investors from switching their investment in securities of one investment company to another investment company and the consequent erosion of their equity.[3]

2. Applicants request relief on behalf of (a) certain existing and subsequent Trust Series, (b) existing and future portfolios of the Stepstone Funds other than money market or no-load funds (*i.e.* funds that do not impose a sales load, a deferred sales load, or bear distribution expenses pursuant to a rule 12b–1 plan), and (c) open-end management investment companies, including portfolios and series thereof, that may in the future be advised by the Adviser, other than money market or no-load funds.[4]

3. Applicants note that the Reinvestment Options provide unitholders the option of either (a) in-kind distribution of their proportionate number of Fund shares or (b) receiving a cash distribution. Such unitholders also will have the option of (a) reinvesting the proceeds of the zero coupon obligations in Fund shares at net asset value (without the imposition of a CDSL or a sales load) or (b) receiving a cash distribution.

4. Applicants believe that the Reinvestment Options give the unitholders flexibility of choice. Applicants further believe that the Reinvestment Options do not raise the concerns that section 11 was designed to address because, although Fund shares have a front-end sales load or a CDSL, none will be charged to the unitholders in the proposed Reinvestment Options. Applicants note that there will be no additional cost, other than the rule 12b–1 fee, to unitholders who choose to invest in Fund shares upon redemption of Units or upon termination of the Trust.[5]

Applicants' Conditions

Applicants agree to the following as conditions to granting the requested order:

1. No sales charge, CDSL, if any, or redemption fee will be imposed on any shares of the Fund deposited in any Series of the Trust or on any Fund shares acquired by unitholders through the Reinvestment Options.

2. The prospectus of each Trust Series and any sales literature or advertising that mentions the existence of the Reinvestment Options will disclose that shareholders who elect to invest in Fund shares will incur a rule 12b–1 fee.

3. The Sponsor and the Distributor will immediately rebate to the Trustee any rule 12b–1 fees it receives on shares of the Funds acquired by the Trust Series.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32720 Filed 12–24–96; 8:45 am]

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[3] Applicants state that they are not requesting relief from sections 14(a) and 19(b) of the Act and rule 19b–1 thereunder because the Trust has received an exemption from such provisions in a prior application. *See* Van Kampen Merritt Equity Opportunity Trust, Investment Company Act Release Nos. 20597 (Oct. 4, 1994) (notice) and 20672 (Nov. 1, 1994) (order).

[4] Applicants state in a letter that all existing Trust Series or portfolios of the Stepstone Funds that currently intend to rely on the requested order are named in the application.

[5] Applicants note that, if Unitholders choose instead to take a cash distribution upon termination of the Trust or upon redemption of Units and later decide to invest in Fund shares, they would have to pay a front-end sales load or would be subject to the imposition of any applicable CDSL.

[Release No. 34–38053; File No. SR–MSRB–96–06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval to Proposed Rule Change and Notice of Filing of, and Order Granting Accelerated Approval to, Amendment No. 1 to the Proposed Rule Change Relating to MSRB Telemarketing Rules

December 16, 1996.

I. Introduction

On July 30, 1996, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend MSRB telemarketing rules[3] the proposed rule change was published for comment in the Federal Register on September 7, 1996.[4] No comments were received on the proposal.[5]

[1] 15 U.S.C. § 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On Nov. 4, 1996, the MSRB filed Amendment No. 1 to its proposal. Letter from Ronald W. Smith, Legal Associate, Municipal Securities Rulemaking Board (''MSRB''), to George A. Villasana, Attorney, Division of Market Regulation, SEC, dated Nov. 1, 1996.

[4] *See* Securities Exchange Act Release No. 37626 (Aug. 30, 1996), 61 FR 47224 (Sept. 6, 1996) (notice of File No. SR–MSRB–96–06).

[5] The Commission, however, received two comment letters on an NASD proposal, which is substantially similar. *See* Letter from Brad N. Bernstein, Assistant Vice President & Senior Attorney, Merrill Lynch, to Jonathan G. Katz, Secretary, SEC, dated Aug. 19, 1996 (''Merrill Lynch Letter''), and Letter from Frances M. Stadler, Associate Counsel, Investment Company Institute (''ICI''), to Jonathan G. Katx, Secretary, SEC, dated Aug. 21, 1996 (''ICI better'').

