



**RULE
ADOPTION
NOTICE**

**RAN-06-38
August 16, 2006**

**TO: All OTP Holders, OTP Firms
and Associated Persons**

FROM: Office of General Counsel

**SUBJECT: Do-Not-Call Registry
(File No. SR-PCX-2005-54)**

On August 14, 2006, the Securities and Exchange Commission issued an order approving a rule filing requiring OTP Holders and OTP Firms to participate in the Federal Trade Commission's national do-not-call registry. The text of the proposed rule change is attached as Exhibit 5. Questions regarding this bulletin may be directed to Melanie Grace at 415-393-4135.

**EXHIBIT 5
Text of the Proposed Rule Change:¹**

Rules of the [Pacific Exchange] NYSE Arca, Inc.

RULE 9 CONDUCTING BUSINESS WITH THE PUBLIC

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Telemarketing

9.20(b) [No OTP Firm, OTP Holder, or associated person of and OTP Firm or OTP Holder may:

- (1) 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
- (2) 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 New text is underlined, Deleted text is in brackets.

- (A) the identity of the caller and the OTP Firm or OTP Holder;
- (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 securities or related services.

(3) The prohibitions of subsections (b)(1) and (b)(2), above, do not apply to telephone calls by any person associated with an OTP Firm or OTP Holder, or another associated person acting at the direction of such person for the purpose of maintaining and servicing an account of an existing customer of the OTP Firm or OTP Holder under the control of or assigned to such associated person if such person places such calls:

(A) 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 deposit, was under the control of or assigned to, such associated person;

(B) to an existing customer who has previously 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

(C) to a broker or dealer.

The scope of this Rule 9.20(b) is limited to the telemarketing calls described herein. The terms of this Rule do not otherwise expressly or by implication impose on OTP Firms and OTP Holders or participants any additional requirements with respect to the relationship between an OTP Firm or OTP Holder or participant and a customer or between a person associated with an OTP Firm or OTP Holder or participant organization and a customer. For the purposes of subsection (b)(3), 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.]

(1) General Telemarketing Requirements. No OTP Firm, OTP Holder or associated person shall make any telephone solicitation, as defined in Section 9.20(b)(10)(B) to:

(A) 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:

(i) the OTP Firm or OTP Holder has an established business relationship with the person pursuant to Section 9.20(b)(10)(A);

(ii) the OTP Firm or OTP Holder has received that person's prior express invitation or permission; or

(iii) the person called is a broker or dealer.

(B) 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 OTP Firm or OTP Holder; or

(C) Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(2) National Do-Not-Call Registry Exceptions. An OTP Firm or OTP Holder will not be liable for violating Section 9.20(b)(1)(C) if:

(A) The OTP Firm or OTP Holder has an established business relationship with the recipient of the call. A person's request to be placed on an OTP Firm's or OTP Holder's firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call registry provision for that OTP Firm or OTP Holder even if the person continues to do business with the OTP Firm or OTP Holder;

(B) The OTP Firm or OTP Holder 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 OTP Firm or OTP Holder that states that the person agrees to be contacted by the OTP Firm or OTP Holder and includes the telephone number to which the calls may be placed; or

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

(3) Safe Harbor Provision. The OTP Firm, OTP Holder or associated person making telephone solicitations will not be liable for violating Section 9.20(b)(1)(C) if the OTP Firm, OTP Holder or associated person demonstrates that the violation is the result of an error and that as part of the OTP Firm's or OTP Holder's routine business practice it meets the following standards:

(A) The OTP Firm or OTP Holder has established and implemented written procedures to comply with the national do-not-call rules;

(B) The OTP Firm or OTP Holder has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(C) The OTP Firm or OTP Holder has maintained and recorded a list of telephone numbers that it may not contact; and

(D) The OTP Firm or OTP Holder 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 thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

(4) Procedures.

Prior to engaging in telemarketing, an OTP Firm or OTP Holder must institute procedures to comply with Section 9.20(b)(1). Such procedures must meet the minimum standards:

(A) Written policy. The OTP Firm or OTP Holder must have a written policy available upon demand for maintaining a do-not-call list.

(B) 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, including the policies and procedures of the firm regarding communication with the public.

(C) Recording, honoring do-not-call requests. If an OTP Firm or OTP Holder receives a request from a person not to receive calls from that OTP Firm or OTP Holder, the OTP Firm or OTP Holder 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. The OTP Firm or OTP Holder 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 30 days from the date of such request. If such requests are being recorded or maintained by a party other than the OTP Firm or OTP Holder on whose behalf the telemarketing call is made, the OTP Firm or OTP Holder on whose behalf the telemarketing call is made will be liable for any failure to honor the do-not-call request.

(D) Identification of sellers and telemarketers. An OTP Firm or OTP Holder, or person associated with an OTP Firm or OTP Holder making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the OTP Firm or OTP Holder, an address or telephone number at which the OTP Firm or OTP Holder may be contacted, and that the purpose of the call is to solicit the purchase or sale of securities or a 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.

(E) 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 OTP Firm or OTP Holder 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 or service being advertised.

(F) Maintenance of do-not-call lists. An OTP Firm or OTP Holder making calls for telemarketing purposes must maintain a record of the caller'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.

(5) Wireless Communications.

(A) OTP Firms and OTP Holders are prohibited from using an automatic telephone dialing system or an artificial or prerecorded voice when initiating a telephone call to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

(B) The provisions set forth in this rule are applicable to OTP Firms and OTP Holders telemarketing or making telephone solicitations calls to wireless telephone numbers.

