



**SECURITIES AND EXCHANGE COMMISSION**  
**[Release No. 34-99226; File No. SR-MSRB-2023-07]**

**Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change to Amend MSRB Rule G-12 to Promote the Completion of Allocations, Confirmations, and Affirmations by the End of Trade Date**

December 21, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act” or “Exchange Act”)<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 20, 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 Rule G-12 (“Rule G-12”), on uniform practice, to promote the completion of allocations, confirmations, and affirmations by the end of trade date for municipal securities transactions between brokers, dealers and municipal securities dealers and their institutional customers to facilitate the move to a settlement cycle of one business day (the “proposed rule change”).

The MSRB requests that the proposed rule change be approved with a compliance date of May 28, 2024, to align with the compliance date for amended Exchange Act Rule 15c6-1 and new Exchange Act Rule 15c6-2, as described herein.<sup>3</sup>

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

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

<sup>3</sup> See Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 at 13918 (Mar. 6, 2023) (File No. S7-05-22) (the “Commission 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 for the proposed rule change to remain aligned with the Commission’s revised compliance date.

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

The proposed rule change would amend Rule G-12 by adding a new section (k) to promote the completion of allocations, confirmations, and affirmations by the end of trade date for transactions in municipal securities between brokers, dealers and municipal securities dealers (“dealers”) and their institutional customers. This proposed rule change would align with the same-day allocation, confirmation, and affirmation process for equities and corporate bonds under Exchange Act Rule 15c6-2, as adopted.<sup>4</sup> Although Exchange Act Rule 15c6-2, as adopted,<sup>5</sup> does not apply to municipal securities transactions, the MSRB believes that the same-day allocation, confirmation, and affirmation process for municipal securities transactions in the secondary market should be consistent with that for equity and corporate bond transactions. This proposal is designed to facilitate the industry’s move to a settlement cycle of one business day (“T+1”) as described further below. To align with Exchange Act Rule 15c6-2, as adopted,<sup>6</sup> the

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<sup>4</sup> 17 CFR 240.15c6-2.

<sup>5</sup> Id.

<sup>6</sup> Id.

MSRB is proposing to amend Rule G-12 by adding a section (k) to require dealers effecting municipal securities transactions subject to the T+1 settlement cycle to either enter into written agreements as specified in the proposed rule change or establish, maintain, and enforce written policies and procedures reasonably designed to address certain objectives related to completing allocations, confirmations, and affirmations as soon as technologically practicable and no later than the end of trade date.

### Background

On February 15, 2023, the Commission adopted amendments to Exchange Act Rule 15c6-1 (“Amended Exchange Act Rule 15c6-1”)<sup>7</sup> to shorten the settlement cycle of most equity and corporate bond transactions from two business days to T+1. In alignment with Amended Exchange Act Rule 15c6-1, the MSRB amended its 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.<sup>8</sup>

In the Commission T+1 Adopting Release, the Commission stated that implementing a T+1 standard settlement cycle would require significant improvements in the current rates of same-day allocations, confirmations, and affirmations to help ensure timely settlement in a T+1 environment.<sup>9</sup> In the Commission T+1 Adopting Release, the Commission proposed new Exchange Act Rule 15c6-2 to establish requirements that facilitate the completion of allocations, confirmations, and affirmations by the end of the trade date, helping to facilitate the settlement of institutional transactions in a T+1 or shorter standard settlement cycle by promoting the timely and orderly transmission of trade data necessary to achieve settlement.<sup>10</sup>

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<sup>7</sup> 17 CFR 240.15c6-1.

<sup>8</sup> See Exchange Act Release No. 97585 (May 25, 2023), 88 FR 35961 (June 1, 2023) (File No. SR-MSRB-2023-03).

<sup>9</sup> See Commission T+1 Adopting Release, 88 FR at 13890.

<sup>10</sup> See id. at 13947.

