has been publicly announced that application will be made to such exchange for the listing thereon of such securities.

24. Contracts of ASA, other than those executed on an Established Exchange which do not involve affiliated persons, will provide that: (a) the contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, each as amended, if the subject matter of the contracts is within the purview of these Acts; and (b) in effecting the purchase or sale of assets, the parties to the contracts will utilize the U.S. mails or means of interstate commerce.

25. ASA will keep at least 20% of its assets in the United States in the custody of a U.S. bank. ASA's remaining assets will be kept in the custody of (a) an eligible foreign custodian, as defined in rule 17f–5 under the Act, in South Africa, Hong Kong, the United Kingdom, Canada, or Australia; or (b) an eligible securities depository, as defined in rule 17f–7 under the Act, in South Africa, Hong Kong, the United Kingdom, Canada, or Australia.

26. If removal of securities purchased on the Tokyo Stock Exchange and the SIX Swiss Exchange becomes either prohibited by law or regulation or financially impracticable, up to 5% of ASA's assets may be held by an eligible foreign custodian or overseas branch of ASA's custodian in each of Japan and Switzerland.

27. ASA will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f–5 under the Act or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASA and its shareholders.

28. ASA will cause its custodian to enter into an agreement (to be filed by ASA with the Commission when the custodian commences service to ASA), which will provide that the custodian agrees: (a) To comply with the Act and the rules of the Commission under the Act and the undertakings and agreements contained in the application as applicable to the custodian and as each may be amended from time to time, as applicable to the custodian; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; and (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order.[21]

29. So long as ASA is registered under the Act, ASA's custody contract with its custodian will provide that the custodian will: (a) Consummate all purchases and sales of securities by ASA through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, except for (i) purchases and sales on the Established Exchanges, and (ii) purchases and sales, through ASA's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-eligible securities; and (b) distribute ASA's assets, or the proceeds thereof, to ASA's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in conditions 17, 20, and 30.

30. With respect to an alleged violation of the Act or the requested order by ASA's custodian, eligible foreign custodian, or eligible securities depository, the Commission, on its own motion, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA's custodian has violated any provision of the Act or the requested order.

31. The Chief Compliance Officer, as defined in Rule 38a–l(a)(4) under the Act, shall prepare a report, as part of the annual report to the Board, that evaluates ASA's compliance with the terms and conditions of the Application and the procedures established to achieve such compliance. The Chief Compliance Officer will also annually file a certification pursuant to item 77Q3 of Form N–SAR as such Form may be revised, amended or superseded from time to time, that certifies that ASA and the Board have established procedures reasonably designed to achieve compliance with Conditions 22, 25 and 26 regarding location of ASA's assets. Additionally, ASA's independent public accountants, in connection with their audit examination of ASA, will review the operations and procedures pertaining to the location of ASA's assets and custody arrangements for compliance with the conditions of the Application, and their review will form the basis, in part, of the auditor's report on internal accounting controls in Form N–SAR.

By the Commission.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–12797 Filed 5–29–13; 8:45 am]

BILLING CODE 8011–01–P

[21] ASA acknowledges that: (a) Every agreement and undertaking of ASA and its custodian contained in the application constitutes (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASA, the Commission and ASA's shareholders; and (b) the failure by ASA or the custodian to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69635; File No. SR–MSRB–2013–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change To Amend MSRB Rule G–39, on Telemarketing

May 24, 2013.

I. Introduction

On February 11, 2013, the Municipal Securities Rulemaking Board (''MSRB'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSRB Rule G–39, on telemarketing. Specifically, the proposed rule change would amend certain provisions of MSRB Rule G–39 and add new provisions to make the rule substantially similar to the telemarketing rules of the Federal Trade Commission (''FTC''). The proposed rule change was published for comment in the **Federal Register** on March 4, 2013.[3] The Commission received no comments on the proposed rule change. The text of the proposed rule change is available on the MSRB's Web site at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2013-Filings.aspx,* at the MSRB's principal office, and at the Commission's Public Reference Room. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 68987 (Feb. 16, 2013), 78 FR 14144 (Mar. 4, 2013) (''Notice''). The comment period closed on March 25, 2013.

