

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34-97257; File No. SR-MSRB-2023-03)

April 6, 2023

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing 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Securities Transactions as Occurring One Business Day after the Trade Date and to Amend Rule G-12 to Update an Outdated Cross Reference

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on March 28, 2023 the Municipal Securities Rulemaking Board (“MSRB” or “Board”) filed with the Securities and Exchange Commission (“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 to amend MSRB Rules G-12, on uniform practice, and 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transactions as occurring one business day after the trade date and a proposed amendment to Rule G-12 to update an outdated cross reference (the “proposed rule change”).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

The MSRB requests 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 text of the proposed rule change is available on the MSRB's website at <https://msrb.org/2023-SEC-Filings>, 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

Consistent with the MSRB's strategic goal to modernize the MSRB Rule Book, the proposed rule change would amend MSRB Rule G-12(b)(ii)(B)-(D) and MSRB 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"). This proposed rule change would align with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act

³ See Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 at 13916 (Mar. 6, 2023) (File No. S7-050-22) ("SEC's T+1 Adopting Release"). If the Commission's compliance date were to change, the MSRB would issue a regulatory notice to modify the compliance date to remain aligned with the Commission's compliance date.

Rule 15c6-1, as amended.⁴ Although Exchange Act Rule 15c6-1, as amended⁵ does not apply to municipal securities transactions, the MSRB 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. Therefore, to facilitate a T+1 standard settlement cycle, the MSRB is proposing to amend MSRB 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.

Background

The SEC initially adopted Exchange Act Rule 15c6-1⁶ 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”).⁷ The T+3 settlement cycle remained in effect until 2017 when the SEC amended Exchange Act Rule 15c6-1⁸ to require the settlement of most equity and corporate bond transactions within two business days (“T+2”).⁹ On February 15, 2023, the SEC adopted amendments to Exchange Act Rule

⁴ 17 CFR 240.15c6-1.

⁵ Id.

⁶ Id.

⁷ Exchange Act Release No. 33023 (Oct. 6, 1993), 58 FR 52891 (Oct. 13, 1993). In adopting Rule 15c6-1, the Commission set a compliance date of June 1, 1995, 58 FR at 52891 (Oct. 13, 1993).

⁸ 17 CFR 240.15c6-1.

⁹ Exchange Act Release No. 80295 (Mar. 22, 2017), 82 FR 15564 (Mar. 29, 2017).

15c6-1 (“Amended SEC Rule 15c6-1”)¹⁰ to further shorten the settlement process, requiring the settlement of most equity and corporate bond transactions on T+1.

Amended SEC Rule 15c6-1(a)¹¹ prohibits a broker-dealer from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security,¹² 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.¹³ The recent amendments to SEC Rule 15c6-1¹⁴ change only the standard settlement date for securities transactions covered by the existing rule and do not impact the existing exclusions enumerated in the rule.¹⁵

¹⁰ 17 CFR 240.15c6-1.

¹¹ 17 CFR 240.15c6-1(a).

¹² 15 U.S.C. 78c(a)(12), (amended Apr. 5, 2012).

¹³ Subsection (c) of Rule 15c6-1, 17 CFR 240.15c6-1(c), 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.

¹⁴ 17 CFR 240.15c6-1. See also SEC’s T+1 Adopting Release, 88 FR at 13874 (Mar. 6, 2023).

¹⁵ In addition, the SEC adopted a new rule, Rule 15c6-2, 17 CFR 240.15c6-2, to improve the processing of institutional trades through new requirements for broker-dealers and registered investment advisers related to same-day affirmations. As SEC Rule 15c6-2 does not apply to municipal securities, the MSRB is evaluating whether a like requirement should be considered under MSRB rules.

Proposal

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.¹⁶ In support of these objectives and to promote regulatory consistency, the MSRB 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.¹⁷ Market efficiencies could be eroded if market participants encounter different settlement cycles when replacing equity or corporate bonds with municipal securities. For that reason, the MSRB adopted a T+3 settlement cycle in 1994,¹⁸ and a T+2 settlement cycle in 2017.¹⁹ In order to continue to maintain consistency across asset classes and harmonize with Amended SEC Rule 15c6-1,²⁰ the MSRB is proposing to amend MSRB Rule G-12(b)(ii)(B)-(D) and MSRB 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.

¹⁶ See SEC’s T+1 Adopting Release, 88 FR at 13919 (Mar. 6, 2023).