Exchange Act Rule 15c6-2 provides two options by which broker-dealers may comply with the rule, as adopted.<sup>11</sup> The first option under Exchange Act Rule 15c6-2 provides that, where parties have agreed to engage in an allocation, confirmation, or affirmation process, a broker-dealer would be prohibited from effecting or entering into a contract for the purchase or sale of a security (other than an exempted security, a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills) on behalf of a customer unless such broker-dealer has entered into a written agreement with the customer that requires the allocation, confirmation, affirmation, or any combination thereof, to be completed no later than the end of the day on trade date in such form as may be necessary to achieve settlement in compliance with Exchange Act Rule 15c6-1(a).<sup>12</sup> The second option under Exchange Act Rule 15c6-2 provides an alternative where, in lieu of a written agreement, a broker-dealer may choose to establish, maintain, and enforce written policies and procedures reasonably designed to ensure the completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.<sup>13</sup> Exchange Act Rule 15c6-2 sets out several specific requirements for such written policies and procedures.<sup>14</sup>

### Proposal

The proposed amendments to Rule G-12 would add a new section (k) that would establish the core standard of same-day allocation, confirmation and affirmation for all regular-way transactions in municipal securities required to be settled on the first business day following the trade date under Rule G-12(b)(ii)(B) or MSRB Rule G-15(b)(ii)(B). Proposed Rule G-

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<sup>11</sup> 17 CFR 240.15c6-2.

<sup>12</sup> 17 CFR 240.15c6-2(a)(1).

<sup>13</sup> 17 CFR 240.15c6-2(a)(2).

<sup>14</sup> 17 CFR 240.15c6-2(b)(1-5).

12(k)(i) refers to the terms “confirmation,” “affirmation” and “allocation” as having the same meaning as used in the Securities Exchange Act Rule 15c6-2. For purposes of proposed Rule G-12(k), the terms “confirmation” and “affirmation” refer to the transmission of messages among dealers, institutional investors, and custodian banks to confirm the terms of a trade executed for an institutional investor, a process necessary to ensure the accuracy of the trade being settled, consistent with how such terms are used in Exchange Act Rule 15c6-2.<sup>15</sup> Additionally, the term “allocation” refers to the process by which an institutional investor (often an investment adviser) allocates a large trade among various client accounts or determines how to apportion securities trades ordered contemporaneously on behalf of multiple funds or non-fund clients, consistent with how such term is used in Exchange Act Rule 15c6-2.<sup>16</sup>

Similar to Exchange Act Rule 15c6-2, proposed Rule G-12(k)(ii) would provide two options by which dealers would comply with the rule to meet the standard of same-day allocation, confirmation and affirmation for all regular-way transactions in municipal securities, also referred to as “same-day affirmation.” The first option under the newly added section (k)(ii)(A) to Rule G-12 would allow dealers to enter into a written agreement with the relevant parties to ensure completion of the allocation, confirmation, affirmation, or any combination thereof, for the transaction as soon as technologically practicable and no later than the end of the day on trade date in such form as necessary to achieve settlement of the transaction.

The term “relevant parties” should be read more broadly than merely customers and would include, for example, investment advisers, custodians, or other agents to the extent that

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<sup>15</sup> See Commission T+1 Adopting Release, 88 FR at 13886. The term “confirmation” under proposed Rule G-12(k) refers to the operational message that includes trade details provided by the dealer to the customer to verify trade information so that a trade can be prepared for timely settlement. This is in contrast to trade confirmations required under Rule G-12(c) or MSRB Rule G-15(a), which list a series of disclosures that dealers are required to provide in writing to dealers or customers at or before completion of a transaction.

<sup>16</sup> Id.

such parties would participate in the allocation, confirmation, and affirmation process.<sup>17</sup> Similar to Exchange Act Rule 15c6-2, when entering into written agreements, the dealer would need to identify and enter into agreements with only the relevant parties that would have a role in completing the allocation, confirmation and affirmation process.<sup>18</sup> If a dealer is acting in the capacity of an executing broker on behalf of a customer and another dealer is settling the transaction (i.e., as a clearing broker), then the executing broker would only comply with the rule to the extent that it participates in the allocation, confirmation and affirmation process. In such a scenario, the executing broker would ensure that its arrangements with the clearing broker identify that the clearing broker will be the dealer engaging in the allocation, confirmation, and affirmation process for compliance with the proposed rule change. To the extent that there is no such arrangement between the executing broker and the clearing broker, the executing broker should consider whether it needs to establish, implement, and maintain policies and procedures to identify and explain its role and relationship with the clearing broker.<sup>19</sup> An executing broker that does not participate in allocation, confirmation, and affirmation processes would face no obligations under the proposed rule change.<sup>20</sup> A dealer would not be deemed to have violated Rule G-12 as amended by the proposed rule change based on the actions of the counterparty (e.g., if an investment adviser fails to provide allocation information to the dealer as required under the agreement) as long as the written agreement describes the obligations of the parties to ensure the allocation, confirmation, or affirmation of the transaction, and the dealer itself has complied with its obligations under the written agreement.<sup>21</sup>

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<sup>17</sup> See id. at 13892.

