SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-81233; File No. SR-MSRB-2017-03)

July 27, 2017

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Consisting of Proposed Amendments to MSRB Rule G-26, on Customer Account Transfers, to Modernize the Rule and Promote a Uniform Customer Account Transfer Standard

I. Introduction

On May 26, 2017, the Municipal Securities Rulemaking Board (the "MSRB" or "Board") filed with the Securities and Exchange Commission (the "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 consisting of proposed amendments to MSRB Rule G-26, on customer account transfers, to modernize the rule and promote a uniform customer account transfer standard for all brokers, dealers, municipal securities brokers and municipal securities dealers (collectively, "dealers") (the "proposed rule change"). The proposed rule change was published for comment in the Federal Register on June 14, 2017.[3]

The Commission received two comment letters on the proposed rule change.[4] On July 20,

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

2 17 CFR § 240.19b-4.

3 Securities Exchange Act Release No. 80890 (June 7, 2017) (the "Notice of Filing"), 82 FR 27307 (June 14, 2017).

4 See Letter to Secretary, Commission, from Mike Nicholas, Chief Executive Officer, Bond Dealers of America ("BDA"), dated July 5, 2017 (the "BDA Letter"); and, Letter to Secretary, Commission, from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA"), dated July 5, 2017 (the "SIFMA Letter").

2017, the MSRB responded to those comments[5] and filed Amendment No. 1 to the proposed rule change ("Amendment No. 1").[6] The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested parties and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of Proposed Rule Change

In the Notice of Filing, the MSRB stated that the purpose of the proposed rule change is to modernize Rule G-26 and promote a uniform customer account transfer standard for all dealers.[7] The MSRB stated that it believes that, by including certain provisions parallel to the customer account transfer rules of other SROs, particularly FINRA Rule 11870, in current Rule G-26, the transfer of customer securities account assets will be more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.[8]

As further described by the MSRB in the Notice of Filing, Rule G-26 requires dealers to cooperate in the transfer of customer accounts and specifies procedures for carrying out the transfer process.[9] According to the MSRB, such transfers occur when a customer decides to

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5 See Letter to Secretary, Commission, from Carl E. Tugberk, Assistant General Counsel, MSRB, dated July 20, 2017 (the "MSRB Response Letter"), available at https://www.sec.gov/comments/sr-msrb-2017-03/msrb201703-1871538-156223.pdf.

6 Id. In Amendment No. 1, the MSRB proposed to amend the requested implementation date to provide for a longer implementation period and later effective date by proposing an effective date six months from the date of Commission approval rather than three months.

7 See Notice of Filing.

8 Id.

9 Id.

transfer an account from one dealer, the carrying party (i.e., the dealer from which the customer is requesting the account be transferred) to another, the receiving party (i.e., the dealer to which the customer is requesting the account be transferred).[10] Moreover, Rule G-26 currently establishes specific time frames within which the carrying party is required to transfer a customer account; limits the reasons for which a receiving party may take exception to an account transfer instruction; provides for the establishment of fail-to-receive and fail-to-deliver contracts;[11] and requires that fail contracts be resolved in accordance with MSRB close-out procedures, established by MSRB Rule G-12(h).[12] In addition, current Rule G-26 requires the use of the automated customer account transfer service in place at a registered clearing agency registered with the Commission when both dealers are direct participants in the same clearing agency.[13] Finally, the rule contains a provision for enhancing compliance by requiring submission of transfer instructions to the enforcement authority with jurisdiction over the dealer carrying the account, if the enforcement authority requests such submission.[14]

As discussed in the Notice of Filing, the MSRB adopted Rule G-26 in 1986 as part of an industry-wide initiative to create a uniform customer account transfer standard by applying a customer account transfer procedure to all dealers that are engaged in municipal securities

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10 Id.

11 The MSRB stated that fail-to-receive and fail-to-deliver contracts are records maintained by the receiving party and the carrying party, respectively, when a customer account transfer fails. See Notice of Filing.

12 See Notice of Filing.

13 See Rule G-26(h).

14 See Rule G-26(i).

activities.[15] The uniform standard for all customer account transfers (i.e., automated and manual processes) is largely driven by the National Securities Clearing Corporation's ("NSCC") Automated Customer Account Transfer Service ("ACATS").[16] The MSRB stated that it adopted Rule G-26 in conjunction with the adoption of similar rules by other self-regulatory organizations ("SROs")—New York Stock Exchange ("NYSE") Rule 412 and Financial Industry Regulatory Authority ("FINRA") Rule 11870.[17] The MSRB stated that those rules are not applicable to certain accounts at dealers, particularly municipal security-only accounts and accounts at bank dealers.[18] Current Rule G-26 governs the municipal security-only customer account transfers performed by those dealers to ensure that all customer account transfers are subject to regulation that is consistent with the uniform industry standard. Thus, the MSRB noted, in order to maintain consistency and the uniform standard, the MSRB has, from time to time, modified the requirements of Rule G-26 to conform to certain provisions of the parallel FINRA and NYSE customer account transfer rules, as well as to enhancements made to the ACATS process by NSCC, that had relevance to municipal securities.[19]

Residual Credit Positions

The MSRB has proposed to update Rule G-26 to include the transfer of customer account residual credit positions.[20] The MSRB noted that in 1989 the NSCC expanded ACATS to

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15 See Notice of Filing.