¹⁷ 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 Exchange Act Release No. 77364; File No. SR-MSRB-2016-04 (Mar. 14, 2016), 81 FR 14906 (Mar. 18, 2016).

¹⁸ See Exchange Act Release No. 34541 (Aug. 17, 1994), File No. SR-MSRB-1994-10 (Aug. 9, 1994).

¹⁹ See Exchange Act Release No. 77744 (Apr. 29, 2016), File No. SR-MSRB-2016-04 (Mar. 1, 2016). See also MSRB Notice 2016-15 (“MSRB to Amend Rules to Define Two-Day Settlement Cycle”).

²⁰ 17 CFR 240.15c6-1.

As a result, with regular-way settlement occurring on T+1, settlement for “when, as and if issued” transactions under MSRB 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.²¹ Specifically, the proposed rule change would amend MSRB 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 confirmation indicating the final settlement date is sent.²² For all other municipal securities transactions under MSRB Rule G-12(b)(ii)(D), 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.²³

²¹ Pursuant to MSRB 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.

²² 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).

²³ For example, 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>.

Lastly, the proposed rule change would correct an outdated cross-reference within MSRB Rule G-12. Specifically, MSRB Rule G-12(b)(ii)(C) regarding the settlement date for “when, as and if issued” transactions currently cross-references MSRB 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. This obligation remains in MSRB Rule G-34 but was moved to subparagraph (a)(ii)(E)(2) due to previous amendments to Rule G-34. Correcting the cross-reference will not alter the obligation of dealers under MSRB Rule G-34 or MSRB Rule G-12.

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+1 regular-way settlement consistent with the implementation of Amended SEC Rule 15c6-1,²⁴ which is currently scheduled for May 28, 2024. 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.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2) of the Exchange Act,²⁵ which provides that the Board shall propose and adopt rules to effect the purposes of this title with respect to transactions in municipal securities effected by brokers, dealers, and municipal securities dealers and advice provided to or on behalf of municipal

²⁴ See SEC’s T+1 Adopting Release, 88 FR at 13916 (Mar. 6, 2023).

²⁵ 15 U.S.C. 78o-4(b)(2).

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.

Section 15B(b)(2)(C) of the Exchange Act²⁶ 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.

The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.²⁷ The proposed amendments to MSRB Rule G-12(b)(ii)(B) and (D) and MSRB Rule G-15(b)(ii)(B)-(C) would define regular-way settlement for municipal securities transactions to occur on T+1. The proposed rule change will 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 by applying the standard for regular-way settlement established by the SEC to transactions in municipal securities. Fostering a consistent standard across asset classes of securities would continue to promote just and equitable principles of trade by facilitating compliance and reducing the risk of potential confusion that could result from an obligation to apply different standards for different asset

²⁶ 15 U.S.C. 78o-4(b)(2)(C).

²⁷ Id.

classes of securities. The MSRB believes the proposed rule change would serve to remove impediments to and perfect the mechanism of a free and open market by yielding 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 therefore reduced liquidity demands and risk. A shortened settlement cycle, as facilitated by the proposed rule change, will promote regulatory consistency, ensuring that market participants will not encounter differing settlement cycles when replacing other securities with municipal securities. The MSRB believes that the proposed rule change would promote investor protection and the public interest by reducing 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.

The MSRB believes the proposed amendment to correct an outdated cross-reference in MSRB Rule G-12(b)(ii)(C) is consistent with Section 15B(b)(2)(C) of the Act.²⁸ Correcting the cross-reference will not alter a dealer's obligations under MSRB Rule G-34 or MSRB Rule G-12. 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. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act²⁹ requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of

²⁸ Id.

²⁹ 15 U.S.C. 78o-4(b)(2)(C).

the Exchange Act. The MSRB believes the proposed rule change to amend MSRB Rule G-12(b)(ii)(B)-(D) and MSRB 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 SEC Rule 15c6-1.³⁰ In addition, the proposed rule change would be applied equally to all dealers. Lastly, the proposed rule change to correct an outdated cross-reference in MSRB Rule G-12(b)(ii)(C) to properly reference MSRB Rule G-34(a)(ii)(E)(2) rather than MSRB Rule G-34(a)(ii)(D)(2) 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.

Therefore, the MSRB believes the proposed rule change would not impose any burden on competition that is 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.³¹

In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change.

³⁰ 17 CFR 240.15c6-1.