<sup>18</sup> See id.

<sup>19</sup> See id.

<sup>20</sup> See id.

<sup>21</sup> See id. at 13891.

The MSRB believes that the term “trade” and “end of the day on trade date” are widely used by the industry and sufficiently understood to facilitate compliance with the proposed rule change.<sup>22</sup> The proposed rule change uses the term “end of the day on trade date” rather than requiring a specific time earlier than end of day to allow firms to maximize their internal processes to meet the appropriate cutoff times and other deadlines, as soon as technologically practicable. The MSRB believes that this would allow for the relevant parties to negotiate terms and expectations that are responsive to their specific operational arrangements and in turn facilitate the same-day allocation, confirmation and affirmation to further facilitate the timely settlement of the transaction.<sup>23</sup>

The second option to meet the core standard of same-day allocation, confirmation and affirmation is listed in the proposed amendment to Rule G-12 under the newly added section (k)(ii)(B). Under this option, dealers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to ensure completion of the allocation, confirmation and affirmation for the transaction as soon as technologically practicable and no later than the end of the day on trade date. At a minimum, the policies and procedures required under the proposed new section Rule G-12(k)(ii)(B) must:

(A) Identify and describe any technology systems, operations, and processes that the dealer uses to coordinate with other relevant parties, including investment advisers and custodians, to ensure completion of the allocation, confirmation, or affirmation process for the transaction;

(B) Set target time frames on trade date for completing the allocation, confirmation, and affirmation for the transaction;

(C) Describe the procedures that the dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and

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<sup>22</sup> See *id.* at 13897.

<sup>23</sup> See *id.*

adjust trade information to help ensure that the allocation, confirmation, and affirmation can be completed by the target time frames on trade date;

(D) Describe how the dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the dealer experiences delays in promptly completing the confirmation; and

(E) Measure, monitor, and document the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of the day on trade date.

The policies and procedures alternative in proposed Rule G-12(k)(ii)(B) could help ensure that, when the parties to a transaction encounter obstacles that may prevent them from completing an allocation, confirmation, or affirmation on trade date, they have policies and procedures to navigate, address, and, when possible, mitigate or overcome such obstacles. For example, similar to Exchange Act Rule 15c6-2, reasonably designed policies and procedures generally could include robust compliance and monitoring systems; processes to escalate identified instances of noncompliance for remediation; procedures that designate responsibility to business line personnel for supervision of functions and persons; processes for escalating issues; processes for periodic review and testing of the adequacy and effectiveness of policies and procedures; and training on policies and procedures.<sup>24</sup>

Under proposed Rule G-12(k)(iii)(A), the policies and procedures should be reasonably designed to ensure that the dealer considers holistically the range of systems and tools it has available to facilitate the same-day affirmation objective, as well as the range of operations and processes that a dealer uses to facilitate same-day affirmations across different customer and commercial relationships.<sup>25</sup> Similar to Exchange Act Rule 15c6-2, the MSRB believes that

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<sup>24</sup> See *id.* at 13894.

<sup>25</sup> See *id.* at 13895.

different processes may be necessary to facilitate same-day affirmations because certain transactions or customer types require different arrangements and a dealer may require different arrangements for a customer who engages directly with the dealer versus a customer whose investment adviser or custodian engages with the dealer on its behalf. Further, to be reasonably designed, dealers would need to categorize and assess the range of operational arrangements and processes that would be used to facilitate the same-day affirmation process across the full range of different customer and transaction types for which it offers services.<sup>26</sup>

The MSRB is aware that a dealer may not be able to complete the same-day affirmation process on the trade date with respect to every transaction it executes for every customer in every circumstance. Therefore, proposed Rule G-12(k)(iii)(B) requires that the policies and procedures should set target time frames for the range of transaction and customer types the dealer serves, as well as the range of systems and operational processes it might employ.<sup>27</sup> Similar to the Commission, the MSRB believes that reasonably designed procedures would be able to categorize the range of transactions and customer relationships that a dealer has established and estimate the length of time it takes to complete each of the allocation, confirmation, and affirmation to set its target time frames.<sup>28</sup> A dealer is required to enforce its policies and procedures, meaning that it is obligated to design its systems and commit the necessary resources to ensure that it can comply with its own policies and procedures under the proposed rule change.<sup>29</sup>

Proposed Rule G-12(k)(iii)(C) would require that policies and procedures lay out the ex ante steps that the dealer would take to promptly communicate trade information, as well as to

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<sup>26</sup> See id. at 13895-13896.

