

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68472; File No. SR-MSRB-2012-08)

December 19, 2012

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Consisting of Amendments to Streamline New Issue Information Submission Requirements Under MSRB Rules G-32 and G-34

I. Introduction

On October 23, 2012, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“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 amendments to Rule G-8 (books and records); Rule G-14 RTRS Procedures³; Rule G-32 (disclosures in connection with primary offerings); Rule G-34 (CUSIP numbers, new issue, and market information requirements); and the Electronic Municipal Market Access (“EMMA[®]”) system facility, to streamline the manner in which underwriters, in connection with new issues of municipal securities, satisfy certain of their submission requirements under Rule G-32. The proposed rule change was published for comment in the Federal Register on November 8, 2012.⁴ The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB proposes to amend Rules G-32 and G-34 to streamline certain new issue

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ “RTRS” refers to the Real-time Transaction Reporting System, which is an MSRB facility for collecting and disseminating information about transactions in municipal securities.

⁴ Securities Exchange Act Release No. 68134 (November 1, 2012), 77 FR 67047 (SR-MSRB-2012-08) (“Notice”).

submission requirements. Rules G-32 and G-34 set forth the reporting requirements for new issues of municipal securities. Rule G-32 requires underwriters to submit certain information⁵ about new issues of municipal securities to the MSRB on or prior to the date of first execution by completing electronic Form G-32 through EMMA's Primary Market Disclosure Service.⁶ Information submitted pursuant to Rule G-32 becomes available to the public on the EMMA website immediately upon submission and typically by the end of the date of first execution.⁷ Rule G-34 requires underwriters for most new issues to submit comprehensive information⁸ to the New Issue Information Dissemination Service ("NIIDS"), operated by the Depository Trust and Clearing Corporation ("DTCC"), no later than two hours after the Time of Formal Award.⁹

⁵ This information includes, among other items, the issuer name and issue description for the new issue and, for each maturity of the new issue, the CUSIP numbers, principal amounts, and initial offering prices or yields.

⁶ See MSRB Rule G-32(b)(vi)(C)(1). Rule G-32(d)(xi) defines "date of first execution" as "the date on which the underwriter executes its first transactions with a customer or another broker, dealer or municipal securities dealer in any security offered in a primary offering; provided that, for offerings subject to Rule G-34(a)(ii)(C), 'date of first execution' shall mean the date corresponding to the Time of First Execution as defined in Rule G-34(a)(ii)(C)(1)(b); further provided that, solely for purposes of this rule, the date of first execution shall be deemed to occur by no later than the closing date."

⁷ See Notice, supra note 4, 77 FR at 67049.

⁸ According to the MSRB, this information includes all of the information required for dealers to produce a "when, as and if issued" customer trade confirmation as well as many of the same items of information included in Form G-32. The term "when, as and if issued" refers to the time period in the life of a new issue of municipal securities from the original date of the sale by the issuer to the delivery of the securities to, and payment by, the underwriter. Sales made during the "when, as and if issued" period are subject to issuance of the securities. See Notice, supra note 4, 77 FR at 67048.

⁹ The "Time of Formal Award" is defined in Rule G-34(a)(ii)(C)(1)(a) as "for competitive issues, the later of the time the issuer announces the award or the time the issuer notifies the underwriter of the award, and for negotiated issues, the later of the time the contract to purchase the securities from the issuer is executed or the time the issuer notifies the underwriter of its execution. If the underwriter and issuer have agreed in advance on a Time of Formal Award, that time may be submitted to the new issue information dissemination system in advance of the actual Time of Formal Award."