16 Id.

17 Id.

18 Id.

19 Id.

20 See Notice of Filing and proposed Rule G-26(k)(ii).

include the transfer of customer account residual credit positions. These are assets in the form of cash or securities that can result from dividends, interest payments or other types of assets received by the carrying party after the transfer process is completed, or which were restricted from being included in the original transfer.[21] The MSRB noted that the NYSE and FINRA made corresponding changes to their rules that require dealers that participate in a registered clearing agency with automated residual credit processing capabilities to utilize those facilities to transfer residual credit positions that accrue to an account after a transfer.[22] Prior to allowing for these transfers, a check frequently would have to be produced, or a delivery bill or report, which then required a check to be issued or securities to be transferred.[23] The MSRB stated that this process could result in lost or improperly routed checks and securities, as well as the expenses of postage and processing.[24] According to the MSRB, the proposed amendments to Rule G-26(k)(ii) would benefit both customers and dealers by substantially decreasing the paperwork, risks, inefficiencies and costs associated with the practice of check issuance and initiation of securities deliveries to resolve residual credit positions.[25]

Partial Account Transfers

The MSRB has proposed to update Rule G-26 to permit partial account transfers under the same time frames applicable to transfers of entire accounts, which the MSRB believes would

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21 See Notice of Filing.

22 Id.

23 Id.

24 Id.

25 Id.

provide dealers with the ability to facilitate more efficient and expeditious transfers, as well as increase accountability for dealers and reduce difficulties encountered by customers related to transfers.[26] The proposed rule change would require that dealers expedite all authorized municipal securities account asset transfers, whether through ACATS or via other means permissible, and coordinate their activities with respect thereto. The MSRB stated that this proposed change would further competition among dealers by more easily allowing investors to transfer their municipal securities to the dealer of their choice.[27] The MSRB noted that in 1994, the NYSE and FINRA amended their rules to permit partial or non-standard customer account transfers (i.e., the transfer of specifically designated assets from an account held at one dealer to an account held at another dealer).[28] The MSRB further noted that in 2004, the NYSE and FINRA further amended their rules generally to apply the same procedural standards and time frames that are applicable to the transfer of entire accounts to partial transfers as well.[29] According to the MSRB, because customer and dealer obligations resulting from the transfer of an entire account differ from the obligations arising from the transfer of specified assets within an account that will remain active at the carrying party, the NYSE and FINRA rules distinguish between the transfer of security account assets in whole or in specifically designated part.[30] The MSRB stated that, as an example, it would not be necessary for a customer to instruct the

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26 See Notice of Filing and proposed Rule G-26(b), (c)(ii), (d)(i), (e)(ii), (k)(i).

27 See Notice of Filing.

28 Id.

29 Id.

30 Id.

carrying party as to the disposition of his or her assets that are nontransferable if the customer is not transferring the entire account.[31]

Transfer of Third-Party and/or Proprietary Products

The MSRB stated that the proposed rule change would amend Rule G-26 to be consistent with the NSCC's Rule 50 regarding the transfer of third-party and/or proprietary products that the receiving party is unable to receive or carry —which allow the receiving party to review the asset validation report, designate those nontransferable assets it is unable to receive/carry, provide the customer with a list of those assets, and require instructions from the customer regarding their disposition—by requiring the receiving party to designate any third-party products it is unable to receive.[32] The MSRB stated that the proposed rule change will eliminate the present need for reversing the transfer of nontransferable assets, reduce the overall time frame for transferring third-party products, and generally reduce delay in and the cost of customer account transfers.[33]

Electronic Signature for Customer Authorization of Account Transfer

Under current Rule G-26, a customer can initiate a transfer of a municipal securities account from one dealer to another by giving written notice to the receiving party.[34] The MSRB states that under current Rule G-26(c)(i), customers and dealers may use Form G-26 (the transfer instruction prescribed by the MSRB), the transfer instructions required by a clearing agency registered with the SEC in connection with its automated customer account transfer system or

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31 Id.

32 See Notice of Filing and proposed Rule G-26(e)(vii).

33 See Notice of Filing.

34 Id.

transfer instructions that are substantially similar to those required by such clearing agency to accomplish a customer account transfer.[35] The proposed rule change would replace the written notice requirement under current Rule G-26 with an authorized instruction requirement, which could be a customer's actual written or electronic signature.[36] The MSRB stated that updating the written notice requirement in Rule G-26 to include electronic signatures will expedite the transfer of customer assets between dealers and more easily allow investors to transfer their assets to the dealer of their choice.[37]

Shortened ACATS Cycle

The proposed rule change would shorten the time for validating or taking exception to the transfer instructions from three days to one day, and shorten the time for completing a customer account transfer from four days to three days, respectively.[38] Rule G-26 currently specifies three days as the time to validate or take exception to the transfer instructions and four days as the time frame for completion of a customer account transfer.[39] The MSRB stated that reducing those time frames to one and three day(s), respectively, will ensure consistency with the industry standard set by the NSCC and harmonization with other SROs, while providing greater efficiency and improving the customer experience in the customer account transfer process.[40]

Definition of "Nontransferable Asset"

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35 Id.