<sup>27</sup> See id. at 13896.

<sup>28</sup> See id.

<sup>29</sup> See id.

investigate discrepancies and adjust trade information in response to information the dealer receives.<sup>30</sup> Although target time frames will not always be met, and although affirmations will not always be complete on trade date, a dealer is required to enforce its policies and procedures to ensure that an action fully within the dealer's own control is not preventing the completion of the allocation, confirmation, or affirmation for the transaction.<sup>31</sup>

Proposed Rule G-12(k)(iii)(D) would require that policies and procedures describe how the dealer plans to identify and address delays if another party, including an investment adviser or a custodian, is not promptly completing the allocation or affirmation for the transaction, or if the dealer experiences delays in promptly completing the confirmation. In addition, policies and procedures generally should identify the circumstances under which a dealer may experience delays in promptly completing the confirmation and what steps it would take to resolve the delays or any recurring problems.<sup>32</sup>

Finally, proposed Rule G-12(k)(iii)(E) would require that policies and procedures be reasonably designed to measure, monitor, and document the rates of allocations, confirmations, and affirmations completed within the target time frames established under proposed Rule G-12(k)(iii)(B), as well as the rates of allocations, confirmations, and affirmations completed as soon as technologically practicable and no later than the end of trade date.<sup>33</sup> While proposed Rule G-12(k) does not require that same-day affirmation occur for every transaction that a dealer executes and settles, for policies and procedures to be effective, the dealer generally should use the metrics identified by proposed Rule G-12(k)(iii)(E) to assess how well its policies and

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<sup>30</sup> See id.

<sup>31</sup> See id.

<sup>32</sup> See id.

<sup>33</sup> See id.

procedures ensure the completion of same-day affirmation and update its policies and procedures over time with improvements.

### Compliance Date

The compliance date of the proposed rule change will correspond with the industry's transition to T+1 settlement consistent with the compliance date for amended Exchange Act Rule 15c6-1<sup>34</sup> and new Exchange Act Rule 15c6-2,<sup>35</sup> which is currently scheduled for May 28, 2024. If the Commission's compliance date were to change, the MSRB would issue a regulatory notice to modify the compliance date of the proposed rule change to remain aligned with the Commission's revised compliance date.<sup>36</sup>

### 2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2) of the Exchange Act,<sup>37</sup> which provides that the MSRB shall propose and adopt rules to effect the purposes of the Exchange Act with respect to transactions in municipal securities effected by dealers and advice provided to or on behalf of municipal entities or obligated persons by 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 dealers and municipal advisors.

Section 15B(b)(2)(C) of the Exchange Act<sup>38</sup> provides that the MSRB's rules shall be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

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<sup>34</sup> See id. at 13916.

<sup>35</sup> See id. at 13918.

<sup>36</sup> The compliance date for the MSRB's amendments to Rule G-12(b)(ii)(B)-(D) and MSRB Rule G-15(b)(ii)(B)-(C) to transition to T+1 settlement for regular-way municipal securities transactions would also be correspondingly modified to remain aligned with the Commission's revised compliance date. See Exchange Act Release No. 97585 (May 25, 2023), 88 FR 35961 (June 1, 2023) (File No. SR-MSRB-2023-03).

<sup>37</sup> 15 U.S.C. 78o-4(b)(2).

<sup>38</sup> 15 U.S.C. 78o-4(b)(2)(C).

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 Exchange Act.<sup>39</sup> 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 by applying the same standard for same-day allocation, confirmation and affirmation 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 regulatory confusion that could result from an obligation to apply different standards for different asset classes of securities.

Further, the proposed rule change would foster cooperation and coordination among regulators by having similar same-day allocation, confirmation and affirmation standards as the Commission. By providing a uniform standard for all types of broker-dealers engaging in equity securities, corporate bonds and/or municipal securities transactions, this alignment of the regulatory scheme will foster greater cooperation and coordination among the MSRB and the Commission and Financial Industry Regulatory Authority, as well as greater cooperation and coordination among the authorities that examine dealers for compliance with MSRB rules.