For a discussion of the letters and responses thereto, see Securities Exchange Act Release No. 38009 (Dec. 2, 1996) (approving File No. SR–NASD–96–28). In response to these letters, the MSRB filed Amendment No. 1 to its proposal. *See* Amendment No. 1, *supra* note 3.

II. Background

Under the Telemarketing and Consumer Fraud and Abuse Prevention Act (''Telemarketing Act''), which became law in August 1994,[6] the Federal Trade Commission adopted detailed regulations (''FTC Rules'')[7] to prohibit deceptive and abusive telemarketing acts and practices that became effective on December 31, 1995.[8] The FTC Rules, among other things, (i) require the maintenance of ''do-not-call'' lists and procedures, (ii) prohibit certain abusive, annoying, or harassing telemarketing calls, (iii) prohibit telemarketing calls before 8 a.m. or after 9 p.m., (iv) require a telemarketer to identify himself or herself, the company he or she works for, and the purpose of the call, and (v) require express written authorization or other verifiable authorization from the customer before the firm may use instruments called ''demand drafts.''[9]

Under the Telemarketing Act, the SEC is required either to promugage or to require the SROs to promulgate rules substantially similar to the FTC Rules, unless the SEC 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 SEC rules already provide for such protection.

The MSRB believes it has implemented the prohibition against certain abusive, annoying, or harassing telemarketing calls contained in the FTC Rules by issuing an interpretation that such conduct is violative of existing rules.[10] The MSRB believes that the proposed rule change addresses all

[6] 15 U.S.C. §§ 6101–08.

[7] 16 CFR 310.

[8] §§ 310.3–4 of FTC Rules.

[9] *Id.* Pursuant to the Telemarketing Act, the FTC Rules do not apply to brokers, dealers, and other securities industry professionals. Section 3(d)(2)(A) of the Telemarketing Act.

A ''demand draft'' is used to obtain funds from a customer's bank account without that person's signature on a negotiable instrument. The customer provides a potential payee with bank account identification information that permits the payee to create a piece of paper that will be processed like a check, including the words ''signature on file'' or ''signature pre-approved'' in the location where the customer's signature normally appears.

[10] The Board implemented the requirement in (ii) referenced above by issuing an interpretation that abusive telemarketing calls are inconsistent with past and equitable principles of trade. *See* MSRB Reports, Vol. 16, No. 3 (Sept. 1996).

other relevant elements of the FTC Rules not covered by existing federal securities laws and regulations.

III. Description of the Proposals

Time Limitations and Disclosure

The proposed rule change adds rule G–39 to prohibit, under proposed paragraph (a) to rule G–39, a broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal securities or retailed 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, and to require, under proposed paragraph (b) to rule G–39, such broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, the telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of municipal securities or related services.

Paragraph (c) to proposed rule G–39 creates exemptions from the time-of-day and disclosure requirements of paragraphs (a) and (b) for telephone calls by associated persons responsible for maintaining and servicing accounts of certain ''existing customers'' assigned to or under the control of the associated persons. Paragraph (c) defines ''existing customer'' as a customer for whom the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealers, carries an account. Proposed subparagraph (c)(i) exempts such calls, by an associated person, 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 under the control of or assigned to such associated person at the time of the transaction or deposit. Proposed subparagraph (c)(ii) exempts such calls, by an associated person, to an existing customer who, at any time, has effected a securities transaction in, or made a deposit of funds or securities into an account under the control of or assigned to the associated person at the time of the transaction or deposit, as long as the customer's account has earned interest or divided income during the preceding twelve months. Each of these exemptions also permits calls by other associated persons acting at the direction of an associated person who is assigned to or controlling the account. Proposed subparagraph (c)(iii) exempts telephone calls to a broker, dealer or municipal securities dealer. The proposed rule change also expressly clarifies that the scope of this rule is limited to the telemarketing calls described herein; the terms of the rule do not otherwise expressly or by implication impose on brokers, dealers or municipal securities dealers any additional requirements with respect to the relationship between a dealer and a customer or between a person associated with a dealer and a customer.[11]

