

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-60487; File No. SR-MSRB-2009-12)

August 12, 2009

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Amendments to Rule G-11(i) (Settlement of Syndicate or Similar Account), Rule G-11(j) (Payment of Designations), and Rule G-12(i) (Settlement of Joint or Similar Account)

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on August 6, 2009, the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“Commission” or “SEC”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The MSRB has filed with the Commission proposed amendments to Rule G-11(i) (settlement of syndicate or similar account), MSRB Rule G-11(j) (payment of designations), and MSRB Rule G-12(i) (settlement of joint or similar account). For the proposed amendments to Rule G-11, the MSRB requested that the amendments become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)) is more than 30 calendar days after the date the amendments are approved by the SEC. For the proposed amendments to Rule G-12, the

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

MSRB requested that the amendments become effective for secondary market trading accounts formed more than 30 days after the date the amendments are approved by the SEC.

The text of the proposed rule change is available on the MSRB's Web site (<http://www.msrb.org/msrb1/sec.asp>), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. SELF-REGULATORY ORGANIZATION'S STATEMENT OF THE PURPOSE OF, AND STATUTORY BASIS FOR, THE PROPOSED RULE CHANGE

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The proposed rule change accelerates the settlement of syndicate accounts and secondary market trading accounts, and the payment of designations, by shortening certain time periods within the rules. These proposals are designed to reduce the exposure of syndicate and secondary market trading account members to the risk of potential deterioration in the credit of the syndicate or account manager during the pendency of account settlements. Since the existing rules were adopted in the 1970s, dealers and those firms who invoice them for syndicate expenses have adopted significantly more efficient billing and accounting systems. The MSRB believes that

such systems make reductions in the time periods for distribution of syndicate and secondary market trading account profits feasible and not unduly burdensome to dealers. Furthermore, many fees are agreed upon in advance or can be estimated with considerable accuracy soon after settlement.

Currently, Rule G-11(i), on settlement of syndicate or similar account, requires that final settlement of an underwriting syndicate or similar account be made within 60 calendar days following the date all securities have been delivered by the syndicate or account manager to the syndicate or account members (“bond closing”). Rule G-11(j), on payments of designations, requires that any credit designated by a customer in connection with the purchase of new issue securities as due to a member of a syndicate shall be distributed to such member by any dealer handling such order within 30 calendar days following bond closing.

The proposed rule change changes the deadlines in Rule G-11 to 30 calendar days after bond closing for distributions (currently 60 calendar days) and 10 calendar days after bond closing for designations (currently 30 calendar days). To facilitate implementation of these reduced time periods, the MSRB also determined to add a new requirement that all syndicate members submit their designations to the syndicate manager within two business days after bond closing.

Rule G-12(i), on settlement of joint or similar account, contains requirements for the settlement of joint or similar accounts formed in the secondary market. The rule currently requires that the settlement of these accounts be made within 60 days following the date all securities have been delivered by the syndicate or account manager to the

syndicate or account members (“delivery date”). The proposed rule change changes the deadline in the rule to 30 calendar days following delivery date.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(C) of the Act,<sup>3</sup> 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, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act because it will further the free and open market in municipal securities by reducing the exposure of dealers to the potential deterioration of the credit of syndicate managers during the period prior to settlement of syndicate accounts and providing a comparable rule for the settlement of secondary market trading accounts.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

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<sup>3</sup> 15 U.S.C. 78o-4(b)(2)(C).

On May 12, 2009, the MSRB requested comment on draft amendments to Rules G-11 and G-12.<sup>4</sup> The MSRB received comments on the proposed rule change from two commentators.<sup>5</sup>

First Southwest applauded the MSRB for proposing the changes to Rule G-11 and urged that they be adopted. No comment was made on the proposed change to Rule G-12. First Southwest also urged that the MSRB study how syndicates could be structured to eliminate the bankruptcy risk of the senior manager to the co-managers. The MSRB's Regulatory Review Special Committee gave preliminary consideration to potentially mandating such a structural change, and its initial review indicated that the cost of such a structural change likely would outweigh the potential benefits. Accordingly, the Committee chose to recommend to the full Board, and the Board approved, the proposed rule changes instead.

SIFMA applauded the MSRB for attempting to reduce the exposure of syndicate members to a potential deterioration in credit of the syndicate manager by means of the draft amendments to Rules G-11 and G-12. However, SIFMA only recommended that the changes to Rule G-12 be adopted. It opposed the proposed change to Rule G-11(i) that would require settlement of syndicate accounts within 30 calendar days rather than 60 calendar days for three reasons: (1) It said that, in many competitive deals, not all the bonds were sold within 30 days; (2) It said that many underwriters' counsel bills were

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<sup>4</sup> See MSRB Notice 2009-20 (May 12, 2009).

<sup>5</sup> Letter from Hill A. Feinberg, Chairman and Chief Executive Officer, First Southwest Company ("First Southwest") to Margaret C. Henry, dated June 26, 2009; Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association ("SIFMA") to Margaret C. Henry, dated June 29, 2009.

not received within 30 days, particularly for new and complicated financings; and (3) It said that 30 calendar days usually amounted to only 20 business days, which it said was too short a period. SIFMA opposed the proposed changes to the Rule G-11(j) on payment of designations for two reasons. First, it said that the new rule requiring co-managers to inform the syndicate manager within two business days after closing of a bond issue was unduly burdensome to co-managers. Instead, it said that the syndicate manager should be required to obtain the information from the co-managers outside of MSRB rules. Second, SIFMA said that the shortening of the time period for payments of designations from 30 calendar days to 10 calendar days would unduly burden the syndicate manager, with minimal reduction in risk. SIFMA said that the periods for settlement of syndicate accounts and payment of designations should be the same: 60 days.

As to SIFMA's comment about the potential effect of the draft Rule G-11(i) changes on competitive underwritings, the Board concluded that only a small percentage of syndicates for competitive underwritings could not be settled within 30 days after closing of a bond issue and that, in such a case, the syndicate could be split up or any unsold bonds sold to a general account of the whole. The Board did not agree with SIFMA's comment regarding the timing of the receipt of underwriter's counsel bills. The Board also found that it was reasonable to require the payment of designations within 10 calendar days after closing of a bond issue and to require all syndicate members to notify the syndicate manager of their designations within two business days after closing of a bond issue.

### III. DATE OF EFFECTIVENESS OF THE PROPOSED RULE CHANGE AND TIMING FOR COMMISSION ACTION

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- A. by order approve such proposed rule change, or
- B. institute proceedings to determine whether the proposed rule change should be disapproved.

For the proposed amendments to Rule G-11, the MSRB requested that the amendments become effective for new issues of municipal securities for which the Time of Formal Award (as defined in Rule G-34(a)(ii)(C)(1)(a)) is more than 30 calendar days after the date the amendments are approved by the SEC. For the proposed amendments to Rule G-12, the MSRB requested that the amendments become effective for secondary market trading accounts formed more than 30 days after the date the amendments are approved by the SEC.

#### IV. SOLICITATION OF COMMENTS

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2009-12 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2009-12. 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 Web site (<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 inspection and copying 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 such 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-2009-12 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>6</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>6</sup> 17 CFR 200.30-3(a)(12).