Bond Case Briefs

Municipal Finance Law Since 1971

SEC Approves Amendments to MSRB Rule G-39 on Telemarketing.

The Securities and Exchange Commission ("SEC") has approved amendments to MSRB Rule G-39, on telemarketing,[1] that expand the scope of the rule to include additional provisions that are substantially similar to Federal Trade Commission ("FTC") rules prohibiting deceptive and other abusive telemarketing acts or practices.[2] Rule G-39 requires brokers, dealers, and municipal securities dealers ("dealers") to, among other things, maintain do-not-call lists and limit the hours of telephone solicitations to customer residences. The effective date for the amendments is August 22, 2013.

SUMMARY OF PRINCIPAL AMENDMENTS

General Telemarketing Requirements

Rule G-39(a)(iv) informs dealers that engage in telemarketing that they are also subject to the requirements of relevant state and federal laws and rules, including the Telemarketing and Consumer Fraud and Abuse Prevention Act, the Telephone Consumer Protection Act,[3] and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers.[4]

Maintenance of Do-Not-Call Lists

The amendments to Rule G-39(d)(vi) maintain the requirement that a dealer making telemarketing calls must maintain a record of a caller's request not to receive further calls. However, the amendments delete the requirement that a dealer honor a firm-specific do-not-call request for only five years from the time the request is made. SEC staff directed the MSRB to delete this provision because the time for which the firm-specific opt-out must be honored under the FTC's Telemarketing Sales Rule[5] is indefinite, rather than five years as currently provided in Rule G-39.[6] Additionally, the amendments clarify that the record of do-not-call requests must be permanent.

Outsourcing Telemarketing

Rule G-39(f) continues 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 contained in the rule. The amendments 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

Rule G-39(g) provides that dealers engaging in telemarketing must transmit caller identification information and are explicitly prohibited from blocking caller identification information. The telephone number provided must permit any person to make a do-not-call request during regular business hours. These provisions are similar to the caller identification provisions in the FTC rules.[7]

Unencrypted Consumer Account Numbers

Rule G-39(h) prohibits a dealer from disclosing or receiving, for consideration, unencrypted consumer account numbers for use in telemarketing. This provision is substantially similar to the FTC's provision regarding unencrypted consumer account numbers.[8] Additionally, the amendments 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. This definition is substantially similar to the approach taken by the FTC.[9]

Submission of Billing Information

Rule G-39(i) provides 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 and a free-to-pay conversion feature, the dealer must: (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 must: (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 amendments are substantially similar to the FTC's provision regarding the submission of billing information.[10]

Abandoned Calls

Rule G-39(j) prohibits a dealer from abandoning any outbound telephone call made for the purpose of, among other things, selling municipal securities or services. The abandoned calls prohibition is subject to a "safe harbor" under subparagraph (j)(ii) that requires 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." These provisions are substantially similar to the FTC's provisions regarding abandoned calls.[11]

Prerecorded Messages

Rule G-39(k) prohibits a dealer from initiating any outbound telephone call that delivers a prerecorded message without a person's express written agreement to receive such calls. The amendment also requires that all prerecorded outbound telephone calls provide specified opt-out mechanisms so that a person can opt out of future calls. The prohibition does not apply to a prerecorded message permitted for compliance with the "safe harbor" for abandoned calls under proposed subparagraph (j)(ii). These provisions are substantially similar to the FTC's provisions regarding prerecorded messages.[12]

Credit Card Laundering

Except as expressly permitted by the applicable credit card system, Rule G-39(l) prohibits a dealer from: (1) presenting to or depositing 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 dealer; (2) employing, soliciting, or otherwise causing a merchant, or an employee, 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 or the applicable credit card system. These provisions are substantially similar to the FTC's provisions regarding credit card laundering.[13]

Exemption

Rule G-39(m) exempts business-to-business calls from most of the provisions of the amended rule. Specifically, the exemption provides 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 rule that still apply to business-to-business calls relate to the firm-specific do-not-call list[14] 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.

Definitions

Rule G-39(n) includes the following definitions, which are substantially similar to the corresponding definitions in the FTC's Telemarketing Sales Rule:[15] "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." Additionally, the amendments delete the reference to "telephone solicitation."

