighting product based on a new and superior technology, and that the existing standard addressing these kinds of products was not adequate, so a new standard should be developed.

The organization that developed the original standard investigated but ultimately determined that there was an insufficient basis to move forward on a new standard.

The court deferred to the standards organization’s expertise and found that the reasons for refusing to

develop a new standard were not arbitrary or unreasonable.

Comment: *The key to the organization’s victory was that it addressed the request for a new standard objectively and comprehensively, even employing an outside consultant to give an unbiased assessment.*

## Lobbying Over a Standard May Have Been Improper, But Not Illegal

Another interesting aspect of the above case is that a competitor of the plaintiff actively lobbied against adoption of a new standard.

This lobbying even took the form of distributing materials in the hotel where a vote was to be taken as to whether to proceed on such a standard.

The standards organization tried to stop this activity, and subsequently enacted a formal rule prohibiting it, but the plaintiff claimed that this intense campaigning, along with the allegedly false statements in the materials being distributed, were so improper as to invalidate the result of the vote (which was to not proceed with a new standard).

The court disagreed, holding that even if the competitor’s conduct was improper, there was no evidence presented that it had any impact on the final vote, and therefore does not rise to the level of an antitrust violation.

Provided By:  
Hugh K. Webster  
Webster, Chamberlain & Bean

### HeadQuarters REPORT

Comments, questions, and editorial materials should be submitted to Christer E. Osterling, Editor.

Association Resources, Inc., 342 North Main Street • West Hartford, CT 06117-2507 • 860.586.7500 • E-mail [costerling@associationresources.com](mailto:costerling@associationresources.com)