

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-97585; File No. SR-MSRB-2023-03)

May 25, 2023

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change to Amend MSRB Rules G-12 and G-15 to Define Regular-Way Settlement for Municipal Securities Transactions as Occurring One Business Day after the Trade Date and to Amend Rule G-12 to Update an Outdated Cross Reference

I. Introduction

On March 28, 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, and G-15 (“Rule G-15”), on confirmation, clearance, settlement and other uniform practice requirements with respect to transactions with customers, to define regular-way settlement for municipal securities transactions as occurring one business day after the trade date and a proposed amendment to Rule G-12 to update an outdated cross reference (“proposed rule change”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The MSRB also 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.³

The proposed rule change was published for comment in the Federal Register on April 12, 2023.⁴ The Commission received three comment letters⁵ on the proposed rule change. On May 11, 2023, the MSRB responded to the comment letters.⁶ As described further below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

The MSRB stated that, consistent with its strategic goal to modernize its rulebook, the proposed rule change would amend Rule G-12(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C) to define regular-way settlement for municipal securities transactions as occurring on one business day after the trade date (“T+1”). The MSRB wrote that this proposed rule change would align with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule

³ See Securities Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872, 13916 (Mar. 6, 2023) (“SEC’s T+1 Adopting Release”). 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. Securities Exchange Act Release No. 97257 (Apr. 6, 2023), 88 FR 22075 n.3 (Apr. 12, 2023) (File No. SR-MSRB-2023-03) (“Notice”).

⁴ See Notice, 88 FR at 22075.

⁵ See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated May 3, 2023 (“SIFMA Letter”); Letter from RJ Rondini, Director, Securities Operations, Investment Company Institute, dated May 2, 2023 (“ICI Letter”); and Letter from Gregory Babyak, Global Head of Regulatory Affairs, Bloomberg L.P., dated May 3, 2023 (“Bloomberg Letter”).

⁶ See Letter to Secretary, Commission, from Saliha Olgun, Interim Chief Regulatory Officer, MSRB, dated May 11, 2023 (“MSRB Letter”).

15c6-1, as amended.⁷ Although Exchange Act Rule 15c6-1, as amended, does not apply to municipal securities transactions,⁸ the MSRB stated that it believes that the regular-way settlement cycle for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.⁹ The MSRB explained that, to facilitate a T+1 standard settlement cycle, the MSRB proposed to amend 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.¹⁰

A. Background

The SEC initially adopted Exchange Act Rule 15c6-1¹¹ in 1993 to shorten the settlement cycle of most equity and corporate bond transactions from the industry standard of within five business days (“T+5”) to requiring settlement within three business days (“T+3”).¹² The T+3 settlement cycle remained in effect until 2017 when the SEC amended Exchange Act Rule 15c6-1¹³ to require the settlement of most equity and corporate bond transactions within two business

⁷ 17 CFR 240.15c6-1.

⁸ Id.

⁹ Notice, 88 FR at 22075.

¹⁰ Id.

¹¹ 17 CFR 240.15c6-1.

¹² 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.

¹³ 17 CFR 240.15c6-1.

days (“T+2”).¹⁴ On February 15, 2023, the SEC adopted amendments to Exchange Act Rule 15c6-1 (“Amended Exchange Act Rule 15c6-1”)¹⁵ to further shorten the settlement process, requiring the settlement of most equity and corporate bond transactions on T+1.¹⁶

Amended Exchange Act Rule 15c6-1(a)¹⁷ prohibits a broker-dealer from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security,¹⁸ a government security, a municipal security, commercial paper, bankers’ acceptances, or commercial bills) that provide for payment of funds and delivery of securities later than T+1, unless the parties expressly agree to a different settlement date at the time of the transaction.¹⁹ The MSRB notes that the recent amendments to Exchange Act Rule 15c6-1²⁰ change only the

¹⁴ Securities Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017).

¹⁵ 17 CFR 240.15c6-1.

¹⁶ Notice, 88 FR at 22075.

¹⁷ 17 CFR 240.15c6-1(a).