(6) Outsourcing Telemarketing. If an OTP Firm or OTP Holder uses another entity to perform telemarketing services on its behalf, the OTP Firm or OTP Holder remains responsible for ensuring compliance with all provisions contained in this rule.

(7) Pre-Recorded Messages.

(A) An OTP Firm or OTP Holder may not initiate any telephone call to any residence using an artificial or prerecorded voice to deliver a message, without the prior express consent of the person called, unless the call:

(i) is not made for a commercial purpose;

(ii) is made for a commercial purpose, but does not include or introduce an unsolicited advertisement or constitute a telephone solicitation; or

(iii) is made to any person with whom the OTP Firm or OTP Holder has an established business relationship at the time the call is made.

(B) All artificial or prerecorded telephone messages shall:

(i) At the beginning of the message, state clearly the identity of the OTP Firm or OTP Holder that is responsible for initiating the call. The OTP Firm or OTP Holder responsible for initiating the call must state the name under which the OTP Firm or OTP Holder is registered to conduct business with the applicable State Corporation Commission (or comparable regulatory authority); and

(ii) During or after the message, the OTP Firm or OTP Holder must state clearly the telephone number (other than that of the autodialer or prerecorded message player that placed the call) of such OTP Firm or OTP Holder. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(iii) For telemarketing messages to a residence, such telephone number, mentioned in Section 9.20(b)(7)(B)(ii) above, must permit any person to make a do-not-call request during regular business hours for the duration of the telemarketing campaign.

(8) Telephone Facsimile or Computer Advertisements

No OTP Firm, OTP Holder or associated person may use a telephone facsimile machine, computer or other device to send an unsolicited advertisement to a telephone facsimile machine, computer or other device.

(A) For purposes of Section 9.20(b)(8) of this rule, a facsimile advertisement is not “unsolicited” if the recipient has granted the OTP Firm, OTP

Holder or associated person prior express invitation or permission to deliver the advertisement. Such express invitation or permission must be evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the OTP Firm, OTP Holder or associated person.

(B) OTP Firms, OTP Holders and associated persons must clearly mark, in a margin at the top or bottom of each page of the transmission, the date and time it is sent and an identification of the OTP Firm, OTP Holder or associated person sending the message and the telephone number of the sending machine or of the OTP Firm, OTP Holder or associated person sending the transmission.

(9) Caller Identification Information

(A) Any OTP Firm or OTP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, must transmit caller identification information. Such caller identification information must include either the Calling Party Number ("CPN") or the calling party's billing number, also known as the Charge Number ("ANI"), and, when available from the telephone carrier, the name of the OTP Firm or OTP Holder. The telephone number so provided must permit any person to make a do-not-call request during regular business hours. Whenever possible, CPN is the preferred number and should be transmitted.

(B) Any OTP Firm or OTP Holder that engages in telemarketing, as defined in Section 9.20(b)(10)(B) of this rule, is prohibited from blocking the transmission of caller identification information.

(C) Provision of caller identification information does not obviate the requirement for a caller to verbally supply identification information during a call.

(10) Definitions.

(A) For purposes of Section 9.20, an OTP Firm or OTP Holder has an "established business relationship" with a person if:

(i) the person has made a financial transaction or has a security position, a money balance, or account activity with the OTP Firm or OTP Holder or at a clearing firm that provides clearing services to such OTP Firm or OTP Holder within the previous 18 months immediately preceding the date of the telemarketing call;

(ii) the OTP Firm or OTP Holder is the broker-dealer of record for an account of the person within the previous 18 months immediately preceding the date of the telemarketing call; or

(iii) the person has contacted the OTP Firm or OTP Holder to inquire about a product service offered by the OTP Firm or OTP Holder within the previous three months immediately preceding the date of the telemarketing call, which relationship has not been previously terminated by either party.

A person's established business relationship with an OTP Firm or OTP Holder does not extend to the OTP Firm's or OTP Holder's affiliated entities unless the person would reasonably expect them to be included, given the nature and type of products or services offered by the affiliate and the identity of the affiliate. Similarly, a person's established business relationship with an OTP Firm's or OTP Holder's affiliate does not extend to the OTP Firm or OTP Holder unless the person would reasonably expect the OTP Firm or OTP Holder to be included.

A person's request to be placed on an OTP Firm's or OTP Holder's firm-specific do-not-call list as set forth in Section 9.20(b)(1)(B) of this rule terminates an established business relationship for purposes of telemarketing and telephone solicitation, even if the person continues to do business with the OTP Holder or OTP Firm.

(B) 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.

(C) The term "personal relationship" means any family member, friend or acquaintance of the telemarketer making the call.

(D) 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 OTP Firm or OTP Holder.

(E) The term "broker-dealer of record" refers to the broker-dealer identified on a customer's account application for accounts held directly at a mutual fund or variable insurance product issuer.

(F) The terms "automatic telephone dialing system" and "autodialer" mean equipment which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

(G) The term "telephone facsimile machine" means equipment which has the capacity to transcribe text or images (or both) from paper, into an electronic signal and to transmit that signal over a regular telephone line, or to transcribe text or images (or both) from an electronic signal received over a regular telephone line onto paper.

(H) The term "unsolicited advertisement" means any material advertising the commercial availability or quality of any products or services which is transmitted to any person without that person's prior express invitation or permission.

Rule 9.20(c)-(d) – No Change.

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