

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.