36 See Notice of Filing and Supplementary Material .01 to proposed Rule G-26.

37 See Notice of Filing.

38 See Notice of Filing and proposed Rule G-26(d)(i), (f)(i).

39 See Notice of Filing and Rule G-26(d)(i), (v).

40 See Notice of Filing and proposed Rule G-26(d)(i), (f)(i).

In response to a specific question in the Request for Comment,[41] SIFMA indicated that dealers may sell proprietary products that are municipal securities to customers, the transferability of which FINRA Rule 11870 addresses.[42] Given this affirmative response, and because a receiving party cannot hold a proprietary product of a carrying party, the MSRB stated that it is important to include proprietary products of the carrying party in the definition of "nontransferable asset" to better harmonize with FINRA's corresponding definition and to ensure that bank dealers, and other dealers subject to Rule G-26, have clarity when handling such proprietary products in customer account transfers.[43] The proposed rule change would also provide the following options for the disposition of such proprietary products that would be nontransferable assets: liquidation; retention by the carrying party for the customer's benefit; or transfer, physically and directly, in the customer's name to the customer.[44]

Disposition of Nontransferable Assets

Under current Rule G-26, if there are nontransferable assets included in a transfer instruction, there are multiple options available to the customer for their disposition, and the carrying party must request further instructions from the customer with respect to which option the customer would like to exercise.[45] Depending on the type of nontransferable asset at issue,

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41 See Notice of Filing and MSRB Notice 2017-01 (Jan. 6, 2017) ("Request for Comment"), Question 8 ("Do municipal securities brokers or municipal securities dealers sell proprietary products that are municipal securities to customers?").

42 See Notice of Filing and Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, SIFMA, to Ronald W. Smith, Corporate Secretary, MSRB, dated February 17, 2017 ("SIFMA Response Letter to Request for Comment").

43 See Notice of Filing and proposed Rule G-26(a)(iii)(C); FINRA Rule 11870(c)(1)(D)(i).

44 See Notice of Filing and proposed Rule G-26(c)(ii)(A)-(C).

45 See Notice of Filing and Rule G-26(c)(ii).

FINRA Rule 11870(c) requires either the carrying party or the receiving party to provide the customer with a list of the specific nontransferable assets and request the customer's desired disposition of such assets. For example, FINRA Rule 11870(c)(4) places the burden on the receiving party for third-party products that are nontransferable.[46] In response to the Request for Comment, SIFMA noted that current industry practice and standard requires that, depending on the type of nontransferable asset, either the carrying party or the receiving party provide the customer with a list of the nontransferable assets and request the customer's desired disposition of such assets, as opposed to limiting that requirement to the carrying party, which was proposed in the Request for Comment.[47] The MSRB stated that, because there are third-party products that are municipal securities that a receiving party may not be able to carry, and such a receiving party may be the only party to a customer account transfer with that knowledge, allowing the receiving party to notify the customer of any nontransferable assets in a transfer and request their disposition in such circumstances will help ensure that nontransferable assets are properly identified and that both parties to a transfer are coordinating closely to complete the transfer efficiently and expeditiously.[48] The MSRB also stated that to allow for this, to improve harmonization with FINRA Rule 11870 and to promote a uniform standard for all dealers, the proposed rule change would explicitly require that the carrying party and/or the receiving party provide the list of nontransferable assets.[49]

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46 See Notice of Filing.

47 See Notice of Filing and SIFMA Response Letter to Request for Comment.

48 See Notice of Filing.

49 See Notice of Filing and proposed Rule G-26(c)(ii).

Liquidation of Nontransferable Assets

The proposed rule change would require a referral to the program disclosure for a municipal fund security or to the registered representative for specific details regarding any redemption or liquidation-related fees.[50] Under current Rule G-26, one of the disposition options for nontransferable assets available to customers is liquidation.[51] When providing customers with this option, dealers are required to specifically indicate any redemption or other liquidation-related fees that may result from such liquidation and that those fees may be deducted from the money balance due the customer.[52] FINRA Rule 11870 provides the same requirements, but also requires dealers to refer customers to the disclosure information for third-party products or to the registered representative at the carrying party for specific details regarding any such fees, as well as to distribute any remaining balance to the customer and an indication of the method of how it will do so.[53] The MSRB stated that the inclusion of these additional requirements in Rule G-26 will help ensure that customers receive as much relevant information as possible regarding potential redemption fees, including for municipal fund securities.[54] In addition, the proposed rule change would require dealers to specifically indicate any redemption or other liquidation-related fees that may result from liquidation and that those fees may be deducted from the money balance due the customer.[55] The MSRB stated that it is important to require explicitly the

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50 See Notice of Filing and proposed Rule G-26(c)(ii).

