

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:</p> <p>OFFICE OF CONSUMER ADVOCATE,                      Complainant,</p> <p>vs.</p> <p>MEMBER'S EDGE, L.L.C.,                      Respondent.</p>	<p>DOCKET NO. FCU-05-16</p>
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**ORDER DOCKETING FOR FORMAL PROCEEDING AND  
SETTING DEADLINE FOR RESPONSE**

(Issued April 22, 2005)

On March 14, 2005, pursuant to Iowa Code §§ 476.103 and 476.3, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed with the Utilities Board (Board) a petition for a proceeding to consider a civil penalty for an alleged cramming violation committed by Member's Edge, L.L.C. (Member's Edge). Based upon the record assembled in the informal complaint proceedings, the events to date can be summarized as follows:

On January 31, 2005, the Board received a complaint from Ben Weir of Colo, Iowa, disputing a charge of \$14.95 for an e-mail set up fee on the local telephone bill for Weir's Real Estate and Insurance. The charge was submitted on behalf of Member's Edge. Mr. Weir stated he had not signed up for any type of e-mail service.

Board staff identified the matter as C-05-22 and, pursuant to Board rules, on February 1, 2005, forwarded the complaint to Member's Edge for response within ten days.

Member's Edge's response to the complaint was filed with the Board on February 11, 2005, by counsel for an entity known as Family Discount Network. The response indicated that a credit had been processed and the account was closed. Member's Edge disputed Mr. Weir's claim that he did not sign up for e-mail services and stated that Member's Edge obtained written documentation of the customer's consent and authorization. The company attached what it labeled as "Letter of Authorization Information" and a copy of confirmation and activation e-mails sent to the customer.

On February 21, 2005, Board staff forwarded a copy of the company's response to the customer for his review. Regarding the part of the company's response labeled, "Letter of Authorization Information," Mr. Weir stated that he did intend to sign up for Internet surveys and did so on a Website identified as [internetsurveygroup.com](http://internetsurveygroup.com). Mr. Weir did not dispute that he entered some of the information on the page, but stated that there was no mention of Member's Edge. Mr. Weir stated that he does not recall receiving any confirmation or authorization e-mails from Member's Edge and, that if he did receive them, he would have deleted them because he had no knowledge of signing up for e-mail service.

On March 2, 2005, Board staff issued a proposed resolution concluding that the printout of the Website page filed by Member's Edge as a written letter of authorization did not meet the Board's requirements for proof of authorization. Staff noted that Board requirements require that a letter of authorization not be combined with any inducements and be a separate document containing only the language authorizing service. Staff observed that the screen printout provided by Member's Edge refers to "4 Free Airline Tickets," and discounts on prescriptions, vision service, legal service, and other benefits. Board staff concluded that the charges submitted on behalf of Member's Edge were the result of cramming.

In its March 14, 2005, petition, Consumer Advocate asserts the proposed resolution should be augmented with a civil penalty because credits alone will not stop the unlawful practice of cramming. Consumer Advocate argues that civil penalties are necessary to ensure compliance and deter future violations. Member's Edge has not responded to Consumer Advocate's petition.

The Board has reviewed the record to date and finds there is sufficient information to warrant further investigation into this matter. The Board will delay establishing a procedural schedule to allow Member's Edge an opportunity to respond to the allegations raised in Consumer Advocate's petition.

**IT IS THEREFORE ORDERED:**

1. The "Petition for Proceeding to Consider Civil Penalty" filed by the Consumer Advocate Division of the Department of Justice on March 14, 2005, is

granted. File C-05-22 is docketed for formal proceedings, identified as Docket No. FCU-05-16.

2. Member's Edge, L.L.C, is directed to file a response to Consumer Advocate's petition on or before May 16, 2005.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 22<sup>nd</sup> day of April, 2005.