The MSRB believes that the proposed rule change will also foster cooperation with other market participants and assist in timely and orderly settlement of securities transactions, because many dealers will have relationships across multiple investment advisers, custodians, and other

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<sup>39</sup> Id.

types of agents, and therefore could be instrumental in introducing better processes and procedures across a range of different relationships. These improvements to facilitate same-day allocations, confirmations, and affirmations can in turn facilitate an orderly and efficient transition to a T+1 settlement cycle. The proposed rule change would incentivize dealers to identify and deploy effective practices for achieving allocations, confirmations, and affirmations ex ante, thereby improving the rate of allocations, confirmations, and affirmations over time, which in turn can enhance the adoption of the industry's move to T+1.

Facilitation of a shorter settlement cycle would remove impediments to and perfect the mechanism of a free and open market in municipal securities by yielding long-term benefits of promoting an orderly settlement process and reducing the likelihood of exceptions or other processing errors that could lead to settlement failures.<sup>40</sup> The proposed rule change would allow for agreements or policies and procedures to be in place that would give dealers means by which to address the obstacles in same-day affirmation, allocation, and confirmation processes which are instrumental in timely settlement of transactions. The sooner the parties can affirm the trade information for their transaction, the lower the likelihood of a settlement failure, which may give parties time to resolve any errors, improve processes over time and implement new technologies instead of “just in time” solutions that can cause delays in timely settlement of transactions. This would foster continued improvements in institutional trade processing, further promote accuracy and efficiency, reduce the potential for settlement fails, and more generally, reduce the potential for operational risk, which would promote investor protection and the public interest.

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

Section 15B(b)(2)(C) of the Exchange Act<sup>41</sup> requires that MSRB rules not be designed to impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The MSRB believes that the proposed rule change would not

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<sup>40</sup> Commission T+1 Adopting Release, 88 FR at 13897.

<sup>41</sup> 15 U.S.C. 78o-4(b)(2)(C).

impose any unnecessary or inappropriate burden on competition, as the proposed rule change would apply a uniform standard for a same-day allocation, confirmation and affirmation for all transactions in municipal securities to align with the newly revised standard applicable to, among other securities, equity and corporate bond transactions under the amended Exchange Act Rule 15c6-2. In addition, the proposed rule change would be applied equally to all dealers. 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.

The MSRB was guided by the MSRB's Policy on the Use of Economic Analysis in MSRB Rulemaking.<sup>42</sup> In accordance with this policy, the MSRB has evaluated the potential impacts on competition of the proposed rule change. The proposed rule change would add a new section (k) to the rule that would establish a core-standard of a same-day allocation, confirmation and affirmation for all transactions in municipal securities.

Although the proposed rule change would be applied equally to dealers, the MSRB acknowledges potential burdens for firms that only participate in the municipal securities market, and those firms likely have relatively smaller revenue bases than firms that also trade other securities. These firms may incur costs associated with system changes to achieve a "same-day affirmation," and may be disproportionately impacted by changes that would require investments in working towards ensuring the same-day affirmation in that such costs would be borne solely by their municipal securities activities whereas other firms with a more diversified securities business likely would have already invested in the cost of coming into compliance with Exchange Act Rule 15c6-2 across their business lines. However, the MSRB believes the proposed rule change would not impose any burden on competition that is not necessary or

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<sup>42</sup> 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 any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, the MSRB was guided by its principles that required the MSRB to consider costs and benefits of a rule change, its impact on capital formation and the main reasonable alternative regulatory approaches.

appropriate in furtherance of the purposes of the Exchange Act,<sup>43</sup> as any such regulatory burden would be necessary or appropriate to align with the newly revised standard applicable to other securities under the amended Exchange Act Rule 15c6-2 to facilitate compliance with the upcoming T+1 settlement obligations. Without the proposed amendments, market participants would encounter different standards between municipal securities and other securities such as equity and corporate bonds, which could result in market inefficiencies and cause confusion, especially for investors who trade both municipal securities and other securities. Accordingly, the proposed rule change would be in the public interest and ultimately for the protection of investors, municipal entities, and obligated persons.<sup>44</sup> In addition, dealers may encounter difficulty complying with the upcoming T+1 settlement obligations without the analogous Exchange Act Rule 15c6-2 requirements that the proposed rule change would incorporate into Rule G-12.