51 See Notice of Filing and Rule G-26(c)(ii).

52 See Notice of Filing and Rule G-26(c)(ii)(A).

53 See Notice of Filing and FINRA Rule 11870(c)(3)(A), (c)(4)(A).

54 See Notice of Filing and proposed Rule G-26(c)(ii)(A).

55 See Notice of Filing.

distribution of the remaining balance to the customer and an indication of how it will be accomplished.[56]

Transfer of Nontransferable Assets to Customers

The MSRB stated that some municipal securities that are nontransferable assets could transferred, physically and directly, to the customer, in a manner similar to FINRA Rule 11870(c)(3)(C)—which provides an option for nontransferable assets that are proprietary products to be transferred, physically and directly, in the customer's name to the customer—and have therefore included amendments in the proposed rule change that add this option to the alternative dispositions available to customers.[57] The MSRB noted that not all municipal securities may be appropriate for this option and that the carrying party would not be required to physically deliver any nontransferable assets of which it does not have physical possession.[58]

Timing of Disposition of Nontransferable Assets

Under the proposed rule change, the Rule G-26 would be amended to harmonize with FINRA Rule 11870(c)(5) to require that the money balance resulting from liquidation must be distributed, and any transfer instructed by the customer must be initiated, within five business days following receipt of the customer's disposition instruction.[59] Rule G-26 currently does not provide a time frame for the carrying party to effect the disposition of nontransferable assets as

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56 See Notice of Filing and proposed Rule G-26(c)(ii)(A).

57 See Notice of Filing and proposed Rule G-26(c)(ii)(C).

58 See Notice of Filing.

59 Id.

instructed by the customer. The MSRB stated that it is important to provide clarity as to the timing of these dispositions to ensure that customer transfers are handled expeditiously.[60]

Transfer Procedures

Current Rule G-26(d) establishes, as part of the transfer procedures, the requirements for validation of the transfer instructions and completion of the transfer.[61] The proposed rule change would provide the provisions describing the specific validation/exception and completion processes in new, separate sections of the rule.[62] As a result of this restructuring, the subsequent, existing sections of Rule G-26 would be renumbered in proposed Rule G-26. The MSRB stated that these amendments will detail the specific validation/exception and completion processes more clearly and better harmonize with FINRA Rule 11870.[63]

Validation of Transfer Instructions

Under current Rule G-26(d)(iv)(A), upon validation of a transfer instruction, the carrying party must "freeze" the account to be transferred and return the transfer instruction to the receiving party with an attachment indicating all securities positions and money balance in the account as shown on the books of the carrying party.[64] Because the proposed rule change would allow for partial account transfers of specifically designated municipal securities assets, the proposed rule change would require the account freeze only for validation of the transfer of an entire account, as the customer's account at the carrying party should not be frozen if certain

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60 See Notice of Filing and proposed Rule G-26(c)(iii).

61 See Notice of Filing.

62 See Notice of Filing and proposed Rule G-26(e), (f).

63 See Notice of Filing.

64 Id.

municipal securities would remain in the account and the customer may want to continue transacting in that account.[65] Under the proposed rule change, for whole and partial account transfers, the carrying party would continue to have the responsibility to return the instructions and indicate the securities positions and money balance to be transferred.[66] However, the MSRB noted that to identify the assets held in the customer account at the carrying party more comprehensively and to harmonize with FINRA Rule 11870(d)(5)(A), the proposed rule change would also require the carrying party to indicate safekeeping positions,[67] which are defined to be any security held by a carrying party in the name of the customer, including securities that are unendorsed or have a stock/bond power attached thereto.[68]

Additionally, current Rule G-26(d)(iv)(B) requires the carrying party to include a then-current market value for all assets to be transferred. FINRA Rule 11870(d)(5) provides that the original cost should be used as the value if a then-current value cannot be determined for an asset.[69] The MSRB stated that the proposed rule change would include a provision substantially similar to the FINRA provision to provide clarity on how any such municipal securities should be valued and to improve harmonization between the MSRB and FINRA rules.[70]

Exceptions to Transfer Instructions

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65 See Notice of Filing and proposed Rule G-26(e)(i).

66 See Notice of Filing and proposed Rule G-26(e)(ii).

67 Id.

68 See Notice of Filing and proposed Rule G-26(a)(vi).

69 See Notice of Filing.

70 See Notice of Filing and proposed Rule G-26(e)(ii).

As part of the validation process, current Rule G-26 provides that the carrying party may take certain exceptions to the transfer instructions authorized by the customer and provided by the receiving party. Specifically, Rule G-26(d)(ii) allows a carrying party to take exception to a transfer instruction only if it has no record of the account on its books or the transfer instruction is incomplete.[71] FINRA Rule 11870(d)(3) provides numerous other bases to take exception to a transfer instruction that—according to the MSRB—would more comprehensively address potential issues with a transfer instruction with which a carrying party could reasonably take issue and better harmonize with FINRA Rule 11870.[72] Accordingly, the MSRB stated, in addition to the existing bases for exceptions, the proposed rule change would allow a carrying party to take exception to a transfer instruction if: (1) the transfer instruction contains an improper signature; (2) additional documentation is required (e.g., legal documents such as death or marriage certificate); (3) the account is "flat" and reflects no transferable assets;[73] (4) the account number is invalid (i.e., the account number is not on the carrying party's books);[74] (5) it is a duplicate request; (6) it violates the receiving party's credit policy; (7) it contains unrecognized residual credit assets (i.e., the receiving party cannot identify the customer); (8) the customer rescinds the instruction (e.g., the customer has submitted a written request to cancel the

71 See Notice of Filing and Rule G-26(d)(ii).

72 See Notice of Filing.

73 The MSRB stated that for such an exception, the receiving party would have to resubmit the transfer instruction only if the most recent customer statement is attached. See Notice of Filing and proposed Rule G-26(e)(v).

