American National Bank

Spam scams

Have you received "spam," or junk e-mail, recommending that you invest in a stock, perhaps even invest in that stock before it is first publicly offered for sale in an Initial Public Offering (IPO)? A recent "Investor Alert" from the National Association of Security Dealers (NASD) explains how to spot and protect yourself from spam problems.

Spam defined

Spam, as you probably are aware, is unsolicited electronic mail sent to a large number of addresses, usually advertising some product, service, business, Web site, scheme or strategy. Stock spam is the electronic equivalent of a boiler room sales operation in which someone who doesn't know you tries to sell you securities, such as penny stocks, or puts aggressive (and suspect) messages on an electronic message board to spur your interest in a company.

Federal legislation was enacted in 2003 to combat spam, and a majority of states now have laws designed to control it. You should know, however, that although spam is regulated in a number of ways, as described below, many aspects of it are unregulated.

Federal and state laws

The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act) requires that unsolicited commercial e-mail messages be labeled and bans false or misleading header information. It also prohibits deceptive or misleading subject lines and requires that e-mails give recipients an opt-out option (an ability for the recipient to stop receiving future commercial messages from the sender). The law also requires commercial e-mail to contain clear and conspicuous notice that the message is an advertisement or solicitation and to contain the e-mailer's valid physical postal address.

Numerous states have laws prohibiting unsolicited commercial e-mail and false or misleading routing information. Many states also prohibit the distribution of software designed to falsify routing information. In addition, many states also require that the spam identify the sender and tell how to opt out of getting more spam from that sender.

SEC enforcement and NASD oversight

The Securities and Exchange Commission (SEC) has created the Office of Internet Enforcement, specifically designed to fight Internet fraud, including schemes using spam. The SEC requires online communications recommending stocks to disclose the person or entity that paid for the communication, including the amount and type of the payment. The SEC has brought scores of enforcement cases that involve violations of the law on using spam. For more details on these scams, see the SEC's "Internet Fraud: How to Avoid Internet Investment Scams," available at: http://sec.gov/investor/pubs/cyberfraud.htm.

NASD member brokerage firms or their employees must abide by applicable federal and state antispam laws. In any communication with the public, NASD rules require that a member identify itself and that investors be given enough information to make a sound investment. NASD rules prohibit statements making promises. But NASD can regulate the actions only of its member brokerage firms and their employees. Although all U.S. brokerage firms have

to be members of NASD to do business with the public, most problem spam is likely sent to you by nonregulated businesses or individuals.
Spotting problem spam

Problem spam frequently includes mentions of:

• Price targets or predictions of exponential growth in a short period of time.
• Rumors or announcements of coming major news, such as “inside” or “confidential” information, an “upcoming favorable research report,” a “prospective merger or acquisition” or a “dynamic new product.”
• Standard corporate developments, such as contracting with a supplier, presented as if they are major events.
• Mention of large, unnamed corporate partners.
• Popular terms, such as “Internet” or “biotech,” to increase the impact of the message.
• Urgency, such as “You must act now!”
• “Guarantees” that you will not lose money on a particular securities transaction.
• Unusually high yields or returns.

What if you are spammed?

A high-pressure sales pitch can mean trouble on the phone or on the Internet. Do not believe anyone who tells you, “Invest quickly, or you will miss out on a once-in-a-lifetime opportunity.” If it sounds too good to be true, it is.

Regulators strive to protect investors as a whole and do not start cases for the sole purpose of getting money back to you following a fraud. You can hire a lawyer to try to get your money back, but you need to know that recovery is rare. By far the best protection is to stay away from bad deals in the first place. In other words, you are in the best position to protect yourself.

Investigate before you invest. Find out who sent the message to you. Ask whether the claims can be documented. Verify whether the claims are true before you send any money.

If you are suspicious about an offer, or feel that the claims might be exaggerated or misleading, contact the SEC Investor Complaint Center. You can find out if the firm or individual spamming you is registered with NASD by using NASD BrokerCheck, which can be accessed from the NASD Web site home page (http://www.nasd.com) or by calling the BrokerCheck hotline at (800) 289-9999. If you think that the problem spammers may be registered with NASD, you can file a complaint at NASD’s Investor Complaint Center, which also may be linked to from the NASD home page.