

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-99484; File No. SR-MSRB-2023-07)

February 7, 2024

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change to Amend MSRB Rule G-12 to Promote the Completion of Allocations, Confirmations, and Affirmations by the End of Trade Date

I. Introduction

On December 20, 2023, 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 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to amend MSRB Rules G-12 (“Rule G-12”), on uniform practice, to promote the completion of allocations, confirmations, and affirmations by the end of the day on trade date for municipal securities transactions between brokers, dealers and municipal securities dealers and their institutional customers to facilitate the move to a settlement cycle of one business day (the “proposed rule change”).³

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Securities Exchange Act Release No. 34-99226 (December 21, 2023), 88 FR 89796 (December 28, 2023) (“Notice”).

The MSRB requested that the proposed rule change be approved with an implementation date of May 28, 2024, to align with the implementation date for Exchange Act Rule 15c6-1, as amended,⁴ and new Exchange Act Rule 15c6-2.⁵

The proposed rule change was published for comment in the Federal Register on December 28, 2023.⁶ The Commission received two comment letters⁷ on the proposed rule change. On February 1, 2024, the MSRB responded to the comment letters.⁸ As described further below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB stated that the proposed rule change would amend Rule G-12 by adding a new section (k) to promote the completion of allocations, confirmations, and affirmations by the end of the day on trade date for transactions in municipal securities between brokers, dealers and municipal securities dealers (“dealers”) and their institutional customers.⁹ According to the MSRB, this proposed rule change would align with the same-day allocation, confirmation, and

⁴ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13916 (Mar. 6, 2023) (“SEC’s T+1 Adopting Release”).

⁵ See SEC’s T+1 Adopting Release, 88 FR at 13918. If the Commission’s compliance date were to change, the MSRB stated that it would issue a regulatory notice to modify the compliance date to remain aligned with the Commission’s compliance date. See Notice, 88 FR at 89799.

⁶ See Notice, 88 FR at 89796.

⁷ See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 18, 2024 (“SIFMA Letter”); and Letter from RJ Rondini, Director, Securities Operations, Investment Company Institute, dated January 18, 2024 (“ICI Letter”).

⁸ See Letter to Secretary, Commission, from Ernesto A. Lanza, Chief Regulatory and Policy Officer, MSRB, dated February 1, 2024 (“MSRB Letter”).

⁹ See Notice, 88 FR at 89797.

affirmation process for equities and corporate bonds under Exchange Act Rule 15c6-2, as adopted.¹⁰ Although Exchange Act Rule 15c6-2, as adopted,¹¹ does not apply to municipal securities transactions, the MSRB believes that the same-day allocation, confirmation, and affirmation process for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.¹² According to the MSRB, the proposed rule change is designed to facilitate the industry’s move to a settlement cycle of one business day (“T+1”) as described further below.¹³ To align with Exchange Act Rule 15c6-2, as adopted,¹⁴ the MSRB is proposing to amend Rule G-12 by adding a section (k) to require dealers effecting municipal securities transactions subject to the T+1 settlement cycle to either enter into written agreements as specified in the proposed rule change or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of the day on the trade date.¹⁵

A. Background

The Commission initially adopted Exchange Act Rule 15c6-1¹⁶ in 1993 to shorten the settlement cycle of most equity and corporate bond transactions from the industry standard of

¹⁰ 17 CFR 240.15c6-2.

¹¹ Id.

¹² See Notice, 88 FR at 89797.

¹³ Id.

¹⁴ Id.

¹⁵ See Notice, 88 FR at 89797-98.

¹⁶ 17 CFR 240.15c6-1.

within five business days (“T+5”) to requiring settlement within three business days (“T+3”).¹⁷ The T+3 settlement cycle remained in effect until 2017 when the Commission amended Exchange Act Rule 15c6-1¹⁸ to require the settlement of most equity and corporate bond transactions within two business days (“T+2”).¹⁹ On February 15, 2023, the Commission adopted amendments to Exchange Act Rule 15c6-1 (“Amended Exchange Act Rule 15c6-1”)²⁰ to further shorten the settlement process, requiring the settlement of most equity and corporate bond transactions on T+1. In alignment with Amended Exchange Act Rule 15c6-1, the MSRB amended its Rule G-12(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C) to define regular-way settlement as occurring on the first business day following the trade date rather than on the second business day following the trade date.²¹

In the SEC’s T+1 Adopting Release, the Commission stated that implementing a T+1 standard settlement cycle would require significant improvements in the current rates of same-day allocations, confirmations, and affirmations to help ensure timely settlement in a T+1 environment.²² In the SEC’s T+1 Adopting Release, the Commission adopted new Exchange Act

¹⁷ Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891 (Oct. 13, 1993). In adopting Exchange Act Rule 15c6-1, the Commission set a compliance date of June 1, 1995, 58 FR at 52891.