74 The MSRB stated that if the carrying party has changed the account number for purposes of internally reassigning the account, it would be the responsibility of the carrying party to track the changed account number, and such reassigned account number would not be considered invalid for purposes of fulfilling a transfer instruction. See Notice of Filing and proposed Rule G-26(e)(iv)(F).

transfer); (9) there is a mismatch of the Social Security Number/Tax ID (e.g., the number on the transfer instruction does not correspond to that on the carrying party's records); (10) the account title on the transfer instruction does not match that on the carrying party's records; (11) the account type on the transfer instruction does not correspond to that on the carrying party's records; (12) the transfer instruction is missing or contains an improper authorization (e.g., the transfer instruction requires an additional customer authorization or successor custodian's acceptance authorization or custodial approval; or (13) the customer has taken possession of the assets in the account (e.g., the municipal securities account assets in question have been transferred directly to the customer).[75] The MSRB stated that in order to include the exceptions to transfer instructions with the provisions related to validation, the proposed rule change would move the existing exceptions and add the new exceptions in the new separate section on validation of transfer instructions.[76]

Additionally, FINRA Rule 11870(d)(2) precludes a carrying party from taking an exception and denying validation of the transfer instruction because of a dispute over security positions or the money balance in the account to be transferred, and it requires the carrying party to transfer the positions and/or money balance reflected on its books for the account.[77] The MSRB stated that this provision will be equally valuable to transfers covered under Rule G-26 to ensure that customers are able to hold their municipal securities at their dealers of choice.[78]

Recordkeeping and Customer Notification

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75 See Notice of Filing and proposed Rule G-26(e)(iv).

76 See Notice of Filing.

77 Id.

78 See Notice of Filing and proposed Rule G-26(e)(iii).

According to the MSRB, during the validation process for a customer account transfer, there is a risk that the parties to the transfer fail to identify certain nontransferable assets, resulting in the improper transfer of those assets.[79] FINRA Rule 11870(c)(1)(E) requires that the parties promptly resolve and reverse any such misidentified nontransferable assets, update their records and bookkeeping systems and notify the customer of the action taken. The proposed rule change would require that the parties promptly resolve and reverse any such misidentified nontransferable assets, update their records and bookkeeping systems and notify the customer of the action taken.[80]The MSRB stated that believes it is important to add this explicit requirement to Rule G-26 to ensure that dealers address any errors in the transfer process promptly.[81]

Transfer Rejection

The proposed rule change would provide the receiving party the ability to deny a customer's transfer request due to noncompliance with its credit policies or minimum asset requirements.[82] FINRA Rule 11870(d)(8) allows the receiving party to reject a full account transfer if the account would not be in compliance with its credit policies or minimum asset requirements.[83] A receiving party may not reject only a portion of the account assets (i.e., the particular assets not in compliance with the dealer's credit policies or minimum asset requirement). Rule G-26 currently does not include any comparable provisions, but the MSRB

79 See Notice of Filing.

80 See Notice of Filing and proposed Rule G-26(e)(vi).

81 See Notice of Filing.

82 See Notice of Filing and proposed Rule G-26(e)(viii).

83 See Notice of Filing.

stated that it is reasonable for a receiving party to deny a customer's transfer request due to noncompliance with its credit policies or minimum asset requirements.[84]

Resolution of Discrepancies

Rule G-26(f) currently provides that any discrepancies relating to positions or money balances that exist or occur after transfer of a customer account must be resolved promptly.[85] FINRA Rule 11870(g) includes the same standard but also requires that the carrying party must promptly distribute to the receiving party any transferable assets that accrue to the customer's transferred account after the transfer has been effected. Further, FINRA Rule 11870(g) provides clarity to the promptness requirement by requiring that any claims of discrepancies after a transfer must be resolved within five business days from notice of such claim or the non-claiming party must take exception to the claim and set forth specific reasons for doing so. The proposed rule change would include these same additional provisions.[86] The MSRB stated that these amendments will provide the same level of clarity as, and improve harmonization with, FINRA Rule 11870(g).[87]

Participant in a Registered Clearing Agency

Rule G-26(h) currently requires the account transfer procedure to be accomplished pursuant to the rules of and through a registered clearing agency when both the carrying party and the receiving party are direct participants in a clearing agency that is registered with the SEC

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84 See Notice of Filing.

85 See Notice of Filing and Rule G-26(f).

86 See Notice of Filing proposed Rule G-26(i)(ii)-(iii).

87 See Notice of Filing.

and offers automated customer securities account transfer capabilities.[88] FINRA Rule 11870(m) has a similar requirement that provides an exception for specifically designated securities assets transferred pursuant to the submittal of a customer's authorized alternate instructions to the carrying party.[89] FINRA Rule 11870(m)(3) also requires the transfer of residual credit positions through the registered clearing agency. FINRA Rule 11870(m)(4) also prescribes several conditions for such transfers for participants in a registered clearing agency.[90] The MSRB stated that customers and the parties to a customer account transfer should have the option of performing the transfer outside of the facilities of a registered clearing agency when an appropriate authorized alternate instruction is given.[91] Additionally, the MSRB stated the additional prescription related to the process provided by FINRA will give greater clarity to customers and dealers.[92] The MSRB, therefore, included these provisions in the proposed rule change.[93]