Do Not Call List

The proposed rule change amends rule G–8, on books and records, so that each broker, dealer and municipal securities dealer that engages in telephone solicitation to market its products and services is required to make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from a broker, dealer or municipal securities dealer or a person associated with a broker, dealer or municipal securities dealer.[12]

Demand Draft Authorization and Recordkeeping

The proposed rule change also amends rule G–8, on books and records, to prohibit a broker, dealer or municipal securities dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer from obtaining from a customer or submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account (''demand draft'') without that person's express written authorization, which may include the customer's signature on the instrument. The proposed change to rule G–9, on preservation of records, requires the retention of such authorization for a period of three years. The proposal also states that this provision shall not, however, require maintenance of copies of negotiable instruments signed by customers.[13]

Telemarketing Scripts

The proposed rule change amends rule G–21 to include ''electronic'' messages sent via computer and ''telemarketing scripts'' within the definition of ''advertisement.'' The inclusion of the term ''electronic'' within the definition of ''advertisement'' is intended to apply to communication available to all network subscribers including items displayed over network bulletin boards, and it is intended to apply to messages sent directly to individuals or targeted groups. Therefore, the associated record retention requirement for ''advertisements'' contained in the proposed change to rule G–9(b)(xiii), on record retention, will require dealers to retain telemarketing scripts for three years.

IV Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, with Section 15B(b)(c)(C) of the Act[14] which requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.[15] The proposed rule change is consistent with these objectives in that it imposes time restriction and disclosure requirements, with certain exceptions, on members' telemarketing calls, requires verifiable authorization from a customer for demand drafts, requires the maintenance of a do-not-call list, requires the retention for three years of all substantially different telemarketing scripts, and prevents members from engaging in certain deceptive and abusive telemarketing acts and practices while allowing for legitimate telemarketing practices. The Commission believes that the addition of rule G–39, prohibiting a broker, dealer or person associated with a broker, dealer or municipal securities dealer from making outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal 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, is appropriate.

[11] *See* Amendment No. 1, *Supra* note 3.

[12] The NYSE, the NASD, the CBOE, the Amex, and the PSE also adopted similar rules. *See* Securities Exchange Act Release Nos. 35821 (June 7, 1995), 60 FR 31337 (approving File No. SR–NYSE–95–11); 35831 (June 9, 1995) 60 FR 56624 (approving File No. SR–CBOE–95–63); 36748 (Jan. 19, 1996), 61 FR 2556 (approving File No. SR–AMEX–96–01); and 37897 (Oct. 30, 1996), 61 FR 57937 (approving File No. SR–PSE–96–32).

[13] *See* Amendment No. 1, *supra* note 3.

[14] 15 U.S.C. § 78o–4.

[15] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. § 78c(f).

The Commission notes that, by restricting the times during which a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer may call a residence, the Rules furthers the interest of the public and provides for the protection of investors by preventing brokers, dealers and municipal securities dealers from engaging in unacceptable practices, such as persistently calling members of the public at unreasonable hours of the day and night.

The Commission also believes that the addition of rule G–39, requiring a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer to promptly disclose to the called person in a clear and conspicuous manner the caller's identity and firm, telephone number or address at which the caller may be contacted, and that the purpose of the call is to solicit the purchase of municipal securities or related services, is appropriate. By requiring the caller to identify himself or herself and the purpose of the call, the rule assists in the prevention of fraudulent and manipulative acts and practices by providing investors with information necessary to make an informed decision when purchasing municipal securities. Moreover, by requiring the associated person to identify the firm for which he or she works and the telephone number or address at which the caller may be contacted, the rule encourages responsible use of the telephone to market municipal securities.

