

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.