

By the Commission.

Jonathan G. Katz,

Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48389; File No. SR-MSRB-2003-07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Proposed Amendments to the MSRB's Telemarketing Rules To Require Participation in the National Do-Not-Call Registry

August 21, 2003.

On August 19, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR-MSRB-2003-07), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder.² The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to require brokers, dealers and municipal securities dealers to participate in the Federal Trade Commission's ("FTC's") national do-not-call registry. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

* * * * *

Rule G-39. Telemarketing

[(a) No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall:]

[(i) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or]

[(ii) make an outbound telephone call to any person for the purpose of soliciting the purchase of municipal securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:]

[(A) the identity of the caller and the firm;]

[(B) the telephone number or address at which the caller may be contacted; and]

[(C) that the purpose of the call is to solicit the purchase of municipal securities or related services.]

[(b) The prohibitions of section (a) shall not apply to telephone calls by any person associated with a broker, dealer or municipal securities dealer, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the broker, dealer or municipal securities dealer under the control of or assigned to such associated person:]

[(i) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the common control of or assigned to, such associated person;]

[(ii) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months; or]

[(iii) to a broker, dealer or municipal securities dealer.]

[For the purposes of section (b), the term "existing customer" means a customer for whom the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealer, carries an account. The scope of this rule is limited to the telemarketing calls described herein; the terms of this rule shall not otherwise expressly or by implication impose on brokers, dealers or municipal securities dealers any additional requirements with respect to the relationship between a broker, dealer or municipal securities dealer and a customer or between a person associated with a broker, dealer or municipal securities dealer and a customer.]

(a) General Telemarketing Requirements

No broker, dealer or municipal securities dealer or person associated

with a broker, dealer or municipal securities dealer shall initiate any telephone solicitation, as defined in paragraph (g)(ii) of this rule, to:

(i) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

(A) the broker, dealer or municipal securities dealer has an established business relationship with the person pursuant to paragraph (g)(i)(A)(1),

(B) the broker, dealer or municipal securities dealer has received that person's prior express invitation or permission, or

(C) the person called is a broker, dealer or municipal securities dealer;

(ii) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the broker, dealer or municipal securities dealer; or

(iii) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) National Do-Not-Call List Exceptions

A broker, dealer or municipal securities dealer making telephone solicitations will not be liable for violating paragraph (a)(iii) if:

(i) Established Business Relationship Exception

The broker, dealer or municipal securities dealer has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that broker, dealer or municipal securities dealer even if the person continues to do business with the broker, dealer or municipal securities dealer;

(ii) Prior Express Written Consent Exception

The broker, dealer or municipal securities dealer has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and the broker, dealer or municipal securities dealer which states that the person agrees to be contacted by the broker, dealer or municipal securities dealer and includes the telephone number to which the calls may be placed; or

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(iii) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision

A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making telephone solicitations will not be liable for violating paragraph (a)(iii) if the broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer demonstrates that the violation is the result of an error and that as part of the broker, dealer or municipal securities dealer's routine business practice, it meets the following standards:

(i) Written procedures. The broker, dealer or municipal securities dealer has established and implemented written procedures to comply with the national do-not-call rules;

(ii) Training of personnel. The broker, dealer or municipal securities dealer has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(iii) Recording. The broker, dealer or municipal securities dealer has maintained and recorded a list of telephone numbers that it may not contact; and

(iv) Accessing the national do-not-call database. The broker, dealer or municipal securities dealer uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process.

(d) Procedures

Prior to engaging in telemarketing, a broker, dealer or municipal securities dealer must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(i) Written policy. Brokers, dealers and municipal securities dealers must have a written policy for maintaining a do-not-call list.

(ii) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(iii) Recording, disclosure of do-not-call requests. If a broker, dealer or

municipal securities dealer receives a request from a person not to receive calls from that broker, dealer or municipal securities dealer, the broker, dealer or municipal securities dealer must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Brokers, dealers and municipal securities dealers must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the broker, dealer or municipal securities dealer on whose behalf the telemarketing call is made, the broker, dealer or municipal securities dealer on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.