¹⁸ 15 U.S.C. 78c(a)(12).

¹⁹ The MSRB wrote that Exchange Act Rule 15c6-1 was also amended to prohibit a broker-dealer from effecting or entering into a contract for firm commitment offerings of securities (other than exempt securities) priced after 4:30 p.m. Eastern Time that provide for payment of funds and delivery of securities later than T+2, unless the parties expressly agree to a different settlement date at the time of the transaction. Notice, 88 FR at 22075 n.13.

²⁰ 17 CFR 240.15c6-1. See also SEC’s T+1 Adopting Release, 88 FR at 13874.

standard settlement date for securities transactions covered by the existing rule and do not impact the existing exclusions enumerated in the rule.²¹

B. Summary of the Proposed Rule Change

The MSRB explained that shortening the settlement 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 of counterparty default and the capital required to mitigate this risk.²² The MSRB stated that, in support of these objectives and to promote regulatory consistency, it has consistently stated that the regular-way settlement cycle for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions.²³ The MSRB noted that market efficiencies could be eroded if market participants encounter different settlement cycles when replacing equity or corporate bonds with municipal securities.²⁴ For that reason, the MSRB stated that it adopted a

²¹ Notice, 88 FR at 22075-76. The MSRB stated that Exchange Act Rule 15c6-2 improved the processing of institutional trades through new requirements for broker-dealers and registered investment advisers related to same-day affirmations. Notice, 88 FR at 22076 n.15. As Exchange Act Rule 15c6-2 does not apply to municipal securities, the MSRB stated that it is evaluating whether a like requirement should be considered under MSRB rules. Id.

²² Notice, 88 FR at 22076. See also SEC's T+1 Adopting Release, 88 FR at 13919.

²³ Notice, 88 FR at 22076. See, e.g., "T+3 Settlement, Amendments Filed: Rules G-12 and G-15," MSRB Reports, Vol. 14, No. 4 (August 1994) at 3; "Report of the Municipal Securities Rulemaking Board on T+3 Settlement for the Municipal Securities Market" (Mar.17, 1994); and Securities Exchange Act Release No. 77364 (Mar. 14, 2016), 81 FR 14906 (Mar. 18, 2016) (File No. SR-MSRB-2016-04).

²⁴ Notice, 88 FR at 22076.

T+3 settlement cycle in 1994,²⁵ and a T+2 settlement cycle in 2017.²⁶ According to the MSRB, in order to continue to maintain consistency across asset classes and harmonize with Amended Exchange Act Rule 15c6-1,²⁷ it proposed to amend Rule G-12(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C), which both currently define regular-way settlement as occurring on T+2, to define regular-way settlement as occurring on T+1.²⁸

The MSRB stated that, as a result, with regular-way settlement occurring on T+1, settlement for “when, as and if issued” transactions under Rule G-12(b)(ii)(C) would be required to be a date agreed upon by both parties that is not earlier than one business day after notification of the initial settlement date for the issue.²⁹ Specifically, the MSRB stated that the proposed rule change would amend G-12(b)(ii)(C)(2) for “when, as and if issued” transactions not eligible for automated comparison to specify that the date agreed upon by both parties shall not be earlier than the first business day, rather than the second business day, following the date that the

²⁵ See Securities Exchange Act Release No. 34541 (Aug. 17, 1994), 59 FR 43503 (Aug. 24, 1994) (File No. SR-MSRB-1994-10).

²⁶ See Securities Exchange Act Release No. 77744 (Apr. 29, 2016), 81 FR 26851 (May 4, 2016) (File No. SR-MSRB-2016-04).

²⁷ 17 CFR 240.15c6-1.

²⁸ Notice, 88 FR at 22076.

