

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-77364; File No. SR-MSRB-2016-04)

March 14, 2016

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Proposed Amendments to Rules G-12 and G-15 to Define Regular-Way Settlement for Municipal Securities Transactions as Occurring on a Two-Day Settlement Cycle and Technical Conforming Amendments

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Exchange Act” or “Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 1, 2016, the Municipal Securities Rulemaking Board (the “MSRB” or “Board”) filed with the Securities and Exchange Commission (the “SEC” or “Commission”) 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 filed with the Commission a proposed rule change consisting of proposed amendments to Rule G-12, on uniform practice, and 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 on a two-day settlement cycle (“T+2”) and technical conforming amendments (“proposed rule change”). The compliance date of the proposed rule change will be announced by the MSRB in a notice published on the MSRB website, which date would correspond with the industry’s transition to a

¹ 15 U.S.C. 78s(b)(i).

² 17 CFR 240.19b-4.

T+2 regular-way settlement, which would include amendments by the SEC to Exchange Act Rule 15c6-1(a).

The text of the proposed rule change is available on the MSRB's website at www.msrb.org/Rules-and-Interpretations/SEC-Filings/2016-Filings.aspx, 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

Background

Following the financial crisis in 2008, regulators implemented additional rules and regulations designed to reduce risk in the markets, achieve greater transparency and improve efficiency in the financial industry. Consistent with those goals, the securities industry launched a voluntary initiative to shorten the settlement cycle for securities transactions to reduce counterparty risk, decrease clearing capital requirements, reduce liquidity demands, and harmonize the settlement cycle globally. The industry-led initiative to shift from the current regular-way settlement cycle defined as a three-day settlement cycle ("T+3") to a T+2 settlement cycle is being led by the Shortened Settlement Cycle Industry Steering Committee ("ISC")

which is jointly chaired by the Investment Company Institute (“ICI”) and the Securities Industry and Financial Markets Association (“SIFMA”).³ The ISC announced its proposal in a white paper (the “white paper”), which outlined the timeline and activities required to move to a T+2 settlement cycle in the U.S. for equities, corporate and municipal bonds, and unit investment trust trades.⁴ The ISC’s white paper identified all SEC and self-regulatory organization (“SRO”) rule changes that it believed would be necessary to support a T+2 settlement cycle.

The ISC recommended a timeline calling for relevant regulatory organizations to confirm support for a reduced settlement cycle by the third quarter of 2015, propose rule changes by the fourth quarter of 2015 and adopt rule changes by the second quarter of 2016, followed by industry implementation of the T+2 settlement cycle occurring by the third quarter of 2017. In a press release announcing the Board’s actions at its July 2015 Board meeting, the MSRB publicly communicated its support of the industry’s initiative to shorten the settlement cycle to T+2.⁵ On November 10, 2015, the MSRB published a Request for Comment on Changes to MSRB Rules to Facilitate Shortening the Securities Settlement Cycle (“Request for Comment”).⁶

On June 18, 2015, concurrent with the white paper, SIFMA and ICI jointly submitted a letter to SEC Chair Mary Jo White to express support for the industry’s efforts “to shorten the

³ Shortening the Settlement Cycle: The Move to T+2, available at, <http://www.ust2.com/pdfs/ssc.pdf>. Other participating industry associations include: The Association of Global Custodians, The Association of Institutional Investors, The Securities Transfer Association, Inc., and The Depository Trust & Clearing Corporation (“DTCC”).

⁴ Id.

⁵ See Press Release, MSRB Holds Quarterly Meeting, (August, 3 2015), available at, <http://www.msrb.org/News-and-Events/Press-Releases/2015/MSRB-Holds-Quarterly-Meeting-July-2015.aspx>.

⁶ [MSRB Notice 2015-22, Request for Comment on Changes to MSRB Rules to Facilitate Shortening the Securities Settlement Cycle \(November 10, 2015\).](#)

settlement cycle for equities, corporate and municipal bonds, unit investment trusts and financial instruments comprised of these products traded on the secondary market.”⁷ The ICI/SIFMA letter identified specific rules that the relevant securities regulators would need to consider amending in order to facilitate the move to T+2. In response to the ICI/SIFMA letter, Chair White stated that she “strongly support[s] [the] efforts to shorten the settlement cycle from the third business day after the trade date to no later than the second business day” and is “committed to considering regulatory changes necessary for this migration to proceed on a timetable that will permit the industry to complete its essential work by no later than the proposed goal of the third quarter of 2017.” Further, Chair White stated that she has “requested that the SROs finalize [schedules of rule changes necessary to support a T+2 settlement cycle] by October 31, 2015.”⁸ In light of Chair White’s support of the industry initiative and the timeline set forth in the ISC’s white paper, the MSRB is filing this proposed rule change.