The Commission also believes that rule G–39, creating exemptions from the time-of-day and disclosure requirements for telephone calls by associated persons, or other associated persons acting at the direction of such persons, to certain categories of ''existing customers'' is appropriate. The Commission believes it is appropriate to create an exemption for calls to customers with whom there are existing relationships in order to accommodate personal and timely contact with a broker, dealer or municipal securities dealer who can be presumed to know when it is convenient for a customer to respond to telephone calls. Moreover, such an exemption also may be necessary to accommodate trading with customers in multiple time zones across the United States. The Commission, however, believes that the exemption from the time-of-day and disclosure requirements should be limited to calls to persons with whom the broker, dealer or municipal securities dealer has a minimally active relationship. In this regard, the Commission believes that rule G–39 achieves an appropriate balance between providing protection for the public and the municipal brokers' and dealers' interest in competing for customers.

The Commission also believes that the amendment to rule G–8, requiring that a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer obtain from a customer, and maintain for three years, express written authorization when submitting for payment a check, draft, or other form of negotiable paper drawn on a customer's checking, savings, share or similar account, is appropriate. The Commission notes that by requiring a broker, dealer and municipal securities dealer or person associated with a broker, dealer or municipal securities dealer to obtain express written authorization from a customer in the above-mentioned circumstances assists in the prevention of fraudulent and manipulative acts in that it reduces the opportunity for a broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer to misappropriate customers' funds. Moreover, the Commission believes that by requiring brokers, dealers and municipal securities dealers or persons associated with a broker, dealer or municipal securities dealer to retain the authorization for three years, rule G–8 protects investors and the public interest in that it provides interested parties with the ability to acquire information necessary to ensure that valid authorization was obtained for the transfer of a customer's funds for the purchase of a municipal security.

The Commission also believes that the amendment to rule G–8, requiring that each broker, dealer and municipal securities dealer maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from the broker, dealer or municipal securities dealer or its associated persons, is appropriate. By requiring brokers, dealers and municipal securities dealers to maintain a do-not-call list, rule G–8 assists in the prevention of fraudulent and manipulative acts and practices, such as persistently calling investors who have expressed a desire not to receive telephone solicitations.

The Commission also believes that the amendments to rules G–9 and G–21, requiring every broker, dealer and municipal securities dealer to retain for three years from the date of each use each advertisement published or designed for distribution to the public, including, among other things, electronic media and telemarketing scripts, is appropriate. By requiring brokers, dealers and municipal securities dealers to retain advertisements for three years, rules G–9 and G–21 assist in the prevention of fraudulent and manipulative acts and practices and provide for the protection of the public in that they provide interested parties with the ability to acquire copies of the advertisements used to solicit the purchase of municipal securities to ensure that brokers, dealers and municipal securities dealers and associated persons are not engaged in unacceptable telemarketing practices.

Finally, the Commission believes that the proposed rule achieves a reasonable balance between the Commission's interest in preventing members from engaging in deceptive and abusive telemarketing acts and the members' interest in conducting legitimate telemarketing practices.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice thereof in the Federal Register. Amendment No. 1 simply clarifies portions of the proposed Rule and does not raise any significant regulatory concerns. Therefore, the Commission believes that granting accelerated approval to Amendment No. 1 is appropriate and consistent with Section 15B and Section 19(b)(2) of the Act.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the MSRB. all submissions should refer to File No. SR–MSRB–96–06 and should be submitted by January 15, 1997.

V. Conclusion

It is Therefore ordered, pursuant to Section 19(b)(2) of the Act, [16] that the proposed rule change (SR–MSRB–96–06), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–32721 Filed 12–24–96; 8:45 am]

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[Release No. 34–38060; File NO. SR–NASD–96–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by NASD Regulation, Inc. Relating to the Policy and Practice Concerning the Application of the Eligibility Provision in Rule 10304 of the NASD Code of Arbitration Procedure

December 18, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 17, 1996, NASD Regulation, Inc. (''NASD Regulation'') 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 NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.[1]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation amended its policy and practice concerning the application of the eligibility provision in Rule 10304 of the Code of Arbitration Procedure (''Code'') of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') to the effect that arbitrators, not the NASD Regulation staff, shall determine whether a dispute is eligible for arbitration. Below is the test of the policy and practice change.