Rule G-39(n) also includes definitions of "person" and "telemarketing" that differ slightly from the FTC's and FINRA's definitions to be more appropriately tailored to the municipal securities market. Specifically, the definition of "person" in 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, but further defines a "person" to include a government, or political subdivision, agency, or instrumentality of a government. The definition of "telemarketing" is limited to calls "pertaining to municipal securities or municipal financial products."

Questions about the amendments may be directed to Lawrence P. Sandor, Deputy General Counsel, or Darlene Brown, Assistant General Counsel, at 703-797-6600.

May 29, 2013

*****

TEXT OF AMENDMENTS[16]

Rule G-39: Telemarketing

(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 outbound telephone call 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 8:00 a.m. or after 9:00 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) (n)(xii)(A),

(B) the broker, dealer or municipal securities dealer has received that person's prior express prior consent 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 any outbound telephone calls 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.

(iv) Compliance with Other Requirements. This rule does not affect the obligation of any broker, dealer or municipal securities dealer that engages in telemarketing to comply with relevant state and federal laws and rules, including, but not limited to, the Telemarketing and Consumer Fraud and Abuse Prevention Act codified at 15 U.S.C. 6101 – 6108, as amended, the Telephone Consumer Protection Act codified at 47 U.S.C. 227, and the rules of the Federal Communications Commission relating to telemarketing practices and the rights of telephone consumers codified at 47 CFR 64.1200.

(b) National Do-Not-Call List Exceptions. A broker, dealer or municipal securities dealer making outbound telephone solicitations calls 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 broker, dealer or municipal securities dealer's firm-specific do-not-call list terminates the established business relationship exception to that the 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 written consent invitation or permission. Such permission consent must be clearly evidenced by a signed, written agreement (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")) 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

(iii) Personal Relationship Exception. The associated person broker, dealer or municipal securities dealer 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 outbound telephone solicitations calls 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 the 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 outbound telephone solicitations calls 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 thirty-one (31) 31 days 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 30 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 outbound telephone call is made, the broker, dealer or municipal securities dealer on whose behalf the telemarketing outbound telephone call is made will be liable for any failures to honor the do-no--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 an outbound telephone 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 outbound telephone calls for telemarketing purposes must maintain a permanent record of a caller person’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 outbound telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing. If a broker, dealer or municipal securities dealer uses another appropriately registered or licensed entity or person 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 or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of the telemarketing call;

(2) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of the telemarketing call; or

(3) 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 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.

(iv) The term “account activity” shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts, or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(v) The term “broker, dealer or municipal securities dealer of record” refers to the broker, dealer or municipal securities dealer identified on a customer’s account application for accounts held directly at an issuer of municipal fund securities or by the issuer’s agent.

(g) Caller Identification Information.

(i) Any broker, dealer or municipal securities dealer that engages in telemarketing must transmit or cause to be transmitted 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, to any caller identification service in use by a recipient of an outbound telephone call.

(ii) The telephone number so provided must permit any person to make a do-not-call request during regular business hours.

(iii) Any broker, dealer or municipal securities dealer that engages in telemarketing is prohibited from blocking the transmission of caller identification information.

(h) Unencrypted Consumer Account Numbers. No broker, dealer or municipal securities dealer shall disclose or receive, for consideration, unencrypted consumer account numbers for use in telemarketing. The term “unencrypted” means not only complete, visible account numbers, whether provided in lists or singly, but also encrypted information with a key to its decryption. This paragraph shall not apply to the disclosure or receipt of a customer’s billing information to process a payment pursuant to a telemarketing transaction.

(i) Submission of Billing Information. For any telemarketing transaction, a broker, dealer or municipal securities dealer must obtain the express informed consent of the person to be charged and to be charged using the identified account.

(i) In any telemarketing transaction involving preacquired account information and a free-to-pay conversion feature, the broker, dealer or municipal securities dealer must:

(A) obtain from the customer, at a minimum, the last four digits of the account number to be charged;

(B) obtain from the customer an express agreement to be charged and to be charged using the account number pursuant to paragraph (i)(i)(A); and

(C) make and maintain an audio recording of the entire telemarketing transaction.

(ii) In any other telemarketing transaction involving preacquired account information not described in paragraph (i)(i), the broker, dealer or municipal securities dealer must:

(A) identify the account to be charged with sufficient specificity for the customer to understand what account will be charged; and

(B) obtain from the customer an express agreement to be charged and to be charged using the account number identified pursuant to paragraph (i)(ii)(A).