Proposal

Two MSRB rules were identified in the ICI/SIFMA letter as essential to facilitate the move to T+2, Rule G-12(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C), because these rules currently define regular-way settlement as occurring on T+3. The MSRB’s proposed rule change would amend Rules G-12(b)(ii)(B)-(D) and G-15(b)(ii)(B)-(C) to define regular-way settlement as occurring on T+2.

As generally noted in ISC’s white paper, the migration to T+2 settlement is expected to provide significant benefits to the financial industry broadly. The benefits to the industry include

⁷ See Letter from Paul Schott Stevens, President & CEO, ICI (“Stevens”), and Kenneth E. Bentsen, Jr., President and CEO, SIFMA (“Bentsen”), to Mary Jo White, Chair, SEC (June 18, 2015) (“ICI/SIFMA letter”).

⁸ See Letter from Mary Jo White, Chair, SEC, to Bentsen and Stevens (September 16, 2015).

the mitigation of counterparty risk, a decrease in margin requirements for National Securities Clearing Corporation's ("NSCC") clearing members, a reduction in pro-cyclical margin and liquidity demands especially during periods of market volatility, and an increase in global settlement harmonization by aligning the U.S. markets with other major markets, such as the European Union.⁹ By shortening the time between trade and execution and settlement by one business day (from T+3 to T+2), the risk of counterparty default and the capital required to mitigate this risk would be reduced. Similarly, the ICI/SIFMA letter noted that "[a]mong other benefits, the shorter settlement cycle will result in process and procedural improvements that will help mitigate the operational risks that can be present between trade date and settlement date."¹⁰ The MSRB believes the likely costs of the proposed rule change, including the changes in processes and technology as well as behavioral modifications by the industry and investors, are justified by the likely benefits associated with transitioning to T+2.

Both the ISC and the ICI/SIFMA letter identified Exchange Act Rule 15c6-1(a) as the primary SEC rule that would need to be amended to facilitate the transition to T+2. Exchange Act Rule 15c6-1 defines regular-way settlement as occurring on T+3 for equities and corporate bonds. Although Exchange Act Rule 15c6-1 does not apply to transactions in municipal securities, the MSRB has previously stated that the regular-way settlement cycle for municipal securities transactions in the secondary markets should be consistent with that for equity and

⁹ See Equity Settlement Cycle for Top 10 Exchanges by Market Capitalization, Figure 2, page 9 (depicting global settlement harmonization for equities pre- and post-migration to T+2), available at, <http://www.ust2.com/pdfs/ssc.pdf>.

¹⁰ See supra n.7.

corporate bond transactions.¹¹ Among other reasons, this ensures that investors will not encounter differing settlement cycles when replacing equity or corporate bonds with municipal securities.

This consistency is currently reflected in MSRB Rules G-12(b)(ii) and G-15(b)(ii), which both define regular-way settlement as occurring on T+3. These rules were last modified in 1995 in coordination with the changes made to Exchange Act Rule 15c6-1 to facilitate shortening the settlement cycle from a five-day settlement cycle (“T+5”) to T+3. In order to maintain consistency across asset classes, the MSRB’s proposed rule change is necessary to support the current industry initiative to shift to a T+2 settlement cycle. The MSRB would coordinate implementation of a T+2 regular-way settlement cycle for municipal securities transactions with other securities regulators contingent on the SEC adopting amendments to Exchange Act Rule 15c6-1(a) establishing T+2 as the standard for regular-way settlement cycle for equities and corporate bonds.