Transfer of Residual Positions

The proposed rule change would include a provision with the same 10-business-day requirement as FINRA Rule 11870(n)[94] that is not limited to when both parties are direct participants in a clearing agency registered with the SEC offering automated customer securities

88 See Notice of Filing and Rule G-26(h).

89 See Notice of Filing.

90 See Notice of Filing and proposed Rule G-26(a)(iv)-(v).

91 See Notice of Filing.

92 Id.

93 See Notice of Filing and proposed Rule G-26(k).

94 See Notice of Filing.

account transfer capabilities.[95] The MSRB stated that the majority of customer account transfers subject to Rule G-26 occur manually, and that it is important to provide clarity on the obligation and timing required to transfer such credit balances for any customer account transfer.[96]

Written Procedures

Current Rule G-26 does not itself include any requirement for policies and procedures.[97] The proposed rule change includes a requirement for dealers to document the procedures they follow to effect customer account transfers and to require explicitly written procedures for supervision of the same.[98] The MSRB stated that such a requirement is consistent with MSRB Rule G-27, on supervision.[99]

FINRA Rule 11650 – Transfer Fees

The MSRB stated that it is important to clarify which party is responsible for the fees incurred for a customer account transfer. The proposed rule change would include a provision identical to FINRA Rule 11650 which specifies that the party at the instance of which a transfer of securities is made shall pay all service charges of the transfer agent. [100]

III. Summary of Comments Received and MSRB's Responses to Comments

As noted previously, the Commission received two comment letters on the proposed rule change, as well as the MSRB Response Letter and Amendment No. 1. SIFMA expressed general

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95 See Notice of Filing and proposed Rule G-26(g).

96 See Notice of Filing.

97 Id.

98 See Notice of Filing and Supplementary Material .02 to proposed Rule G-26.

99 See Notice of Filing.

100 See Notice of Filing and Supplementary Material .03 to proposed Rule G-26.

support for the stated purpose of the proposed rule change, although SIFMA disapproved of the proposed rule change in its current form and stated that the proposed rule change is unnecessary and not an efficient way to achieve its stated purposes.[101] SIFMA suggested alternative amendments to Rule G-26 that it believed would result in a more efficient rule that would be more closely harmonized with similar SRO rules.[102] BDA suggested that the Commission request that FINRA harmonize the timeframe in FINRA Rule 11870(f)(1) with MSRB Rules G-12(h) and G-26 as soon as practicable and that the MSRB amend the proposed rule change to allow for a longer period between the adoption of the proposed rule change and its effective date.[103] The MSRB stated that it believes the proposed rule change is consistent with its statutory mandate and has responded to the comments, as discussed below.[104]

1. Alternative Amendments to Rule G-26 to Further Purpose of Proposed Rule Change

SIFMA stated that the MSRB should not have rejected its previously submitted suggestion to amend Rule G-26 to follow the NYSE model and incorporate FINRA Rule 11870 by reference because, contrary to the MSRB statement in the Notice of Filing, "the MSRB would not be seen to be delegating its core mission to protect the municipal securities market, as there is nothing particularly unique regarding the transfer of customer accounts with respect to municipal securities."[105] SIFMA noted that it believed there is precedence in the MSRB

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101 See SIFMA Letter.

102 Id.

103 See BDA Letter.

104 See MSRB Response Letter.

105 See SIFMA Letter and SIFMA Response Letter to Request for Comment.

rulebook for making incorporating the rules of other SROs by reference in a MSRB rule.[106] SIFMA also suggested that, as an alternative to incorporation by reference, "FINRA member firms could elect to follow FINRA 11870 in lieu of MSRB Rule G- 26, NYSE member firms can follow NYSE Rule 412 in lieu of MSRB Rule G-26, and firms that are not covered by either, then must follow MSRB Rule G-26."[107] SIFMA stated that it believes adoption of one of these, or similar, alternative would be an "efficient way to reduce confusion and risk to investors, and reduce regulatory risk to dealers."[108]

The MSRB responded that, as it previously noted in the Notice of Filing, it continues to believe that Rule G-26 is necessary and that the proposed rule change is the appropriate approach to achieve the purpose of modernizing the rule and promoting a uniform customer account transfer standard for all dealers. The MSRB noted that it believed that SIFMA's comments are substantially similar to previous comments it submitted in response to the MSRB's Request for Comment,[109] and the MSRB had addressed them in detail in the Notice of Filing. The MSRB stated that it believes that, although SIFMA is correct that any firms that are not members of FINRA or the NYSE are likely not direct clearing participants of the NSCC and, therefore, ineligible to participate in ACATS, this does not obviate the need for Rule G-26. The MSRB stated that, contrary to SIFMA's assertion, this is a key reason why Rule G-26 is not redundant and is necessary to ensure that all dealers are subject to a customer account transfer rule, and the proposed rule change is necessary and appropriate to ensure that the standard in

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106 See SIFMA Letter.