¹⁸ 17 CFR 240.15c6-1.

¹⁹ Securities Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017).

²⁰ 17 CFR 240.15c6-1.

²¹ See Exchange Act Release No. 97585 (May 25, 2023), 88 FR 35961 (June 1, 2023) (File No. SR-MSRB-2023-03).

²² See SEC’s T+1 Adopting Release, 88 FR at 13890.

Rule 15c6-2 to establish requirements that facilitate the completion of allocations, confirmations, and affirmations by the end of the trade date, helping to facilitate the settlement of institutional transactions in a T+1 or shorter standard settlement cycle by promoting the timely and orderly transmission of trade data necessary to achieve settlement.²³

Exchange Act Rule 15c6-2 provides two options by which broker-dealers may comply with the rule, as adopted.²⁴ The first option under Exchange Act Rule 15c6-2 provides that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker-dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer unless such broker-dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, to be completed no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Exchange Act Rule 15c6-1(a).²⁵ The second option under Exchange Act Rule 15c6-2 provides an alternative where, in lieu of a written agreement, a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade

²³ See *id.* at 13947.

²⁴ 17 CFR 240.15c6-2.

²⁵ 17 CFR 240.15c6-2(a)(1).

date in such form as necessary to achieve settlement of the transaction.²⁶ Exchange Act Rule 15c6-2 sets out several specific requirements for such written policies and procedures.²⁷

B. Summary of the Proposed Rule Change

The MSRB explained that shortening the affirmation, allocation, and confirmation process can serve to reduce operational risks that can be present between trade date and settlement date, which can promote investor protection, help reduce the risk settlement fails and the capital required to mitigate this risk.²⁸ The MSRB stated that, in support of these objectives and to promote regulatory consistency, the affirmation, allocation, and confirmation processes for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.²⁹ The MSRB noted that market efficiencies could be eroded if market participants encounter different affirmation, allocation, and confirmation processes when replacing equity or corporate bonds with municipal securities.³⁰ According to the MSRB, in order to continue to maintain consistency across asset classes and harmonize with Amended Exchange Act Rule 15c6-2,³¹ it proposed to amend Rule G-12 to require affirmation, allocation, and confirmation as occurring on T+1.³²

²⁶ 17 CFR 240.15c6-2(a)(2).

²⁷ 17 CFR 240.15c6-2(b)(1-5).

²⁸ See Notice, 88 FR at 89800. See also SEC's T+1 Adopting Release, 88 FR at 13919.

²⁹ See Notice, 88 FR at 89797.

³⁰ See Notice, 88 FR at 89800.

³¹ 17 CFR 240.15c6-2.

³² See Notice, 88 FR at 89799.

The MSRB stated that the proposed amendments to Rule G-12 would add a new section (k) that would establish the core standard of same-day allocation, confirmation and affirmation for all regular-way transactions in municipal securities required to be settled on the first business day following the trade date under Rule G-12(b)(ii)(B) or MSRB Rule G-15(b)(ii)(B).³³ The MSRB explained that, similar to Exchange Act Rule 15c6-2, proposed Rule G-12(k)(ii) would provide two options by which dealers would comply with the rule to meet the standard of same-day allocation, confirmation and affirmation for all regular-way transactions in municipal securities, also referred to as “same-day affirmation.”³⁴ According to the MSRB, the first option under the newly added section (k)(ii)(A) to Rule G-12 would allow dealers to enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.³⁵

The MSRB also explained the second option to meet the core standard of same-day allocation, confirmation, and affirmation is listed in the proposed amendment to Rule G-12 under the newly added section (k)(ii)(B).³⁶ According to the MSRB, under this option dealers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation, and affirmation for the transaction as soon

³³ See id. at 89797.

³⁴ See id. at 89797-98.

³⁵ See id. at 89798.

³⁶ See id.

as technologically practicable and no later than the end of the day on trade date.³⁷ The MSRB explained that the proposed new section Rule G-12(k)(ii)(B) sets five minimum requirements that the policies and procedures must meet.³⁸ The MSRB also explained that under proposed Rule G-12(k)(iii)(A), such policies and procedures must be reasonably designed to ensure that the dealer considers holistically the range of systems and tools it has available to facilitate the same-day affirmation objective, as well as the range of operations and processes that a dealer uses to facilitate same-day affirmations across different customer and commercial relationships.³⁹ The MSRB stated that this policies and procedures alternative in proposed Rule G-12(k)(ii)(B) could help ensure that, when the parties to a transaction encounter obstacles that may prevent them from completing an allocation, confirmation, or affirmation on trade date, they have policies and procedures to navigate, address, and, when possible, mitigate or overcome such obstacles.⁴⁰

C. Compliance Date

The MSRB stated that the compliance date of the proposed rule change will correspond with the industry's transition to T+1 settlement consistent with the compliance date for amended Exchange Act Rule 15c6-1,⁴¹ which is currently scheduled for May 28, 2024. The MSRB indicated that if the Commission's compliance date were to change, the MSRB would issue a

³⁷ See id.