(iv) Identification of sellers and telemarketers. A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the broker, dealer or municipal securities dealer, an address or telephone number at which the broker, dealer or municipal securities dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the broker, dealer or municipal securities dealer making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) Maintenance of do-not-call lists. A broker, dealer or municipal securities dealer making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(e) Wireless Communications

The provisions set forth in this rule are applicable to brokers, dealers and municipal securities dealers telemarketing or making telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing

If a broker, dealer or municipal securities dealer uses another entity to perform telemarketing services on its behalf, the broker, dealer or municipal securities dealer remains responsible for ensuring compliance with all provisions contained in this rule.

(g) Definitions**(i) Established business relationship.**

(A) An established business relationship exists between a broker, dealer or municipal securities dealer and a person if:

(1) the person has made a financial transaction with the broker, dealer or municipal securities dealer within the previous eighteen months immediately preceding the date of the telemarketing call; or

(2) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the previous three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(ii) The terms telemarketing and telephone solicitation mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(iii) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

Rule G—8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xviii) No change.

[Telemarketing Requirements]
Negotiable Instruments Drawn From a Customer's Account

[(A) Each broker, dealer and municipal securities dealer shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such broker, dealer or municipal securities dealer or its associated persons.]

[(B)] No broker, dealer or municipal securities dealer or person associated with such broker, dealer or municipal securities dealer shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(xx)–(xxii) No change.

(b)–(g) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Earlier this year, both the FTC and the Federal Communications Commission ("FCC") established requirements for sellers and telemarketers to participate in a national do-not-call registry.

Beginning in June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's rules are directly applicable to broker/dealers.

The national do-not-call registry is not the FCC's or FTC's first foray into regulating telemarketing. In 1992 and 1995, the FCC and FTC developed requirements for firms to maintain do-not-call lists and to limit the hours of telephone solicitations. The MSRB adopted substantially similar rules in 1996.³ On July 2, 2003, the SEC requested that the MSRB amend its telemarketing rules to include a requirement for dealers to participate in the national do-not-call registry.⁴

In this proposed rule change, the MSRB is amending its rules to implement the national do-not-call registry. Because broker/dealers and banks are subject to the FCC's jurisdiction, the MSRB modeled its rules after the FCC, with minor modifications tailoring the rules to broker/dealers and the securities industry.⁵

General Telemarketing Requirements

Paragraph (a)(i) of the proposed rule change provides the time-of-day restrictions under which a dealer or person associated with a dealer may make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services. Specifically, dealers may engage in such telephone solicitations only between the hours of 8 a.m. to 9 p.m. (local time at the called party's location) unless the dealer has an established business relationship with the called person based upon a financial transaction with the dealer, the dealer has received express written permission from the person which allows the dealer to call outside the applicable time frame, or the person called is a broker, dealer or municipal securities dealer. These provisions are substantively equivalent to those currently in Rule G-39, except that the MSRB is replacing the current existing customer exception with the established business relationship exception. This change is discussed in detail below.

³ See Release No. 34-38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (approving MSRB rule requiring brokers, dealers and municipal securities dealers ("dealers") to maintain firm-specific do-not-call lists and creating telemarketing time-of-day restrictions and disclosure provisions).

⁴ The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the SEC determines that such rules are not in the interest of investor protection. 47 U.S.C. 6102(d) (2003).

⁵ Substantively, the Rules of the FCC and FTC are very similar. Indeed, Congress has asked the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. See The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (Mar. 11, 2003).

Paragraph (a)(ii) provides the requirement for firms to maintain a firm-specific do-not-call list.⁶ The MSRB originally established the requirement for firms to maintain their own do-not-call lists in 1996. The new federal legislation imposes the additional requirement for firms to consult the national do-not-call registry; it does not eliminate the obligation for firms to maintain their own do-not-call lists. The provisions in paragraph (a)(ii) are substantively equivalent to those in current Rule G-8(a)(xix)(A). Dealers should note that under proposed paragraph (d)(iii), they must honor a request by a person to be placed on a firm-specific do-not-call list within thirty days, or sooner if they are able to do so.

Paragraph (a)(iii) prohibits a dealer or person associated with a dealer from making telephone solicitations to any person who registers his or her phone number on the national do-not-call registry. Dealers should note that such registrations are maintained in the national registry for a period of five years. A consumer may re-register his or her telephone number at any time. This re-registration re-commences the applicable five-year registration.

Exceptions

The rules of the FCC and FTC provide several exceptions under which sellers and telemarketers may make telephone solicitations to persons on the national registry.⁷ The MSRB has adopted these exceptions.