107 Id.

108 Id.

109 See Request for Comment.

Rule G-26 is consistent with the industry standard.[110] The MSRB further stated that ACATS, which is established and governed by NSCC Rule 50, is an automated process utilized by NSCC members to perform customer account transfers.[111] The MSRB also responded to SIFMA's comment by stating that not only does NSCC Rule 50 not apply to dealers that are not direct clearing participants and members of NSCC, it does not apply to manual processes, which are used by certain dealers with municipal security-only customer accounts, particularly bank dealers that are not members of FINRA or the NYSE.[112] The MSRB stated that, as a result, it believes that there remains a need for Rule G-26, which applies, currently and as proposed, to both automated and manual processes, including provisions to facilitate the use of ACATS,[113] to address the customer account transfers of these dealers.[114] The MSRB stated that it continues to believe that amending Rule G-26 to incorporate FINRA Rule 11870 by reference would not be an appropriate approach to the proposed rule change, as well as being inconsistent with the MSRB's statutory mandate and mission, as most relevant here, to protect investors, issuers, and the public interest, and to promote a fair and efficient municipal market.[115] The MSRB further stated that—putting aside whether there are unique aspects of the transfer of municipal security-only customer accounts— it believes that bank dealers clearly are unique, as they would not be

110 See MSRB Response Letter.

111 Id.

112 Id.

113 See Notice of Filing, MSRB Rule G-26(h) and proposed MSRB Rule G-26(k)(i).

114 See MSRB Response Letter.

115 Id.

subject to a customer account transfer rule but for the existence of Rule G-26.[116] The MSRB stated that, as a result, it believes it is important that, at a minimum, it retain the full ability to deliberately consider issues that may be unique to these dealers, but also to the municipal securities market more broadly, in the consideration of future amendments to Rule G-26, which ability could be hindered if the MSRB were merely to incorporate FINRA Rule 11870 by reference.[117]

In response to SIFMA's suggested alternative to effectively allow FINRA and NYSE members to follow FINRA Rule 11870 in lieu of Rule G-26, while dealers that are not members of those SROs would remain subject to Rule G-26, the MSRB stated that it believes that SIFMA's suggestion captures how Rule G-26 already operates (and would continue to operate as proposed to be amended).[118] The MSRB further responded by stating that it had explained in the Request for Comment and the Notice of Filing that, at the time Rule G-26 was adopted, NYSE Rule 412 and FINRA Rule 11870 (NASD Rule 11870 at the time) were not applicable to certain dealers, particularly those with municipal security-only accounts and bank dealers.[119] The MSRB further stated that this jurisdictional divide remains true today, such that Rule G-26 is not applicable to FINRA or NYSE members.[120] However, the MSRB noted that there are dealers which are not members of those other SROs, particularly bank dealers, necessitating the

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116 Id.

117 Id.

118 Id.

119 See MSRB Response Letter, Notice of Filing and Request for Comment.

120 See MSRB Response Letter.

existence of Rule G-26.[121] The MSRB further stated that the main effect of the proposed rule change is to increase harmonization with FINRA Rule 11870, promoting a uniform customer account transfer standard that will make the transfer of customer securities accounts more flexible, less burdensome and more efficient, while reducing confusion and risk to investors and allowing them to better move their municipal securities to their dealer of choice.[122]

2. Extension of the Implementation Date of the Proposed Rule Change

BDA suggested, in its comment letter, that the effective date of the proposed rule change be adjusted from three months from the date of approval to 180 days from the effective date of a approval to benefit smaller dealers with fewer compliance staff and resources and dealers subject to new Department of Labor rules effective January 1, 2018 and new MSRB and FINRA retail confirmation rules effective in May 2018.[123]

The MSRB stated that it agreed that a more lengthy implementation period is appropriate, but that it does not believe a period of nearly a year is necessary, as the proposed rule change is designed primarily to create efficiencies in the customer account transfer process and the MSRB does not anticipate that the limited number of dealers subject to the amended rule would need to make significant changes to systems and/or policies and procedures.[124] To ease the extent of the burden created by the proposed rule change, the MSRB stated that it believes doubling the implementation period from three to six months from the date of approval is a sufficient amount of time for dealers to effect any changes necessary to achieve

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121 Id.

122 Id.

123 See BDA Letter.

124 See MSRB Response Letter and Amendment No. 1.

compliance.[125] In response to the comment from BDA, the MSRB proposed, in Amendment No. 1, to amend the effective date of the proposed rule change requested in the Notice of Filing from three months to six months from the date of approval.[126]

3. Economic Impact of the Proposed Rule Change

SIFMA stated that while it agrees that current Rule G-26 is not consistent with current securities industry standards and practices and that it likely creates "uncertainties, inefficiencies and unnecessary costs associated with customer account transfers for all market participants" but that the proposed rule change is not the most effective means for addressing these issues.[127] SIFMA stated that "[h]aving different rules for account level transfers could result in: additional compliance burdens, conflicting examiners from different regulators applying different rules to the same customer account transfer, and confusion among customers."[128]

The MSRB stated in Notice of Filing that it has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the baseline in accordance with its Policy on the Use of Economic Analysis in MSRB Rulemaking,[129] and does not believe the proposed rule change

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125 See MSRB Response Letter and Amendment No. 1.