II. Description of the Proposal

As stated in the Notice, the proposed rule change would amend MSRB Rule G–39, on telemarketing, to include provisions substantially similar to those contained in the FTC rules that prohibit deceptive and other abusive telemarketing acts or practices.[4] Rule G–39 currently requires brokers, dealers, and municipal securities dealers (''dealers'') to, among other things, maintain do-not-call lists and limit the hours of telephone solicitations. In 1996, the SEC directed the MSRB (along with the other self-regulatory organizations) to enact a telemarketing rule in accordance with the Prevention Act.[5] The Prevention Act requires the Commission to promulgate, or direct any national securities exchange or registered national securities association (collectively, ''self-regulatory organizations'' or ''SROs'') to promulgate, rules substantially similar to the FTC rules, to prohibit deceptive and other abusive telemarketing acts or practices, unless the Commission determines either that the rules are not necessary or appropriate for the protection of investors or the maintenance of fair and orderly markets, or that existing federal securities laws or Commission rules already provide for such protection.[6]

In 1997, the SEC determined that telemarketing rules promulgated and expected to be promulgated by the SROs, together with the other rules of the SROs, the federal securities laws, and the SEC's rules thereunder, satisfied the requirements of the Prevention Act because, at the time, the applicable provisions of those laws and rules were substantially similar to the Telemarketing Sales Rule.[7] Since 1997, the FTC has amended its telemarketing rules in light of changing telemarketing practices and technology.[8]

In May 2011, Commission staff directed the MSRB (along with all other SROs) to conduct a review of its telemarketing rule and propose rule amendments that provide protections that are at least as strong as those provided by the FTC's telemarketing rules.[9] Commission staff had concerns ''that the [self-regulatory organization] rules overall have not kept pace with the FTC's rules, and thus may no longer meet the standards of the Prevention Act.'' [10]

The proposed rule amendments, as directed by the Commission staff, would amend and adopt provisions in Rule G–39 that would be substantially similar to the FTC's current rules that prohibit deceptive and other abusive telemarketing acts or practices as described below.[11]

General Telemarketing Requirements

Proposed Rule G–39(a)(iv) would remind dealers that engage in telemarketing that they are also subject to the requirements of relevant state and federal laws and rules, including the Prevention Act, the Telephone Consumer Protection Act,[12] and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers.[13]

Maintenance of Do-Not-Call Lists

Proposed Rule G–39(d)(vi) would maintain the requirement in Rule G–39 that a dealer making telemarketing calls must maintain a record of a caller's request not to receive further calls. The amendment, however, would delete the requirement that a dealer honor a firm-specific do-not-call request for five years from the time the request is made. This amendment makes this provision consistent with the FTC's Telemarketing Sales Rule because the time for which the firm-specific opt-out must be honored under the FTC's Telemarketing Sales Rule [14] is indefinite.[15] Additionally, the proposed rule change would clarify that the record of do-not-call requests must be permanent.

Outsourcing Telemarketing

MSRB Rule G–39(f) would continue to state that, if a dealer uses another entity to perform telemarketing services on its behalf, the dealer remains responsible for ensuring compliance with all provisions of the rule. The proposed amendments would clarify that dealers must consider whether the entity or person that a dealer uses for outsourcing, is appropriately registered or licensed, where required.

Caller Identification Information

Proposed Rule G–39(g) would provide that dealers engaging in telemarketing must transmit caller identification information [16] and are explicitly prohibited from blocking caller identification information. The telephone number provided would have to permit any person to make a do-not-call request during regular business hours. These provisions are similar to the caller identification provision in the FTC rules.[17]

Unencrypted Consumer Account Numbers

Proposed Rule G–39(h) would prohibit a dealer from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. The MSRB believes that this proposed provision would be substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[18] Additionally, the proposed rule change would define ''unencrypted'' to include not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. The MSRB believes that this approach is substantially similar to the approach taken by the FTC.[19]

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[4] The FTC initially adopted its rules prohibiting deceptive and other abusive telemarketing acts or practices (the ''Telemarketing Sales Rule,'' codified at 16 CFR 310.1–9) in 1995 under the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Prevention Act'') codified at 15 U.S.C. 6101–6108. *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842 (Aug. 23, 1995). The Telemarketing Sales Rule has been amended since 1995, prompting the SEC's request for the MSRB to review its telemarketing rule. *See* amendments cited *infra* note 8.

[5] *See* Prevention Act *supra* note 4.

[6] *See* 15 U.S.C. 6102.

[7] *See Telemarketing and Consumer Fraud and Abuse Prevention Act; Determination that No Additional Rulemaking Required,* Exchange Act Release No. 38480 (Apr. 7, 1997), 62 FR 18666 (Apr. 16, 1997). The Commission also determined that some provisions of the FTC's telemarketing rules related to areas already extensively regulated by existing securities laws or activities not applicable to securities transactions. *Id.* at 62 FR 18667–69.

