

do-not-call registry. Proposed new language is italicized; proposed deletions are in brackets.

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2200. COMMUNICATIONS WITH THE PUBLIC

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2211. Telemarketing

[No member or person associated with a member shall:]

[(a) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of 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]

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

[(1) the identity of the caller and the member firm;]

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

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

[(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a member, 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 member under the control of or assigned to such associated person:]

[(1) 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 control of or assigned to, such associated person;]

[(2) 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]

[(3) to a broker or dealer.]

[(d) For the purposes of paragraph (c), the term "existing customer" means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or 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 members any additional requirements with respect to the relationship between a member and a customer or between a person associated with a member and a customer.]

(a) General Telemarketing Requirements

No member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to:

(1) 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 member has an established business relationship with the person pursuant to paragraph (g)(1)(A)(i),

(B) the member has received that person's prior express invitation or permission, or

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

(2) 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 member; or

(3) 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 member making telephone solicitations will not be liable for violating paragraph (a)(3) if:

(1) Established Business Relationship Exception

The member 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 member even if the person continues to do business with the member;

(2) Prior Express Written Consent Exception

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

(3) Personal Relationship Exception

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

(c) Safe Harbor Provision

A member or person associated with a member making telephone solicitations will not be liable for violating paragraph (a)(3) if the member or person associated with a member demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

(1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;

(2) Training of personnel. The member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and

(4) Accessing the national do-not-call database. The member 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 member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) 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.

(3) Recording, disclosure of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member 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. Members 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