³¹ Policy on the Use of Economic Analysis in MSRB Rulemaking is available at <http://msrb.org/Rules-and-Interpretations/Economic-Analysis-Policy.aspx>. In evaluating whether there was a burden on competition, the Board was guided by its principles that required the Board to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

With the adoption of the Amended SEC Rule 15c6-1, the regular-way settlement cycle for all securities (other than an exempted security, a government security, commercial paper, commercial bills, bankers' acceptances and municipal securities) is being shortened from T+2 to T+1 starting on May 28, 2024. Without the MSRB's proposed amendments, market participants would encounter different settlement cycles between municipal securities and other securities such as equity and corporate bonds, which would result in market inefficiencies and cause confusion in the clearing and settlement process, especially for investors who trade both municipal securities and other securities. The proposed amendments are necessary to ensure a consistent settlement cycle for municipal securities transactions and other securities transactions.

Benefits and Costs

The MSRB considered the economic impact associated with the proposed rule change relative to the baseline, which is the current T+2 settlement cycle, and assessed incremental changes in benefits and costs in a proposed future state with a T+1 settlement cycle.

The proposed rule change would yield 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 therefore reduced liquidity demands and risk. The MSRB believes the proposed rule change would promote regulatory consistency³² and market efficiency by having regular-way settlement for municipal securities transactions consistent with the standard settlement for other security classes, harmonized with Amended SEC Rule 15c6-1.³³

³² The MSRB has previously updated rules to harmonize with the Commission to change regular-way settlement from T+5 to T+3 in 1995 and T+3 to T+2 in 2017.

³³ 17 CFR 240.15c6-1.

The MSRB does not have the data necessary to form its own firm-level estimates of the costs of updates to systems and processes and utilized the Commission's estimates for its analysis.³⁴ The MSRB believes that dealers would incur some cost for the systems changes to shift from a T+2 to T+1 settlement cycle. 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 system investments. Since most firms, whether they clear themselves or through a third-party firm, would be required to upgrade the technology for the transition to a T+1 settlement cycle for all other relevant securities, the system costs would already be realized and there should be minimal or no incremental cost for the municipal securities settlement cycle change. The MSRB does not have the data necessary to form its own firm-level estimates of the costs of updates to systems and processes and utilized the Commission's estimates for its analysis. For select municipal dealers who only trade municipal securities and clear themselves, the one-time upfront costs for system upgrades and policy and procedure revision would be approximately \$874,000 per firm for dealers serving institutional investors only and \$1,276,000 per firm for dealers also serving retail investors. This calculation is based on the Commission's estimate of the one-time upfront cost of \$8,740,000 per firm for broker-dealers that serve institutional investors and \$12,760,000 per firm for broker-dealers that also serve retail investors when including all securities, other than an exempted security (a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills).³⁵ The MSRB

³⁴ SEC's T+1 Adopting Release, 88 FR at 13937 - 13978 (March 6, 2023).

³⁵ Id. The MSRB's internal analysis assumes a cost saving of 90% for the one-time upfront cost for municipal securities only, as opposed to many other securities, such as equities, corporate bonds, asset-backed securities, mortgage-backed securities, and stock options, etc., accounting for some fixed costs when working on a single security product. In addition, the MSRB's internal analysis assumes that dealers who trade municipal

believes these select dealers may choose to use a third-party clearing firm if the cost for outsourcing the clearing practice is lower than the estimated costs above. Finally, the MSRB also believes that dealers would incur minimal ongoing direct compliance costs after the initial transition to a T+1 standard settlement cycle.³⁶

In summary, the MSRB believes that the industry is equipped with readily available technology for the transition to a T+1 settlement cycle, and the changes are necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB believes the proposed rule change would promote regulatory consistency and market efficiency by having regular-way settlement for municipal securities transactions consistent with the standard settlement for other security classes and harmonized with Amended SEC Rule 15c6-1.³⁷ As the proposed rule change would be applied equally to all registered dealers transacting in municipal securities, the MSRB 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 Exchange Act.

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

Written comments were neither solicited nor received on the proposed rule change.

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

securities only and self-clear are smaller in size than a typical broker-dealer in the SEC's estimate.

³⁶ See SEC's T+1 Adopting Release, 88 FR at 13937 (March 6, 2023).

³⁷ 17 CFR 240.15c6-1.

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 email to rule-comments@sec.gov. Please include File Number SR-MSRB-2023-03 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-2023-03. This file number should be included on the subject line if email 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. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-MSRB-2023-03 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, pursuant to delegated authority.³⁸

Sherry R. Haywood

Assistant Secretary

³⁸ 17 CFR 200.30-3(a)(12).