[8] *See, e.g.,* FTC, *Telemarketing Sales Rule,* 73 FR 51164 (Aug. 29, 2008) (amendments to the Telemarketing Sales Rule relating to prerecorded messages and call abandonments); and FTC, *Telemarketing Sales Rule,* 68 FR 4580 (Jan. 29, 2003) (amendments to the Telemarketing Sales Rule establishing requirements for, among other things, sellers and telemarketers to participate in the national do-not-call registry).

[9] *See* Letter from Robert W. Cook, Director, Division of Trading and Markets, SEC, to Michael G. Bartolotta, then Chairman of the Board of Directors of the MSRB, dated May 10, 2011 (the ''Cook Letter''). SEC staff also asked the MSRB to coordinate with the Financial Industry Regulatory Authority (''FINRA'') regarding proposed telemarketing rule amendments.

[10] *Id.*

[11] The MSRB believes that proposed amended Rule G–39 also would be similar in most material respects to FINRA Rule 3230 (Telemarketing). The material differences between FINRA Rule 3230 and proposed Rule G–39 are described below.

[12] *See* 47 U.S.C. 227.

[13] *See* 47 CFR 64.1200.

[14] *See* 16 CFR 310.4.

[15] *See* the Cook Letter.

[16] Caller identification information includes the telephone number and, when made available by the broker, dealer, or municipal securities dealer's telephone carrier, the name of the broker, dealer, or municipal securities dealer.

[17] *See* 16 CFR 310.4(a)(8); *see also* FINRA Rule 3230(g).

[18] *See* 16 CFR 310.4(a)(6); *see also* FINRA Rule 3230(h). The FTC provided a discussion of the provision when it was adopted pursuant to the Prevention Act. *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580, 4615–16 (Jan. 29, 2003).

[19] *See Id.* at 4616.

Submission of Billing Information

Proposed Rule G–39(i) would provide that, for any telemarketing transaction, a dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account. If the telemarketing transaction involves preacquired account information [20] and a free-to-pay conversion [21] feature, the dealer would have to: (1) Obtain from the customer, at a minimum, the last four digits of the account number to be charged; (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number; and (3) make and maintain an audio recording of the entire telemarketing transaction. For any other telemarketing transaction involving preacquired account information, the dealer would have to: (1) Identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and (2) obtain from the customer an express agreement to be charged and to be charged using the identified account number. The MSRB believes that these proposed provisions would be substantially similar to the FTC's provisions regarding the submission of billing information.[22] Although the MSRB expressed the view that some of these provisions may not be directly applicable to securities transactions generally, and, more specifically, municipal securities transactions, the proposed rule is substantially similar to FINRA's telemarketing rule, which includes similar provisions.[23]

Abandoned Calls

Proposed Rule G–39(j) would prohibit a dealer from abandoning [24] any outbound telephone call. The abandoned calls prohibition would be subject to a ''safe harbor'' under proposed subparagraph (j)(ii) that would require the dealer: (1) To employ technology that ensures abandonment of no more than three percent of all calls answered by a person, measured over the duration of a single calling campaign, if less than 30 days, or separately over each successive 30-day period or portion thereof that the campaign continues; (2) for each outbound telephone call placed, to allow the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; (3) whenever a dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, to promptly play a recorded message stating the name and telephone number of the dealer on whose behalf the call was placed; and (4) to maintain records establishing compliance with the ''safe harbor.'' The MSRB believes that these proposed provisions would be substantially similar to the FTC's provisions regarding abandoned calls.[25]

Prerecorded Messages

Proposed Rule G–39(k) would prohibit a broker, dealer, or municipal securities dealer from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement [26] to receive such calls. The proposed rule change also would require that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition would not apply to a prerecorded message permitted for compliance with the ''safe harbor'' for abandoned calls under proposed subparagraph (j)(ii). The MSRB believes that the proposed provisions would be substantially similar to the FTC's provisions regarding prerecorded messages.[27]

Credit Card Laundering

Except as expressly permitted by the applicable credit card system, proposed Rule G–39(l) would prohibit a dealer from: (1) Presenting to or depositing into, the credit card system [28] for payment, a credit card sales draft [29] generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder [30] and the dealer; [31] (2) employing, soliciting, or otherwise causing a merchant,[32] or an employee,

[20] The term ''preacquired account information'' would mean any information that enables a dealer to cause a charge to be placed against a customer's or donor's account without obtaining the account number directly from the customer or donor during the telemarketing transaction pursuant to which the account will be charged. *See* proposed Rule G–39(n)(xix).