126 See Amendment No. 1.

127 See SIFMA Letter.

128 Id.

129 See Notice of Filing and Policy on the Use of Economic Analysis in MSRB Rulemaking, MSRB, available at: http://msrb.org/rules-and-interpretations/economic-analysis-policy.

imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[130]

4. Request for an Update and Harmonization of Relevant FINRA Rules

SIFMA and BDA requested that FINRA amend its Rule 11870 as soon as practicable to reflect the recent amendments to MSRB Rule G-12 relating to close-outs.[131] SIFMA also suggested that the Commission should direct FINRA to "consolidate its provisions that relate to the transfer of securities into FINRA 11870" and recommended that FINRA delete its Rule 11650 with its operative language being included as new FINRA 11870 Supplementary Material .04.[132]

The comments from BDA and SIFMA regarding their suggestion that FINRA amend its Rules 11870 and 11650 are beyond the scope of the proposed rule change.

IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, the MSRB Response Letter, and Amendment No. 1. The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

In particular, the proposed rule change, as modified by Amendment No. 1, is consistent with Sections 15B(b)(2), 15B(b)(2)(C) and 15B(b)(2)(G) of the Act.[133] Section 15B(b)(2) of the Act requires the MSRB to adopt rules to effect the purposes of this title with respect to

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130 See Notice of Filing.

131 See SIFMA Letter and BDA Letter.

132 See SIFMA Letter.

133 15 U.S.C. 78o-4(b)(2); 78o-4(b)(2)(C) and 78o-4(b)(2)(G).

transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal entities or obligated persons by brokers, dealers, municipal securities dealers, and municipal advisors with respect to municipal financial products, the issuance of municipal securities, and solicitations of municipal entities or obligated persons undertaken by brokers, dealers, municipal securities dealers, and municipal advisors.[134] Section 15B(b)(2)(C) of the Act requires that the MSRB's rules 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, in general, to protect investors, municipal entities, obligated persons, and the public interest.[135] Section 15B(b)(2)(G) of the Act requires that the MSRB's rules prescribe records to be made and kept by municipal securities brokers, municipal securities dealers, and municipal advisors and the periods for which such records shall be preserved.[136]

The Commission believes that the proposed rule change is consistent with the provisions of Sections 15B(b)(2)[137] and 15B(b)(2)(C)[138] of the Act because it would re-establish consistency with the customer account transfer rules of other SROs by conforming to significant updates by

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134 See 15U.S.C. 78o-4(b)(2).

135 See 15U.S.C. 78o-4(b)(2)(C).

136 See 15 U.S.C. 78o-4(b)(2)(G).

137 See 15 U.S.C. 78o-4(b)(2).

138 See 15 U.S.C. 78o-4(b)(2)(C).

the NSCC, the NYSE and FINRA that have relevance to municipal securities. The Commission further believes that including certain provisions from the other rules in the proposed rule change will make the transfer of customer securities account assets more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to better move their securities to their dealer of choice. The Commission believes that the proposed rule change will promote fairness and provide greater efficiency in the transfer of customer accounts, which should prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, 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, remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial products, and, in general, protect investors and the public interest.

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(G) of the Act[139] because it would require dealers to document the procedures they follow to effect customer account transfers and to require explicitly written procedures for supervision of the same.

In approving the proposed rule change, the Commission also has considered the impact of the proposed rule change, as modified by Amendment No. 1, on efficiency, competition, and capital formation.[140] The Commission does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes the proposed rule change would apply equally to all

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139 Id.

140 15 U.S.C. 78c(f).

municipal securities brokers and municipal securities dealers and may reduce inefficiencies that stem from uncertainty and confusion associated with existing Rule G-26. The Commission believes that the clarifications and revisions included in the proposed rule change will likely result in dealers processing of customer account transfers by dealer in a manner that more closely reflects the securities industry standard, which may, in turn, reduce operational risk to dealers and investors. Furthermore, the Commission believes that the proposed rule change will likely make the transfer of customer municipal securities account assets more flexible, less burdensome, and more efficient, while reducing confusion and risk to investors and allowing them to more efficiently and effectively transfer their municipal securities to their dealer of choice.

As noted above, the Commission received two comment letters on the filing. The Commission believes that the MSRB, through its responses and through Amendment No. 1, has addressed commenters' concerns.

For the reasons noted above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

V. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use of the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-MSRB-2017-03 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

All submissions should refer to File Number SR-MSRB-2017-03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). 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 website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 am and 3:00 pm. Copies of the filing also will be available for inspection and copying at the principal office of the MSRB. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2017-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

VI. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause for approving the proposed rule change, as amended by Amendment No. 1, prior to the 30th day after the date of publication of notice of Amendment No. 1 in the Federal Register. As discussed above, Amendment No. 1 modifies the proposed rule

change by proposing a longer implementation period of six months rather than the previously proposed three months. The MSRB has proposed the revisions included in Amendment No. 1 to provide a sufficient amount of time for dealers to effect any changes necessary to achieve compliance with the proposed rule change. As noted by the MSRB, Amendment No. 1 does not alter the substance of the original proposed rule change and only provides a lengthier implementation period to address a commenter's concern and ease the limited burden of the proposed rule change on dealers.

For the foregoing reasons, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VIII. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,[141] that the proposed rule change (SR-MSRB-2017-03) be, and hereby is, approved .

For the Commission, pursuant to delegated authority.[142]

Eduardo A. Aleman
Assistant Secretary

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141 15 U.S.C. 78s(b)(2).

142 17 CFR 200.30-3(a)(12).