Proposed Amendments to MSRB Rules G-12(b)(ii)(B)-(D) and G-15(b)(ii)(B)-(C)

MSRB Rule G-12, on uniform practice, establishes uniform industry practices for processing, clearance and settlement of transactions in municipal securities between a broker, dealer or municipal securities dealer and any other broker, dealer or municipal securities dealer. Rule G-12(b)(ii), on settlement dates, defines “regular way” settlement as occurring on a T+3 basis. The proposed rule change would amend Rule G-12(b)(ii)(B)-(D) to define “regular way” settlement as occurring on a T+2 basis.

¹¹ See, e.g., “T+3 Settlement, Amendments Filed: Rules G-12 and G-15,” MSRB Reports, Vol. 14, No. 4 (August 1994) at 3; and “Report of the Municipal Securities Rulemaking Board on T+3 Settlement for the Municipal Securities Market” (March 17, 1994).

MSRB Rule G-15, on confirmations, clearance, settlement and other uniform practice requirements, requires municipal securities brokers and municipal securities dealers to provide customers with written confirmations of transactions, containing specified information; and prescribes certain uniform practice procedures for dealers that transact municipal securities business with customers. Rule G-15(b)(ii), on settlement dates, defines “regular way” settlement as occurring on a T+3 basis. The proposed rule change would amend Rule G-15(b)(ii)(B)-(C) to define “regular way” settlement as occurring on a T+2 basis.

Technical Amendments

The MSRB is also proposing technical changes to Rules G-12(b)(i)(B), G-15(b)(i)(B) and G-15(g)(ii)(B). Rules G-12(b)(i)(B) and G-15(b)(i)(B) would both be revised by replacing the reference to “National Association of Securities Dealers, Inc.” with the “Financial Industry Regulatory Authority.” Rule G-15(g)(ii)(B) would likewise be revised to replace the reference to “NASD Conduct Rule 2260(g),” which is retired, and replace it with the current relevant rule cite “FINRA Rule 2251(g).”

Compliance Date

The compliance date of the proposed rule change will be announced by the MSRB in a notice published on the MSRB website, which date would correspond with the industry’s transition to a T+2 regular-way settlement, which would include amendments by the SEC to Exchange Act Rule 15c6-1(a).

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Exchange Act,¹² which provides that the MSRB’s rules shall:

¹² 15 U.S.C. 78o-4(b)(2)(C).

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.

The MSRB believes that cooperating and coordinating with the various regulators, identified by the ISC, and the industry, shortening the time between trade execution and settlement by one business day will serve to reduce the risk of counterparty default, subsequent mandatory closeouts and, as a result, capital required to mitigate these risks would be reduced. Additionally, the MSRB believes the move to a shortened settlement cycle, as facilitated by the proposed rule change, will improve the overall efficiency of the securities markets, promote financial stability and better align U.S. securities markets with global markets.

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

Section 15B(b)(2)(C) of the Exchange Act¹³ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

In determining whether these standards have been met, the MSRB was guided by the Board's Policy on the Use of Economic Analysis in MSRB Rulemaking.¹⁴ In accordance with this policy, the Board has evaluated the potential impacts on competition of the proposed rule change, including in comparison to reasonable alternative regulatory approaches, relative to the

¹³ Id.

¹⁴ Policy on the Use of Economic Analysis in MSRB Rulemaking, available at, <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>.

baseline. The MSRB also considered other economic impacts of the proposed rule change and has addressed any comments relevant to these impacts in other sections of this document.

Based on the DTCC's Cost Benefit Analysis of Shortening the Settlement Cycle,¹⁵ which is the only quantitative analysis of this subject of which the MSRB is aware, the MSRB believes that the cost of the systems changes that may be required to shift from a T+3 to T+2 settlement cycle may be significant. Firms with relatively smaller revenue bases and/or firms that only participate in the municipal securities market may be disproportionately impacted by changes that require significant investments.

Nonetheless, the MSRB believes that the changes are necessary or appropriate in furtherance of the purposes of the Exchange Act and yield important benefits for a range of market participants including, but not limited to, operational cost savings, reduced counterparty risk, decreasing clearing capital requirements, reduce pro-cyclical margin and liquidity demands and increased global securities settlement harmonization.

Therefore, the MSRB does not believe that the proposed rule change will impose any additional burdens on competition, relative to the baseline, that are not necessary or appropriate in furtherance of the purposes of the Exchange Act.