[21] The term ''free-to-pay conversion'' would mean, in an offer or agreement to sell or provide any goods or services, a provision under which a customer receives a product or service for free for an initial period and will incur an obligation to pay for the product or service if he or she does not take affirmative action to cancel before the end of that period. *See* proposed Rule G–39(n)(xiii).

[22] *See* 16 CFR 310.4(a)(7); *see also* FINRA Rule 3230(i). The FTC provided a discussion of the provision when it was adopted. *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580, 4616–23 (Jan. 29, 2003).

[23] *See* FINRA Rule 3230(i). *See also* the Cook Letter.

[24] Under the proposed amended rule, an outbound call would be ''abandoned'' if a called person answers it and the call is not connected to a dealer within two seconds of the called person's completed greeting.

[25] *See* 16 CFR 310.4(b)(1)(iv) and (b)(4); *see also* FINRA Rule 3230(j) (Throughout FINRA Rule 3230(j) and (k), referred to in note 30 *infra,* FINRA uses the term ''telemarketing call'' where the proposed MSRB rule would use the term ''outbound telephone call.'' The MSRB believes that its proposed terminology is substantially similar because proposed MSRB Rule G–39(n)(xvi) defines ''outbound telephone call'' as a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.). The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act. *See* FTC, *Telemarketing Sales Rule,* 68 FR 4580, 4641 (Jan. 29, 2003).

[26] The express written agreement would have to: (a) Have been obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the dealer to place prerecorded calls to such person; (b) have been obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service; (c) evidence the willingness of the called person to receive calls that deliver prerecorded messages by or on behalf of the dealer; and (d) include the person's telephone number and signature (which may be obtained electronically under the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001, *et seq.* (''E-Sign Act'')).

[27] *See* 16 CFR 310.4(b)(1)(v); *see also* FINRA Rule 3230(k). The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act. *See* FTC, *Telemarketing Sales Rule,* 73 FR 51164, 51165 (Aug. 29, 2008).

[28] The term ''credit card system'' would mean any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system. The term ''credit card'' would mean any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit. The term ''credit'' would mean the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment. *See* proposed Rule G–39(n)(vii), G–39(n)(viii), and G–39(n)(x), respectively.

[29] The term ''credit card sales draft'' would mean any record or evidence of a credit card transaction. *See* proposed Rule G–39(n)(ix).

[30] The term ''cardholder'' would mean a person to whom a credit card is issued or who is authorized to use a credit card on behalf of or in addition to the person to whom the credit card is issued. *See* proposed Rule G–39(n)(vi).

[31] The Commission staff asked the MSRB to remind its registrants that extending or arranging for the extension of credit to purchase securities raises a number of issues under the federal securities laws, including whether the person extending or arranging credit needs to register as a broker-dealer.

[32] The term ''merchant'' would mean a person who is authorized under a written contract with an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. *See* proposed Rule G–39(n)(xiv). The term ''acquirer'' would mean a business organization, financial institution, or an agent of a business organization or financial institution that has authority from an organization that operates or licenses a credit card system to authorize merchants to accept, transmit, or process payment by credit card through the credit card system for money, goods or services, or anything else of value. *See* proposed Rule G–39(n)(ii). A ''charitable contribution'' would mean any donation or gift of money or any other thing of value, for example, a transfer to a pooled income fund. *See* proposed Rule G–39(n)(iii).

representative or agent of the merchant, to present to or to deposit into the credit card system for payment, a credit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card transaction between the cardholder and the merchant; or (3) obtaining access to the credit card system through the use of a business relationship or an affiliation with a merchant, when such access is not authorized by the merchant agreement [33] or the applicable credit card system. The MSRB believes that these proposed provisions would be substantially similar to the FTC's provisions regarding credit card laundering.[34] Although the MSRB expressed the view that some of these provisions may not be directly applicable to securities transactions generally, and, more specifically, municipal securities transactions, the proposed rule is substantially similar to FINRA's telemarketing rule, which includes these provisions.[35]