³⁸ See id.

³⁹ See id.

⁴⁰ See id.

⁴¹ Notice, 88 FR at 89799. See also SEC's T+1 Adopting Release, 88 FR at 13916.

regulatory notice to modify the compliance date of the proposed rule change to remain aligned with the Commission's revised compliance date.⁴²

III. Summary of Comments Received to the Proposed Rule Change

The Commission received two comment letters⁴³ on the proposed rule change, as well as a response⁴⁴ from the MSRB to the comment letters. The two commenters expressed support for the proposed rule change and no commenters objected to the proposed rule change.

Two commenters expressed support for the proposed rule change related to the alignment of the allocation, confirmation, and affirmation process for municipal securities with the process for equities and corporate bonds under Exchange Act Rule 15c6-2, as amended.⁴⁵

One commenter opined that that it is not practical for securities trading after 4:30 pm to meet the same-day affirmation requirements and requested that the affirmation process for securities trading after 4:30 pm be extended to the next day.⁴⁶ The MSRB responded that it appreciated this feedback, but noted that extending the affirmation process to the next day would deter the core purpose of the proposed rule change of facilitating the industry's move to T+1 settlement.⁴⁷

⁴² Notice, 88 FR at 89799.

⁴³ See SIFMA Letter; ICI Letter.

⁴⁴ See MSRB Letter.

⁴⁵ See SIFMA Letter; ICI Letter.

⁴⁶ See SIFMA Letter at 3.

⁴⁷ See MSRB Letter at 2-3.

One commenter questioned the practicality of requiring trade allocations by 7:00 pm and affirmations by 9:00 pm on trade date.⁴⁸ The MSRB responded that the proposed rule change does not include a requirement to complete trade allocations by 7:00 pm and affirmations by 9:00 pm on trade date.⁴⁹ Instead, the MSRB explained, the proposed rule change intentionally adopts the language “end of the day on trade date” (rather than requiring a specific time) to allow firms to maximize their internal processes to meet the appropriate cutoff times and other deadlines, as soon as technologically practicable.⁵⁰

One commenter expressed concerns over examination and enforcement of the proposed rule change.⁵¹ The MSRB responded that it does not have enforcement or examination authority and believes that the appropriate regulatory agencies will undertake their examination and enforcement duties in a manner consistent with Exchange Act Rule 15c6-2.⁵²

One commenter requested that enforcement of the proposed rule change be delayed because of its opinion that dealers will have a shorter time frame to implement the provisions of the proposed rule change as compared to the implementation of Exchange Act Rule 15c6-2.⁵³ The MSRB responded that while it believes that dealers have had adequate notice to allow them to make the necessary preparations to comply with the proposed rule change, it is ultimately up to the Commission, the Financial Industry Regulatory Authority (“FINRA”), and other

⁴⁸ See SIFMA Letter at 3.

⁴⁹ See MSRB Letter at 3.

⁵⁰ See id.

⁵¹ See SIFMA Letter at 3.

⁵² See MSRB Letter at 4.

⁵³ See SIFMA Letter at 4.

appropriate regulatory agencies to make determinations regarding their examination or enforcement postures.⁵⁴

The MSRB stated that it continues to believe the proposed rule change is reasonable and that the proposed rule change is necessary and appropriate to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities by applying the same standard for same-day affirmation across all asset classes.⁵⁵

IV. Discussion and Commission's Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB's response thereto. 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 MSRB.

In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15B(b)(2)(C), which provides, in part, 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

⁵⁴ See MSRB Letter at 4-5.

⁵⁵ See id. at 5.

interest.⁵⁶ The Commission believes that the proposed rule change will: (i) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities by applying the same standard for same-day allocation, confirmation and affirmation established by the SEC to transactions in municipal securities; (ii) remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products; and (iii) protect investors, municipal entities, obligated persons, and the public interest.