The first exception, contained in paragraph (b)(i), is for calls made to persons with whom the dealer has an "established business relationship." An established business relationship may be formed in two ways. First, under paragraph (g)(i)(A)(1), an established business relationship exists between a dealer and a person if such person has made a financial transaction with the dealer within the previous eighteen months immediately preceding the date of the telemarketing call. Second, under paragraph (g)(i)(A)(2), an established business relationship arises if a person has contacted the dealer to inquire about a product or service offered by the

⁶ MSRB Rule G-8(a)(xix)(A) currently requires firms to maintain firm-specific do-not-call lists. In an effort to consolidate and clarify the MSRB's telemarketing rules, the MSRB is proposing to combine Rule G-8(a)(xix)(A) with its main telemarketing rule, Rule G-39. The remaining section of Rule G-8(a)(xix) is substantively unchanged.

⁷ The FTC rule only contains two exceptions: (1) Prior express written consent; and (2) an established business relationship. The FTC rule, unlike the FCC rule, does not include a personal relationship exception.

dealer within the previous three months immediately preceding the date of the telemarketing call.

The definition of established business relationship replaces the definition of "existing customer," which was applicable solely to the time-of-day restriction and disclosure provisions in current Rule G-39. The MSRB believes that requiring dealers to follow separate definitions of existing customer and established business relationship would lead to confusion and inadvertent violations. We note that the proposed definition of "established business relationship" is generally broader than the MSRB's definition of existing customer in that it looks back eighteen months rather than twelve months to see whether a consumer made a financial transaction. In addition, an established business relationship may be established by a person inquiring about a product or service from the dealer within the previous three months. The MSRB proposes, however, that time-of-day restrictions should not be waived solely because a person inquired about a product or service within the past three months. Thus, for purposes of the time-of-day restrictions in paragraph (a)(i), an established business relationship must exist based upon a financial transaction as specified in paragraph (g)(i)(A)(1).

In addition, for purposes of paragraph (g)(i)(A)(1), the MSRB proposes interpreting the term "financial transaction" to mean that a person has effected a securities transaction or deposited funds or securities with the broker, dealer or municipal securities dealer. The MSRB does not believe that under the FCC's or FTC's definitions of established business relationship,⁸ the receipt of interest or dividends would constitute a financial transaction. We note that this is a distinction from current Rule G-39(b)(ii), under which a person could be an existing customer solely on the basis of interest or dividend income. However, because dealers are subject to FCC rules, we have sought to harmonize MSRB standards with those of the FCC. We also believe that consumers generally would not view receiving interest or dividends as sufficient to overcome their expectation that entering their telephone number in the national do-

not-call registry will curtail telephone solicitations.

A person's request to be placed on a firm-specific do-not-call list terminates the established business relationship exception. Thus, a dealer or person associated with a dealer may not make telephone solicitations to a person with whom it has an established business relationship if such person requests to be placed on the dealer's do-not-call list. This is consistent with the MSRB's current do-not-call provisions, which do not contain any exemption for existing customers. Nothing in this section prohibits a dealer from contacting a customer concerning the administration of his or her account. Such calls are not telephone solicitation or telemarketing and are not precluded under existing MSRB rules or the proposed rule change.

The second exception to the national do-not-call rules, contained in paragraph (b)(ii), is for calls to persons from whom the dealer has obtained prior express invitation or permission. In accordance with the requirements of the FCC and FTC, permission must be evidenced by a signed, written agreement between the dealer and person that specifically states that the person agrees to be contacted by the dealer. The agreement also must include the telephone number to which calls may be placed.

The third exception, in paragraph (b)(iii), is for calls made by an associated person who has a personal relationship with the recipient. The definition of personal relationship is in paragraph (g)(iii) and means "any family member, friend, or acquaintance of the telemarketer making the call." The FCC has indicated that in determining whether a telemarketer is a friend or acquaintance of the consumer, the FCC will look at, among other things, whether a reasonable consumer would expect a call from such persons because they have a close, or, at least, a firsthand relationship. Dealers and persons associated with a dealer also should be aware that this exception applies solely to the national do-not-call registry. Thus, if a person with whom an associated person has a personal relationship has requested to be placed on a firm's do-not-call list, the associated person may not make a telephone solicitation to such person.