Exemption

Proposed Rule G–39(m) would exempt business-to-business calls from most of the provisions of the amended rule. Specifically, the exemption would provide that outbound telephone calls from a dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from the rule, other than sections (a)(ii) and (d)(i)–(iii), (v) and (vi). The sections of the proposed rule that would still apply to business-to-business calls relate to the firm-specific do-not-call list and procedures related to (i) maintaining a do-not-call list, (ii) training personnel on the existence and use of the do-not-call list, (iii) the recording and honoring of do-not-call requests, (iv) application to affiliated persons or entities, and (v) maintenance of do-not-call lists. FINRA's telemarketing rule, Rule 3230, does not include an express exemption for business-to-business calls.[36] The FTC's Telemarketing Sales Rule, however, includes an exemption from all of its provisions for telephone calls between a telemarketer and any business, with a caveat that most of the rule continues to apply to sellers and telemarketers of nondurable office or cleaning supplies.[37]

When initially adopting the exception for business-to-business calls, the FTC indicated that it believed Congress did not intend that every business use of the telephone be covered by the FTC's Telemarketing Sales Rule.[38] The only type of business-to-business calls that are subject to the Telemarketing Sales Rule are calls to induce the retail sale of nondurable office or cleaning supplies.[39]

The MSRB believes that exempting business-to-business calls pertaining to municipal securities from Rule G–39 would be consistent with the FTC's general approach to exempting business-to-business calls because, unlike sellers of nondurable office or cleaning supplies, dealers are subject to an entire regulatory regime, which includes the federal securities laws, the fair practice rules of the MSRB, and examinations and enforcement by FINRA, banking regulators and the SEC. Nevertheless, the provisions of proposed Rule G–39 pertaining to the firm-specific do-not-call list and related procedures would apply to business-to-business calls. Dealers are already required to maintain a firm-specific do-not-call list for requests that are not related to business-to-business calls; therefore, the MSRB believes that requiring such a list with respect to business-to-business calls should not create an undue burden. Moreover, the MSRB believes that it would be reasonable to require dealers to honor the wishes of businesses that do not wish to be solicited by telephone by requiring dealers to maintain a list of such do-not-call requests. The MSRB believes that this approach also would be consistent with FINRA's telemarketing rule and related guidance.[40]

Definitions

Proposed Rule G–39(n) would include the following definitions, which the MSRB believes would be substantially similar to the corresponding definitions in the FTC's Telemarketing Sales Rule: [41] ''acquirer,'' ''billing information,'' ''caller identification service,'' ''cardholder,'' ''charitable contribution,'' ''credit,'' ''credit card,'' ''credit card sales draft,'' ''credit card system,'' ''customer,'' ''donor,'' ''free-to-pay conversion,'' ''merchant,'' ''merchant agreement,'' ''outbound telephone call,'' ''preacquired account information'' and ''telemarketer.'' [42] Additionally, the proposed rule change would delete the reference to ''telephone solicitation.''

Proposed Rule G–39(n) also would include definitions of ''person'' and ''telemarketing'' that differ substantively from the FTC's and FINRA's definitions of these terms but that reflect MSRB's jurisdictional scope. While the definition of ''person'' in proposed MSRB Rule G–39(n)(xvii) tracks the definition in the FTC and FINRA rules to include any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity, it further defines a ''person'' to include a government, or political subdivision, agency, or instrumentality of a government. These entities are included in the proposed definition because dealers often solicit these types of entities. While the MSRB believes that the proposed definition of ''telemarketing'' would be substantially similar to the FTC and FINRA rules, its scope would be limited in MSRB Rule G–39(n)(xxi) to calls ''pertaining to municipal securities or municipal financial products'' since the MSRB only promulgates rules pertaining to the municipal securities activities of dealers. The MSRB intends the

[33] The term ''merchant agreement'' would mean a written contract between a merchant and an acquirer to honor or accept credit cards, or to transmit or process for payment credit card payments, for the purchase of goods or services or a charitable contribution. *See* proposed Rule G–39(n)(xv).

[34] *See* 16 CFR 310.3(c); *see also* FINRA Rule 3230(l). The FTC provided a discussion of the provisions when they were adopted pursuant to the Prevention Act. *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842, 43852 (Aug. 23, 1995).

[35] *See* FINRA Rule 3230(l); *see also* the Cook Letter.

[36] *See* FINRA Rule 3230.

[37] *See* 16 CFR 310.6(b)(7).

[38] *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842, 43861 (Aug. 23, 1995).