Pursuant to Rule 10304 of the Code, ''[n]o dispute, claim or controversy shall be eligible for submission to arbitration under this code where six (6) year as have elapsed from the occurrence or event giving rise to the act or dispute, claim or controversy.'' Effective August 1, 1996,[2] the NASD Regulation staff will no longer make preliminary determinations concerning the eligibility of a claim for arbitration. The NASD Regulation staff instead will address questions concerning the eligibility of a claim according to the following procedures:

1. Upon the filing or receipt of a claim, the staff reviews the claim to determine if the claimant has identified when the transaction at issue occurred or when the claim arose. If not identified, the Statement of Claim is retained but the claimant is asked for additional information about the age of the claim.

2. If a claim identifies when the transaction at issue occurred or when the claim arose, it is served on the respondents. It is then the respondent's determination whether to challenge the eligibility of the claim.

3. Any motions to dismiss the claim on eligibility grounds and any responses thereto are forwarded to the arbitrators for a decision.

4. For those cases filed prior to August 1, 1996 where the staff has made a preliminary eligibility ruling in response to a respondent's motion, the moving papers will be forwarded to the arbitrators with a remainder that the arbitrators must review the issue *de novo* and must not accord the staff's preliminary ruling any weight.

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

In its filing with the Commission, NASD Regulation 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 these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

NASD Regulation is soliciting comment on its amended policy and practice concerning the application of the eligibility provision in Rule 10304 of the Code to the effect that arbitrators, not the NASD Regulation staff, shall determine whether a dispute is eligible for arbitration under Rule 10304.[3]

Until recently, the NASD Regulation staff made preliminary eligibility determinations, both before and after a claim had been served, in cases where a bright line test could be applied. Before a claim was served the staff would, upon examination of the allegations in the Statement of Claim, determine if the occurrence or event giving rise to the act or dispute, claim or controversy took place more than six (6) years prior to the filing of the Statement of Claim. If the staff determined that this was the case, it would advise the claimant that the claim was ineligible for arbitration. Once a claim had been served and the staff had previously made a preliminary eligibility determination upon the motion of a party, upon the request of a party the arbitrators could review the preliminary staff determination and accept or reject it. The other self-regulatory organization (''SRO'') arbitration forums have also followed this practice.

NASD Regulation has determined that because the practice of having the staff make preliminary eligibility determinations is not expressly provided for in the Code, questions may arise concerning the legal effect of these determinations. Accordingly, NASD Regulation amended the existing policy and practice to eliminate staff eligibility determinations.

The amended policy, which is consistent with the Code and plain language of Rule 10304, will require the staff, upon the filing or receipt of a claim, to review the claim to determine if the claimant has identified when the transaction at issue occurred or when the claim arose. If not identified, the Statement of Claim is retained but the claimant is asked for additional information about the age of the claim. By requiring that claims identify when the transaction at issue occurred or arose, NASD Regulation is facilitating the ability of the arbitrators to determine if the claim is eligible.

[16] 15 U.S.C. § 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12)(1994).

[1] NASD Regulation originally submitted this proposed rule change in SR–NASD–96–37 on October 15, 1996. That rule filing was submitted for immediate effectiveness under Section 19(b)(3)(A) of the Act. SR–NASD–96–37 was withdrawn simultaneously with the filing of this rule change.

[2] NASD Regulation has been enforcing the amended policy and practice described in SR–NASD–96–37, and in this filing, since August 1, 1996, up to and during the filing of notice in SR–NASD–96–37, and is continuing to enforce the policy at this time.

[3] This policy is intended to be temporary. NASD Regulation intends the policy to remain in effect until an amendment to Rule 10304 can be developed and approved. The NASD's Arbitration Policy Task Force Report on Securities Arbitration Reform recommended suspending the eligibility rule. NASD Regulation, in consultation with the Securities Industry Conference on Arbitration (SICA) and others, is considering other alternatives to suspending the eligibility rule. The policy will not be included in the NASD Manual because NASD Regulation intends to propose a new arbitration eligibility rule within a few months.