²⁹ Id. Pursuant to MSRB Rule G-34 (“Rule G-34”), on CUSIP numbers, new issue, and market information requirements, subparagraph (a)(ii)(E)(2), the initial settlement is to be provided to the registered clearing agency by the managing underwriter for the issue. With respect to transactions not eligible for automated comparison, the settlement date shall not be earlier than the first business day after the date that the confirmation indicating the final settlement date is sent. Notice, 88 FR at 22076 n.21.

confirmation indicating the final settlement date is sent.³⁰ For all other municipal securities transactions under Rule G-12(b)(ii)(D), the MSRB stated that the proposed rule change would amend the current time frame to provide that a broker, dealer or municipal securities dealer (a “dealer”) would be prohibited from effecting a transaction that provides for payment of funds and delivery of securities later than the first business day, rather than the second business day, after the transaction unless expressly agreed to by the parties.³¹

The MSRB also explained that the proposed rule change would correct an outdated cross-reference within Rule G-12.³² Specifically, the MSRB explained that Rule G-12(b)(ii)(C) regarding the settlement date for “when, as and if issued” transactions currently cross-references Rule G-34 subsection paragraph (a)(ii)(D)(2) in referring to the obligation that a managing underwriter has to provide notification of initial settlement date of an issue to the registered clearing agency.³³ The MSRB also wrote that this obligation remains in Rule G-34 but was moved to subparagraph (a)(ii)(E)(2) due to previous amendments to Rule G-34. The MSRB

³⁰ Notice, 88 FR at 22076. For “when, as and if issued” transactions required to be compared in an automated comparison system under Rule G-12(f)(i), the settlement date shall continue to be not earlier than two business days after notification of initial settlement date for the issue is provided to the registered clearing agency by the managing underwriter for the issue as required by Rule G-34(a)(ii)(E)(2). Notice, 88 FR at 22076 n.22.

³¹ Notice, 88 FR at 22076. The MSRB explained that variable rate demand obligations may establish a settlement date expressly agreed to by the parties that may occur later than regular-way settlement to coincide with the reset date (e.g., T+5, T+3, etc.). See *Three Day Settlement: Rules G-12(b) and G-15(b)*, *MSRB Reports*, Vol. 15, No. 12 (July 1995), available at <https://www.msrb.org/sites/default/files/July1995-Volume15-Number2.PDF>. See also Notice, 88 FR at 22076 n.23.

³² Notice, 88 FR at 22076.

³³ Id.

indicated that correcting the cross-reference will not alter the obligation of dealers under Rule G-34 or Rule G-12.³⁴

C. Compliance Date

The MSRB stated that the compliance date of the proposed rule change would be announced by the MSRB in a notice published on its website, which date would correspond with the industry's transition to a T+1 regular-way settlement consistent with the implementation of Amended Exchange Act Rule 15c6-1,³⁵ which is currently scheduled for May 28, 2024. The MSRB indicated that if the SEC's compliance date were to change, the MSRB would issue a regulatory notice to modify the compliance date to remain aligned with the SEC's compliance date.³⁶

III. Summary of Comments Received to the Proposed Rule Change

The Commission received three comment letters³⁷ on the proposed rule change, as well as a response³⁸ from the MSRB to the comment letters. Two of the three 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 municipal securities settlement with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6-1, as amended.³⁹ Additionally, one commenter

³⁴ Id.

³⁵ Id. See also SEC's T+1 Adopting Release, 88 FR at 13916.

³⁶ Notice, 88 FR at 22076.

³⁷ See SIFMA Letter; ICI Letter; Bloomberg Letter.

³⁸ See MSRB Letter.

³⁹ See SIFMA Letter; ICI Letter.

encouraged the MSRB to consider further a rule consistent with Exchange Act Rule 15c6-2, to improve the processing of institutional trades through new requirements for market participants related to same-day affirmations.⁴⁰ The MSRB responded that it continues to evaluate whether a similar standard may be appropriate for the municipal securities market, and that it expect to engage stakeholders to inform this continued evaluation.⁴¹

One commenter encouraged the MSRB and the SEC to consider permitting market participants a choice among financial identifiers for required reporting and for other regulatory use cases as specified in the MSRB's rules.⁴² The MSRB responded that it appreciated this feedback but believes that the comment is outside of the scope of the proposed rule change and should be considered separately.⁴³

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 reduce operational risks, which can promote investor protection, help reduce risk of counterparty default and the capital required to mitigate this risk.⁴⁴

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

⁴⁰ SIFMA Letter at 2.