[39] *See* 16 CFR 310.6(b)(7). Sellers of these products are treated differently because the FTC believes that the conduct prohibitions and affirmative disclosures mandated by the Telemarketing Sales Rule ''are crucial to protect businesses—particularly small businesses and nonprofit organizations—from the harsh practices of some unscrupulous sellers of these products.'' *See* FTC, *Telemarketing Sales Rule,* 60 FR 43842, 43862 (Aug. 23, 1995). Additionally, the FTC's enforcement experience against deceptive telemarketers indicated that office and cleaning supplies had been ''by far the most significant business-to-business problem area.'' *Id.* at 43861. When adopting its Telemarketing Sales Rule in 1995, the FTC indicated that it would consider expanding the list of business-to-business telemarketing activities excluded from the exemption if additional business-to-business telemarketing activities became problems after the Telemarketing Sales Rule became effective. *Id.* To date, however, the only type of business-to-business telemarketing activity that is excluded from the exemption is the retail sale of nondurable office or cleaning supplies.

[40] *See* FINRA Rule 3230; *see also* FINRA guidance dated November 1, 1995, *Requirements of member firms in maintaining do-not-call lists under NASD Rule 3110* (''[M]embers who are involved in telemarketing, and whom make cold calls to the public, [must] . . . establish and maintain a do-not-call list notwithstanding whether [the member] contact[s] businesses or residences.'').

[41] The MSRB believes that these definitions are also substantially similar to definitions in FINRA Rule 3230, with the exception of ''telemarketer,'' which is not defined in FINRA's rule.

[42] *See* proposed Rule G–39(n)(ii), (iii), (v), (vi), (vii), (viii), (ix), (x), (xi), (xiii), (xiv), (xv), (xvi), (xix), and (xx).

limitation in the definition to correspond with the limits of the MSRB's rulemaking authority. As described earlier, the MSRB has implemented rules to address sales practices by dealers that cover their municipal securities activities, including sales by telephone.

Technical and Conforming Changes

The proposed revisions to MSRB Rule G–39 would make a number of technical and conforming changes. First, the proposed revisions would amend Rule G–39 to delete the phrase ''or person associated with a broker, dealer or municipal securities dealer'' throughout the rule since associated persons are included in the definition of ''broker, dealer or municipal securities dealer'' in the MSRB rules.[43] Second, the proposed revisions would renumber and make technical changes to the terms ''account activity,'' ''broker, dealer or municipal securities dealer of record,'' ''established business relationship,'' and ''personal relationship.'' Third, the proposed revisions would amend paragraphs (a), (b), (c), (c)(iv), and (e) by replacing the term ''telephone solicitation'' with the term ''outbound telephone call.'' Fourth, the proposed revisions would amend paragraphs (d)(iii), (d)(iv), and (d)(vi) by replacing the term ''telemarketing'' with the term ''outbound telephone.'' Fifth, the proposed revisions would update a reference to an ''established business relationship'' in subparagraph (a)(1)(A). Finally, the proposed rule change would amend paragraph (b)(ii) to clarify that a signed, written agreement may be obtained electronically under the E-Sign Act.

The MSRB requested an effective date for the proposed rule change of 90 days following the date of SEC approval.

III. Summary of Comments Received

As previously noted, the Commission received no comments on the proposed rule change.

IV. Commission's Findings

The Commission has carefully reviewed the proposed rule change, and, based on its review of the record, finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.[44] In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[45]

More specifically, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act because it should protect investors and the public interest by preventing dealers from engaging in fraudulent and manipulative acts and practices, particularly deceptive and other abusive telemarketing acts or practices. The Commission also finds that the proposed rule is consistent with the FTC's and FINRA's telemarketing rules, which include provisions similar to those described above. Accordingly, the proposed rule change should foster cooperation and coordination with FINRA members and other persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, and remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder. As requested by the MSRB, the proposed rule change will become effective 90 days following the date of SEC approval.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–MSRB–2013–02) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Jill M. Peterson,

Assistant Secretary.

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[43] *See* MSRB Rule D–11 which states: ''Unless the context otherwise requires or a rule of the Board otherwise specifically provides, the terms 'broker,' 'dealer,' . . . 'municipal securities dealer,' . . . shall refer to and include their respective associated persons.''

[44] In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[45] 15 U.S.C. 78o–4(b)(2)(C).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69634; File No. SR–NYSEArca–2013–56]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Listing and Trading of Shares of the PowerShares China A-Share Portfolio Under NYSE Arca Equities Rule 8.600

May 23, 2013.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 21, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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 Exchange proposes to list and trade the shares of the following under NYSE Arca Equities Rule 8.600 (''Managed Fund Shares''): PowerShares China A-Share Portfolio. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

In its filing with the Commission, the self-regulatory organization 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 text of those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.