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

The MSRB received nine comment letters¹⁶ in response to the Request for Comment on

¹⁵ Cost Benefit Analysis of Shortening the Settlement Cycle (October 2012), available at, http://www.dtcc.com/~media/Files/Downloads/WhitePapers/CBA_BCG_Shortening_the_Settlement_Cycle_October2012.pdf.

¹⁶ Comment letters were received in response to the Request for Comment from: Bernardi Securities, Inc., Letter from Eric Bederman, SVP, Chief Operating & Compliance Officer, dated November 17, 2015 ("Bernardi"); Bond Dealers of America, Letter from Michael Nicholas, Chief Executive Officer, dated December 10, 2015 ("BDA"); Brandis Tallman LLC, Letter from Richard Brandis, ("Brandis"); Castle Advisory Company, E-

the draft amendments to Rules G-12 and G-15.¹⁷ Seven of the nine commenters provided comments in support of the transition to T+2, agreeing that the move to a shortened settlement cycle would improve the overall efficiency of the securities markets, promote financial stability and better align U.S. securities markets with global markets.¹⁸ Four of the nine commenters expressed concerns about the impact the shortened settlement cycle would have on investors – particularly senior investors – who, the commenters note, often pay for municipal securities purchases by writing a check and sending it through the mail. Several commenters requested the Board consider the impact the proposal may have on the customer disclosure obligations of brokers, dealers and municipal securities dealers (“dealers”) pursuant to MSRB Rule G-32. Finally, BDA, FSI, ICI and SIFMA encouraged the MSRB to work with other regulators on the T+2 initiative and to file any necessary rule changes by the second quarter of 2016 in order to finalize the necessary amendments and implement the change to T+2 in accordance with ISC’s timeline, which called for completing the transition to T+2 by the third quarter of 2017.

The impact of T+2 on certain retail investors

BDA, Bernardi, Brandis and Coastal each commented that retail municipal securities investors that do not utilize payment mechanisms to ensure funds are good/cleared and available

mail from Garth Schulz, dated November 10, 2015 (“Castle”); Coastal Securities, E-mail from Chris Melton, Executive Vice President, dated December 10, 2015 (“Coastal”); Financial Services Institute, Letter from David T. Bellaire, Executive Vice President & General Counsel, dated December 10, 2015 (“FSI”); Geraldine Lettieri, E-mail dated November 10, 2015 (“Lettieri”); Investment Company Institute, Letter from Martin A. Burns, Chief Industry Operations Officer, dated December 1, 2015 (“ICI”); and Securities Industry and Financial Markets Association, Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, dated December 10, 2015 (“SIFMA”).

¹⁷ See supra n.6.

¹⁸ The following commenters were supportive of the amendments contained in the Request for Comment: Bernardi, BDA, Castle, FSI, ICI, Lettierie and SIFMA.

for settlement would be negatively impacted by the proposed rule change. Bernardi stated that the move to T+2 would specifically impact “1. Customer purchases with longer settlements (i.e., 5-10 days) designed to coincide with another bond’s redemption. 2. Customers who do not hold cash balances and send payment via the US Postal System. 3. Customer trades which are booked to settle on the same date as the corresponding firm street trade, if not done ‘regular way.’”

Brandis stated that many of the investors associated with his firm who invest in municipal securities are over the age of 50, are less tech savvy, and predominantly pay for bond purchases by writing a check and sending payment through the mail. Coastal stated, “This proposal . . . will all but require retail clients that cannot settle DVP to transact business only with the firm that holds their assets, effectively eliminating any competition for the municipal business of many clients . . . [s]hortening of the settlement cycle should be delayed until retail commercial banking can provide investors with a cost effective manner of immediate fund transfer.”

Similarly, BDA stated that “many retail clients still rely on sending checks, which may not clear within a two-day window.”

The MSRB recognizes that it may be difficult for certain investors to make the behavioral changes necessary for a successful transition to a T+2 settlement cycle. The MSRB believes that the vast majority of firms have access to technology that would enable their clients to deliver funds in order to settle their municipal securities trades on a T+2 basis and firms should encourage their customers to leverage electronic funds payment to streamline payment processing. Dealers with customers that fund their trade settlement using checks or ACH payments may wish to consider updating their internal control processes and educating customers to ensure that funds are available to settle a transaction on T+2, as proposed.