DTCC disseminates this information to its subscribers upon submission by underwriters.¹⁰ The information that underwriters must submit to NIIDS under Rule G-34 is generally more extensive than the information that underwriters must submit to EMMA under Rule G-32 and includes many, but not all of, the same items.¹¹

For any primary offering of municipal securities that is a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C), the MSRB proposes to require that the underwriter submit all information required under Rule G-32(b)(i)(A) at such times and in such manner as required under Rule G-34(a)(ii)(C). The submission of information per Rule G-34(a)(ii)(C) in a full and timely manner shall be deemed to be in compliance with the submission requirement of Rule G-32(b)(i)(A)(1).¹² In addition, the revised Rule G-32(b)(i)(A)(1)(a) would require that any items of information required to be included on Form G-32, but for which no corresponding data element is then available through NIIDS, be submitted to EMMA at the times and in the manner prescribed by Rule G-32(b)(vi) and set forth in the EMMA Dataport Manual.¹³

For any primary offering of municipal securities that is not a new issue eligible for submission of information to NIIDS under Rule G-34(a)(ii)(C) or that is exempt from such

¹⁰ See Notice, supra note 4, 77 FR at 67048.

¹¹ See Notice, supra note 4, 77 FR at 67048–49. Submissions to NIIDS provide a mechanism for underwriters to communicate the Time of Formal Award and Time of First Execution to market participants that trade in the new issue. See id. at 67048. Rule G-34(a)(ii)(C)(1)(b) defines “Time of First Execution” as “the time the underwriter plans to execute its first transactions in the new issue.”

¹² See MSRB Rule G-32(b)(i)(A)(1). The MSRB is also revising the EMMA facility to add to the EMMA display and the EMMA primary market subscription the Time of First Execution and the Time of Formal Award. See Notice, supra note 4, 77 FR at 67049.

¹³ Any corrections to data submitted pursuant to Rule G-34(a)(ii)(C) must be made promptly and, to the extent feasible, in the manner originally submitted. See MSRB Rule G-32(b)(i)(A)(1)(b).

submission requirement under Rule G-34(d), the underwriter will be required to initiate the submission of Form G-32 information on or prior to the date of first execution and complete the submission at such times and in such manner as required under Rule G-32(b)(vi) and set forth in the EMMA Dataport Manual.¹⁴

Rule G-34(a)(ii)(C) currently exempts certain types of short-term instruments from the NIIDS submission requirement. The MSRB is amending Rule G-34(a)(ii)(C) to remove exceptions for notes maturing in less than nine months, variable rate instruments, and auction rate products. Accordingly, underwriters for these types of issues will now be required to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information about new issues.¹⁵ The MSRB is retaining the exception for commercial paper, and underwriters will continue to be able to use other means to announce relevant new issue information promptly in a manner reasonably designed to reach market participants that may trade the new issue.¹⁶

Rule G-34(a)(ii)(C) currently requires underwriters to designate a Time of First Execution that is no less than two hours after all information has been transmitted to NIIDS. Because the hours counted in determining the responsibilities of an underwriter include only the hours of 9:00 A.M. and 5:00 P.M. Eastern Time, in the event a dealer submits data to NIIDS to make an issue trade eligible between 3:00 P.M. and 5:00 P.M. on a trading day, the two-hour dissemination period carries through to the first hours of the following day. The MSRB proposes to amend Rule G-34(a)(ii)(C)(1)(b)(ii) to permit underwriters who submit information to NIIDS between 3:00 P.M. and 5:00 P.M. Eastern Time to designate a Time of First Execution as early

¹⁴ See MSRB Rule G-32(b)(i)(A)(2).

¹⁵ See Notice, *supra* note 4, 77 FR at 67050.

¹⁶ See MSRB Rule G-34(a)(ii)(C)–(D).

as 9:00 A.M. Eastern Time on the next RTRS Business Day, regardless of whether two Business Hours have elapsed.¹⁷ In addition, Rule G-34(a)(ii)(C)(1)(b)(ii) would permit underwriters for new issues of variable rate instruments with a planned settlement cycle of one day or less to designate a Time of First Execution any time after all information required by Rule G-34(a)(ii)(C) has been transmitted to NIIDS.¹⁸

The MSRB is also amending Rule G-8(a)(xiii)(C) to require underwriters to keep records of all documents, notices, and information required to be submitted under Rule G-32(b), but only to the extent that the information is not included in the information that is submitted through NIIDS in satisfaction of the requirements of Rule G-32(b) and properly maintained pursuant to Rule G-8(a)(xxiii). The proposed rule change also includes certain technical changes to Rule G-14 RTRS Procedures, Rule G-32, and Rule G-34.¹⁹

III. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations

¹⁷ See MSRB Rule G-34(a)(ii)(C)(1)(b)(ii)(B). The MSRB is revising Rule G-34(a)(ii)(C)(2) to define “Business Hours” to “include only the hours from 9:00 A.M. to 5:00 P.M. Eastern Time on an RTRS Business Day.” See MSRB Rule G-34(a)(ii)(C)(2)(a). “RTRS Business Day” shall have the meaning set forth in Rule G-14 RTRS Procedures section (d)(ii). See MSRB Rule G-34(a)(ii)(C)(2)(b).

¹⁸ See Notice, supra note 4, 77 FR at 67049; and MSRB Rule G-34(a)(ii)(C)(1)(b)(ii)(A).

¹⁹ The technical amendments to Rule G-14 RTRS Procedures clarify the types of securities that are not subject to the RTRS reporting requirement that transactions be reported within 15 minutes of the time of trade and remove language describing auction rate securities as having a short “effective maturity.” The technical amendments to MSRB Rule G-32 include correcting a cross-reference to Rule 15c2-12 under the Act and a misnumbered paragraph containing the definition of the term “obligated person,” as well as removing certain transitional provisions that were operational during the period between the former pre-EMMA submission process and the EMMA-based submission process.

thereunder applicable to the MSRB.²⁰ In particular, the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides 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 interest.²¹

The Commission believes that the proposed rule change is designed to remove impediments to and perfect the mechanism of a free and open market in municipal securities by reducing the submission burden on underwriters and improving data quality on EMMA and in the municipal securities marketplace. The proposed rule change revises Rule G-32 to provide that an underwriter's obligations to submit data about a new issue under Rule G-32 would be fulfilled by submitting that data through NIIDS as required pursuant to Rule G-34, while data elements not included in NIIDS and data for certain types of offerings not required to use NIIDS would continue to be subject to existing Rule G-32 data submission requirements. Allowing underwriters to submit information to NIIDS in satisfaction of certain EMMA submission requirements should help to streamline the submission process and accelerate the availability of Form G-32 data on EMMA. In addition, the proposed rule change would require underwriters to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to

²⁰ In approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78o-4(b)(2)(C).

disseminate information about new issues of notes maturing in less than nine months, variable rate instruments, and auction rate products, which will provide market participants and the general public with enhanced access to primary market data for a broader scope of new issues of municipal securities.

The proposed rule change would permit underwriters of any issue that is made “trade eligible” between 3:00 P.M. and 5:00 P.M. Eastern Time to set a Time of First Execution for as early as 9:00 A.M. Eastern Time on the next RTRS Business Day without having to wait for the two Business Hour period to elapse. The Commission notes that dealers would still have sixteen hours between 5:00 P.M. Eastern Time and the earliest possible Time of Execution to integrate NIIDS data and prepare for the underwriter’s announced Time of First Execution. The proposed rule change adds an exception from this requirement for variable rate instruments with a planned settlement cycle of one day or less. According to the MSRB, the two-hour advanced notification timeframe is not as important for these types of instruments as for other types of new issues. The Commission notes, however, that the requirement to announce the Time of Formal Award and the Time of First Execution and to use NIIDS to disseminate information would apply to these instruments.

IV. Conclusion

For the foregoing reasons, 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 and, in particular, Section 15B(b)(2)(C)²² of the Act. The proposal will become effective no later than May 6, 2013, or such earlier date to be announced by the MSRB in a

²² 15 U.S.C. 78o-4(b)(2)(C).

notice published on the MSRB website with at least a thirty day advance notification prior to the effective date.

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act,²³ that the proposed rule change (SR-MSRB-2012-08) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁴

Kevin M. O'Neill
Deputy Secretary

²³ 15 U.S.C. 78s(b)(2).

²⁴ 17 CFR 200.30-3(a)(12).