(j) Abandoned Calls.

(i) No broker, dealer or municipal securities dealer shall "abandon" any outbound telephone call. An outbound call is "abandoned" if a called person answers it and the call is not connected to a broker, dealer or municipal securities dealer within two seconds of the called person's completed greeting.

(ii) A broker, dealer or municipal securities dealer shall not be liable for violating paragraph (j)(i) if:

(A) the broker, dealer or municipal securities dealer employs technology that ensures abandonment of no more than three percent of all outbound telephone 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;

(B) the broker, dealer or municipal securities dealer, for each outbound telephone call placed, allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call;

(C) whenever a broker, dealer or municipal securities dealer is not available to speak with the person answering the outbound telephone call within two seconds after the person's completed greeting, the broker, dealer or municipal securities dealer promptly plays a recorded message that states the name and telephone number of the broker, dealer or municipal securities dealer on whose behalf the call was placed; and

(D) the broker, dealer or municipal securities dealer retains records establishing compliance with paragraph (j)(ii).

(k) Prerecorded Messages.

(i) No broker, dealer or municipal securities dealer shall initiate any outbound telephone call that delivers a prerecorded message other than a prerecorded message permitted for compliance with the call abandonment safe harbor in paragraph (j)(ii)(C) unless:

(A) the broker, dealer or municipal securities dealer has obtained from the recipient of the call an express agreement, in writing, that:

(1) the broker, dealer or municipal securities dealer obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the broker, dealer or municipal securities dealer to place prerecorded calls to such person;

(2) the broker, dealer or municipal securities dealer obtained without requiring, directly or indirectly, that the agreement be executed as a condition of opening an account or purchasing any good or service;

(3) evidences the willingness of the recipient of the call to receive calls that deliver prerecorded messages by or on behalf of a specific broker, dealer or municipal securities dealer; and

(4) includes such person's telephone number and signature (which may be obtained electronically under the E-Sign Act);

(B) the broker, dealer or municipal securities dealer allows the telephone to ring for at least 15 seconds or four rings before disconnecting an unanswered call; and within two seconds after the completed greeting of the person called, plays a prerecorded message that promptly provides the disclosures in paragraph (d)(iv), followed immediately by a disclosure of one or both of the following:

(1) for a call that could be answered by a person, that the person called can use an automated interactive voice and/or keypress-activated opt-out mechanism to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii) at any time during the message. The mechanism must:

(a) automatically add the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) once invoked, immediately disconnect the call; and

(c) be available for use at any time during the message;

(2) for a call that could be answered by an answering machine or voicemail service, that the person called can use a toll-free telephone number to assert a firm-specific do-not-call request pursuant to the broker, dealer or municipal securities dealer's procedures instituted under paragraph (d)(iii). The number provided must connect directly to an automated interactive voice or keypress-activated opt-out mechanism that:

(a) automatically adds the number called to the broker, dealer or municipal securities dealer's firm-specific do-not-call list;

(b) immediately thereafter disconnects the call; and

(c) is accessible at any time throughout the duration of the telemarketing campaign; and

(C) the broker, dealer or municipal securities dealer complies with all other requirements of this rule and other applicable federal and state laws.

(ii) Any call that complies with all applicable requirements of paragraph (k) shall not be deemed to violate paragraph (j).

(l) Credit Card Laundering. Except as expressly permitted by the applicable credit card system, no broker, dealer or municipal securities dealer shall:

(i) present to or 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 broker, dealer or municipal securities dealer;

(ii) employ, solicit, or otherwise cause a merchant, or an employee, 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

(iii) obtain 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 or the applicable credit card system.

(m) Exemption. Outbound telephone calls from a broker, dealer, or municipal securities dealer to a business entity, government, or political subdivision, agency, or instrumentality of a government are exempt from this rule, other than sections (a)(ii) and (d)(i)-(iii), (v) and (vi).

(n) Definitions.

For purposes of this rule:

(i) The term “account activity” shall include, but not be limited to, purchases, sales, interest credits or debits, charges or credits, dividend payments, transfer activity, securities receipts or deliveries, and/or journal entries relating to securities or funds in the possession or control of the broker, dealer or municipal securities dealer.