⁴¹ MSRB Letter at 2.

⁴² Bloomberg Letter at 1.

⁴³ MSRB Letter at 2.

⁴⁴ Id.

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 interest.⁴⁵ 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 and municipal financial products; (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(b)(ii)(B) and (D) and Rule G-15(b)(ii)(B)-(C) 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

⁴⁵ 15 U.S.C. 78o-4(b)(2)(C).

that the proposed rule change applies the standard for regular-way settlement established by the SEC to transactions in municipal securities. As such, the Commission finds that the proposed rule change would continue to ensure that the settlement cycle remains synchronous across classes of securities (including municipal securities). By avoiding different settlement cycles for municipal securities, the proposed rule change would avoid regulatory confusion, simplify compliance, and reduce risk (e.g., operational error). These positive effects would be experienced by municipal securities market participants involved in regulating, clearing and settling, and processing information for municipal securities transactions.

In addition, the proposed amendment to correct an outdated cross-reference in Rule G-12(b)(ii)(C) is consistent with Section 15B(b)(2)(C) of the Act,⁴⁶ and correcting the cross-reference will not alter a dealer's obligations under Rule G-34 or Rule G-12. The Commission further believes that the proposed amendment promotes coordination with persons engaged in facilitating transactions in municipal securities by aiding dealers' understanding of the rule and facilitating compliance.

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 including, but not limited to, operational cost savings, reduced counterparty risk due to a shorter settlement cycle, reduced market risk for unsettled trades, decreasing clearing capital requirements, reduced pro-cyclical margin, and

⁴⁶

Id.

therefore, reduced liquidity demands and risk. The Commission also believes the proposed rule change would promote regulatory consistency and market efficiency. In particular, the Commission notes that the proposed rule change institutes regular-way settlement for municipal transactions consistent with the standard settlement for other security classes, harmonized with Amended Exchange Act Rule 15c6-1.⁴⁷ As the proposed rule change reduces liquidity demands and risk, as well as promotes regulatory consistency and market 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 the proposed rule change will reduce the timeframe for regular-way settlement and avoiding misaligned settlement dates, which can serve to reduce risks that can be present between trade date and settlement date (including the incidence of failed transactions). In addition, the Commission believes that a shorter standard settlement cycle would reduce liquidity risks that could arise by allowing investors to obtain the proceeds of securities transactions sooner. 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

⁴⁷ 17 CFR 240.15c6-1.

Act⁴⁸ 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(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C) would not impose any burden on competition and would not have an impact on competition, as the proposed rule change would apply a uniform standard for regular-way settlement for municipal securities to align with the standard applicable to, among other securities, equity and corporate bond transactions under Amended Exchange Act Rule 15c6-1.⁴⁹ In addition, the proposed rule change would apply equally to all dealers. The proposed rule would also change to correct an outdated cross-reference in Rule G-12(b)(ii)(C) to properly reference Rule G-34(a)(ii)(E)(2) rather than Rule G-34(a)(ii)(D)(2), which would not impose any burden on competition or have an impact on competition as the proposed change is technical in nature, does not impose any new obligation and enhances understanding of the rule. As all of these 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 changes ensures a uniform settlement cycle 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 clearance and settlements of municipal securities transactions.

⁴⁸ 15 U.S.C. 78o-4(b)(2)(C).

⁴⁹ 17 CFR 240.15c6-1.

Furthermore, a shorter settlement cycle may reduce the volume of unsettled transactions that could potentially pose settlement risk, and also 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 clearance and settlement process, would not negatively impact the municipal securities market's operational efficiency.

As noted above, the Commission received three comment letters on the filing. The Commission believes that the MSRB, through its response, addressed the commenters' concerns. 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,⁵⁰ that the proposed rule change (SR-MSRB-2023-03) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.⁵¹

Sherry R. Haywood

Assistant Secretary

⁵⁰ 15 U.S.C. 78s(b)(2).

⁵¹ 17 CFR 200.30-3(a)(12).