A. Foster Cooperation and Coordination with Persons Engaged in Regulating, Clearing, Settling, Processing Information with Respect to, and Facilitating Transactions in Municipal Securities

The Commission believes that the proposed amendments to Rule G-12 would 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. In particular, the Commission notes that the proposed rule change applies the same standard for same-day allocation, confirmation and affirmation established by the Commission to transactions in municipal securities. As such, the Commission finds that the proposed rule change would continue to ensure that the standard for same-day allocation, confirmation and affirmation remains synchronous across classes of securities (including municipal securities). By avoiding different standards for same-day allocation, confirmation and affirmation for municipal securities, the proposed rule change would avoid regulatory confusion, simplify compliance, and reduce risk (e.g., operational error).

In addition, the proposed rule change would foster cooperation and coordination among regulators (such as the MSRB, the Commission, FINRA, and other authorities that examine

⁵⁶ 15 U.S.C. 78q-4(b)(2)(C).

dealers for compliance with MSRB rules) by having similar same-day allocation, confirmation, and affirmation standards as the Commission. The Commission further believes that the proposed rule change would foster cooperation and coordination among market participants by incentivizing dealers to identify and deploy effective practices for achieving allocations, confirmations, and affirmations ex ante, thereby improving the rate of allocations, confirmations, and affirmations over time, which in turn can enhance the adoption of the industry's move to T+1. These positive effects would be experienced by municipal securities market participants involved in regulating, clearing and settling, and processing information for municipal securities transactions. As the proposed rule change promotes cooperation and coordination among market participants and regulators, the Commission finds that the proposed rule change would 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.

B. Remove Impediments to and Perfect the Mechanism of a Free and Open Market

The Commission also believes the proposed rule change would serve to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products. The Commission notes that the proposed rule change yields long-term benefits for a range of market participants by promoting an orderly settlement process that reduces exceptions and other processing errors that could lead to settlement failures. In particular, the Commission notes that proposed rule change would allow for agreements or policies and procedures to be in place that would give dealers means by which to address potential obstacles in the same-day affirmation, allocation, and confirmation processes. The Commission believes that such agreements or policies and procedures will promote accuracy and

efficiency in the market by lowering the likelihood of a settlement failure and fostering improvements to processes over time. As the proposed rule change reduces operational risk and increases accuracy and efficiency, the Commission finds that the proposed rule change removes impediments to and perfects the mechanism of a free and open market in municipal securities and municipal financial products.

C. Protect Investors, Municipal Entities, Obligated Persons, and the Public Interest

The Commission believes that the proposed rule change would promote investor protection and the public interest. The Commission notes that without the proposed rule change, market participants would encounter different standards between municipal securities and other securities such as equity and corporate bonds, which could result in market inefficiencies and cause confusion, especially for investors who trade both municipal securities and other securities. The Commission notes that the proposed rule change harmonizes those standards across security classes, which reduces the potential for settlement failures, and more generally, reduces the potential for operational risk. Given the associated risk reduction, the Commission finds that the proposed rule change would promote investor protection and the public interest.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. Section 15B(b)(2)(C) of the Act⁵⁷ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the proposed rule change to amend Rule G-12 would not impose any burden on competition and would not have an impact on competition, as the proposed rule change would apply a uniform

⁵⁷ 15 U.S.C. 78o-4(b)(2)(C).

standard for same-day allocation, confirmation, and affirmation for municipal securities to align with the standard applicable to, among other securities, equity and corporate bond transactions under Amended Exchange Act Rule 15c6-2.⁵⁸ In addition, the proposed rule change would apply equally to all dealers. As all components of the proposed rule change would be applied equally to all registered dealers transacting in municipal securities, the Commission believes that the proposed rule change would not impose any additional burdens on competition that are not necessary or appropriate in furtherance of the purposes of the Act.

The Commission also finds that the proposed rule change will not hinder capital formation. As noted above, the proposed rule change ensures a uniform standard for same-day allocation, confirmation, and affirmation across all asset classes of securities (including municipal securities), and would be applied equally to all dealers. As such, the Commission believes that the proposed rule change would promote clearer regulatory requirements for the trade matching and affirmation process of municipal securities transactions. Furthermore, a shorter standard for allocations, confirmations, and affirmations may reduce the volume of unsettled transactions that could potentially pose settlement risk, and decrease liquidity risk by enabling market participants to access the proceeds of their transactions sooner. Therefore, the Commission also finds that the proposed rule change would promote efficiency of the trade matching and affirmation process, and would not negatively impact the municipal securities market's operational efficiency.

As noted above, the Commission received two comment letters on the filing. The Commission believes that the MSRB, through its response, addressed the commenters' concerns.

⁵⁸ 17 CFR 240.15c6-2.

For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Exchange Act.

V. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,⁵⁹ that the proposed rule change (SR-MSRB-2023-07) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁶⁰

Sherry R. Haywood,

Assistant Secretary.

⁵⁹ 15 U.S.C. 78s(b)(2).

⁶⁰ 17 CFR 200.30-3(a)(12).