T+2 and the implications for Rule G-32

Two commenters, BDA and SIFMA, commented that a shortened settlement cycle bears on other MSRB rules, including Rule G-32, which governs the delivery of official documents to customers in connection with primary offerings. SIFMA stated that “[c]oncerning the baseline legal requirement of Rule G-32, for dealers delivering paper official statements to customers, the move to T+2 will compress the timeframe dealers have to complete the delivery of offering documents in fulfillment of this disclosure obligation.”¹⁹ SIFMA suggested the Board consider clarifying previous guidance with respect to the electronic delivery of official statements, but recognized that revisiting the prior guidance was not critical to transitioning to T+2 and should not impede the proposed rule change.²⁰ BDA also recognized that the proposed rule would automatically shorten the timeframe associated with the requirement to deliver offering documents by no later than the settlement of the transaction. BDA urged the Board to address the amendments to Rules G-12 and G-15, but leave all other requirements under MSRB rules tied to the settlement date, such as Rule G-32, unchanged.

Timing and implementation of the proposed rule change

BDA, FSI, ICI and SIFMA encouraged the Board to move forward with the T+2 initiative within ISC’s proposed timeline, which outlines the activities that would be required to complete the transition to T+2 by the third quarter of 2017. The MSRB stated in the Request for

¹⁹ SIFMA comment letter.

²⁰ SIFMA requested that the Board consider clarifying definitively that “access equals delivery” under Rule G-32(a)(ii) and (iii) applies to all dealers and in order to harmonize Rule G-32 with SEC Rules 172, 173 and 174 of the Securities Act of 1933, revisiting the guidance that a customer’s standing request for copies of official statements applies to all municipal transactions with that dealer. The MSRB may consider SIFMA’s suggested clarifications in the future.

Comment that the draft amendments to facilitate the transition to T+2 settlement cycle will be dependent on the SEC amendments to Exchange Act Rule 15c6-1(a), which would establish T+2 as the standard regular-way settlement cycle for equities and corporate bonds. Although, Exchange Act Rule 15c6-1 does not apply to municipal securities, the MSRB has previously stated that the regular-way settlement cycle of municipal securities transactions should be consistent with that for transactions in the equity and corporate bond markets.²¹ ICI and SIFMA both commented that the Board should not consider amendments to Exchange Act Rule 15c6-1(a) to be a “precondition” of filing the MSRB’s proposed changes to Rules G-12 and G-15 with the SEC. SIFMA noted that the MSRB rule change will afford sufficient time, prior to the move to T+2, to implement any system and process changes and fully test those internally and with other industry participants. The MSRB agrees that the adoption of amendments to Exchange Act Rule 15c6-1(a) should not be a precondition to the Board filing proposed amendments to applicable MSRB rules. However, the MSRB will announce the compliance date of amended Rules G-12 and G-15 to correspond with applicable amendments to rules of other self-regulatory organizations as well as the SEC’s implementation of changes to Exchange Act Rule 15c6-1(a). The MSRB intends to ensure that the settlement cycle for municipal securities remains consistent with the settlement cycle for equities and corporate bonds.

The MSRB believes that shortening the time between trade execution and settlement by one business day will serve to reduce the risk of counterparty default, subsequent mandatory closeouts and, as a result, capital required to mitigate these risks would be reduced. Additionally, the MSRB believes the move to a shortened settlement cycle will improve the overall efficiency

²¹ See supra n.11.

of the securities markets, promote financial stability and better align U.S. securities markets with global markets.

The majority of the commenters were supportive of the draft amendments in the Request for Comment, generally in agreement that the move to T+2 would mitigate counterparty risk, provide for more liquidity in the market and increase global harmonization. Commenters recognized that shortening the time between trade execution and settlement by one business day will reduce the risk of counterparty default, subsequent mandatory closeouts and capital required to mitigate these risks would be reduced. Several commenters stated that the move to T+2 would require process, technological and behavioral (business and client) modifications as well as coordination among regulators in order to transition to the T+2 settlement cycle.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period of up to 90 days (i) as the Commission may designate 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 or disapprove such proposed rule change, or
- (B) institute proceedings to determine whether the proposed rule change should be disapproved.

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. Please include File Number SR-MSRB-2016-04 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-2016-04. 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-2016-04 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.²²

Robert W. Errett
Deputy Secretary

²² 17 CFR 200.30-3(a)(12).