(ii) The term “acquirer” means 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.

(iii) The term “billing information” means any data that enables any person to access a customer’s or donor’s account, such as a credit or debit card number, a brokerage, checking, or savings account number, or a mortgage loan account number. A “donor” means any person solicited to make a charitable contribution. A “charitable contribution” means any donation or gift of money or any other thing of value, for example a transfer to a pooled income fund.

(iv) The term “broker, dealer or municipal securities dealer of record” refers to the broker, dealer or municipal securities dealer identified on a customer’s account application for accounts held by the issuer’s agent for municipal fund securities.

(v) The term “caller identification service” means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber’s telephone.

(vi) The term “cardholder” means 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.

(vii) The term “credit” means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(viii) The term “credit card” means any card, plate, coupon book, or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(ix) The term “credit card sales draft” means any record or evidence of a credit card transaction.

(x) The term “credit card system” means any method or procedure used to process credit card transactions involving credit cards issued or licensed by the operator of that system.

(xi) The term “customer” means any person who is or may be required to pay for goods or services offered through telemarketing.

(xii) The term “established business relationship” means a relationship between a broker, dealer or municipal securities dealer and a person if:

(A) the person has made a financial transaction or has a security position, a money balance, or account activity with the broker, dealer or municipal securities dealer or at a clearing firm that provides clearing services to such broker, dealer or municipal securities dealer within the eighteen months immediately preceding the date of an outbound telephone call;

(B) the broker, dealer or municipal securities dealer is the broker, dealer or municipal securities dealer of record for an account of the person within the eighteen months immediately preceding the date of an outbound telephone call; or

(C) 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 three months immediately preceding the date of an outbound telephone call.

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.

(xiii) The term "free-to-pay conversion" means, 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.

(xiv) The term "merchant" means 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.

(xv) The term "merchant agreement" means 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.

(xvi) The term "outbound telephone call" means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution from a donor.

(xvii) The term "person" means any individual, group, unincorporated association, limited or general partnership, corporation, other business entity, government, or political subdivision, agency, or instrumentality of a government.

(xviii) The term "personal relationship" means any family member, friend, or acquaintance of the broker, dealer or municipal securities dealer making an outbound telephone call.

(xix) The term "preacquired account information" means any information that enables a broker, dealer or municipal securities 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.

(xx) The term "telemarketer" means any person who, in connection with telemarketing, initiates or receives telephone calls to or from a customer or donor.

(xxi) The term "telemarketing" means consisting of or relating to a plan, program, or campaign involving at least one outbound telephone call pertaining to municipal securities or municipal financial products, for example cold-calling. The term does not include the solicitation of sales through the mailing of written marketing materials, when the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the marketing materials and during those calls takes orders only without further solicitation. For purposes of the previous sentence, the term "further solicitation" does not include providing the

customer with information about, or attempting to sell, anything promoted in the same marketing materials that prompted the customer's call.

[1] See SEC Release No. 34-69635 (May 24, 2013), File No. SR-MSRB-2013-02.

[2] 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 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 to request the MSRB and other self-regulatory organizations to review their telemarketing rules.

[3] See 47 U.S.C. 227.

[4] See 47 CFR 64.1200.

[5] See 16 CFR 310.4.

[6] 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.

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

[8] See 16 CFR 310.4(a)(6); see also FINRA Rule 3230(h).

[9] See FTC, Telemarketing Sales Rule, 68 FR 4580, 4616 (Jan. 29, 2003).

[10] See 16 CFR 310.4(a)(7); see also FINRA Rule 3230(i).

[11] See 16 CFR 310.4(b)(1)(iv) and (b)(4); see also FINRA Rule 3230(j).

[12] See 16 CFR 310.4(b)(1)(v); see also FINRA Rule 3230(k).

[13] See 16 CFR 310.3(c); see also FINRA Rule 3230(l).

[14] For example, if a dealer solicits an issuer official to obtain municipal securities underwriting business and the issuer official requests that the dealer place the telephone number on the dealer's do-not-call list, the dealer must honor the request and retain the individual's telephone number on the do-not-call list indefinitely.

[15] 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.

[16] Underlining indicates new language; strikethrough denotes deletions.

Copyright © 2026 Bond Case Briefs | bondcasebriefs.com