Safe Harbor Provision

The FCC and FTC rules also contain a "safe harbor" under which a person will not be liable for a violation that is the result of error if the telemarketer's routine business practice meets certain specified standards. The safe harbor is

established in paragraph (c) and applies only to a violation of paragraph (a)(iii), the national do-not-call registry provision. To be eligible for this safe harbor, a dealer or person associated with a dealer must demonstrate that the dealer's routine business practice meets the following four standards. First, the dealer has established and implemented written procedures to comply with the national do-not-call rules. Second, the dealer has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the dealer has maintained and recorded a list of telephone numbers that the dealer may not contact. Fourth, the dealer uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and maintains records documenting this process.⁹

Telemarketing Procedures

Paragraph (d) tracks the requirements of the FCC rule and existing Rule G-39 in establishing procedures that dealer firms must institute prior to engaging in telemarketing. These procedures include requirements to: (1) Have a written policy for maintaining a do-not-call list; (2) train personnel engaged in

⁸ The FCC's definition of established business relationship requires a person's "purchase or transaction with the entity." FCC Report 03-153 (July 3, 2003). The FTC's definition is substantially similar and states that the established business relationship may be formed by the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller. 68 FR 4580, 4669 (Jan. 29, 2003).

The FTC will collect fees from sellers and telemarketers to fund the ongoing expenses of the national registry. The annual cost of accessing the FTC's national registry has been set at \$25 per area code, with a maximum annual cap of \$7,375 (equivalent to 300 area codes). See 68 FR 45134, 45141 (July 31, 2003). In addition, as part of the FTC's Regulatory Flexibility analysis on the burdens to small entities, the FTC determined that it would not charge an access fee for the first five area codes.

Although the MSRB's proposed safe harbor does not contain provisions concerning the sale, rent, lease, purchase, use, or means of accessing the national do-not-call registry as such matters generally fall outside the purview of the investor protection concerns underlying the proposed rule change, dealers are subject to the FCC's national do-not-call rules and must nevertheless comply with these provisions or risk administrative action by the FCC.

⁹ The FCC's definition of established business relationship requires a person's "purchase or transaction with the entity." FCC Report 03-153 (July 3, 2003). The FTC's definition is substantially similar and states that the established business relationship may be formed by the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller. 68 FR 4580, 4669 (Jan. 29, 2003).

telemarketing in the existence and use of the do-not-call list; (3) record and disclose requests from a person to be added to the dealer's do-not-call list; and (4) have the dealer provide the called party with the name of the individual caller, the name of the dealer, a telephone number or address at which the dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Paragraph (d)(v) contains the FCC's position with respect to affiliated persons or entities. In general, a person's do-not-call request applies only to the entity making the call, and does not apply to any affiliated entity unless the customer reasonably would expect the affiliated entity to be included given the identification of the caller and the product being advertised. Similarly, the established business relationship exception does not extend to the dealer's affiliated entities unless the customer reasonably would expect the dealer to be included.

Paragraph (d)(vi) explains that dealers must maintain a record of a caller's request not to receive further telemarketing calls and must honor that request for a period of five years.

Miscellaneous Provisions

Paragraph (e) tracks the FCC's position with respect to the application of the proposed rule change to wireless telephone numbers. In general, the FCC has stated that wireless subscribers may participate in the national do-not-call registry. Although FCC telemarketing rules only generally apply to residential telephone subscribers, the FCC has stated that it will presume wireless subscribers who ask to be put on the national do-not-call list are residential subscribers. Such a presumption, however, may require a complaining wireless customer to provide further proof of the validity of that presumption should it need to take enforcement action. The MSRB agrees with this interpretation and, consistent with the FCC, will apply its telemarketing provisions to dealers engaging in telephone solicitations with wireless subscribers.

Paragraph (f) provides that, if a dealer uses another entity to perform telemarketing services on its behalf, the dealer remains responsible for ensuring compliance with all provisions contained in this proposed rule. Dealers also should be mindful of the limitations on the use of unregistered persons to perform telemarketing services.

2. Basis

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade* * * to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that investors will expect that their participation in the national do-not-call registry will, subject to certain limited exceptions, preclude telephone solicitations by broker/dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Copies of the submissions, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR-MSRB-2003-07 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁰

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48390; File No. SR-NASD-2003-131]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD's Telemarketing Rules To Require Members To Participate in the National Do-Not-Call Registry

August 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 15, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission a proposed rule change to require members to participate in the Federal Trade Commission's ("FTC") national

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.