#### Benefits, Costs and Effect on Competition

The MSRB considered the economic impact associated with the proposed rule change, relative to the baseline, which is the current Rule G-12 that does not align with Exchange Act Rule 15c6-2 on same-day allocation, confirmation and affirmation, and assessed incremental changes in benefits and costs in the proposed future state of a same-day allocation, confirmation and affirmation process, in both cases in light of the already approved move to a T+1 settlement cycle in May 2024.

#### Benefits

The proposed rule change would facilitate compliance with the upcoming T+1 settlement obligations. The proposed rule change would help expedite the transmission and affirmation of trade data that is expected to enhance the accuracy and efficiency of institutional trade processing. The MSRB also expects that the same-day allocation, confirmation and affirmation

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<sup>43</sup> 15 U.S.C. 78o-4(b)(2)(C).

<sup>44</sup> Id.

standard would encourage the development of more standardized and automated dealer practices. While much of the industry has moved to a same-day allocation, confirmation and affirmation standard, the MSRB understands that there remain outliers who have not yet done so. By adopting a settlement process, either by agreement or strengthening existing policies and procedures, the MSRB believes that more institutional trades would be successfully processed and receive an affirmed confirmation on the same trade date. The proposed rule change for regular-way municipal securities transactions in the secondary market would be consistent with Exchange Act Rule 15c6-2, which applies to equity and corporate bond transactions. Market efficiencies could be eroded if market participants encounter differing allocation, confirmation and affirmation standards in settlement cycles when trading equity securities or corporate bonds along with municipal securities. Finally, the MSRB expects that an increase in same-day affirmation rates would help reduce the number of settlement failures as affirmations on the same-day can help mitigate the risk of errors.

#### Costs

The MSRB believes that some dealers would incur costs associated with systems changes to achieve a same-day allocation, confirmation and affirmation standard. For upfront costs, dealers would need to create written agreements for relevant parties and/or update existing policies and procedures. While firms may already have written agreements as part of their practices, firms would still need to review the existing policies and procedures framework to ensure their compliance with the proposed rule change. There would also be ongoing costs associated with compliance and recordkeeping in relation to the written policies and procedures and written agreements, including measuring and documenting the rate at which trades are meeting a same-day allocation, confirmation and affirmation standard.

The T+1 settlement obligation is applicable to all firms regardless of how many asset classes they trade, and firms that only participate in the municipal securities market may be disproportionately impacted by changes that could require system or staffing investments in

working towards ensuring a same-day allocation, confirmation and affirmation. This is in contrast to firms that participate in multiple asset classes, for which the incremental costs would be smaller or negligible as these firms are assumed to be in compliance with Exchange Act Rule 15c6-2 obligations for asset classes other than municipal securities (as of the effective date of those obligations). For the limited number of dealers who only trade municipal securities, the MSRB assumes these dealers would likely choose the second option of establishing policies and procedures to comply with the proposed rule change, as the first option of entering written agreements could generally be more costly unless a particular dealer already uses written agreements to manage their relationship with their customers.<sup>45</sup> The MSRB estimates that one-time upfront costs for system upgrades and policy and procedure revisions would be approximately \$44,440 per firm and that ongoing annual costs for compliance and recordkeeping would be approximately \$3,448 per firm. This calculation is based on the Commission's upper-bound estimates of \$88,880 per firm for the one-time upfront cost and \$172,416 per firm for the annual ongoing cost when including all securities, other than an exempted security (a government security, a municipal security, commercial paper, bankers' acceptances, or commercial bills).<sup>46</sup>

#### Burden on Competition and Capital Formation

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<sup>45</sup> See Commission T+1 Adopting Release, 88 FR at 13938. There is also a possibility that the industry would develop a standard written agreement for investors to complete and send to dealers over the longer term, but the MSRB is not aware of the possibility currently.

<sup>46</sup> See *id.*, 88 FR at 13946. The Commission estimated 411 broker-dealers would be subject to the requirements of Exchange Act Rule 15c6-2. *Id.* at 13939. The MSRB's internal analysis assumes a cost saving of 50% 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. For the ongoing cost, the MSRB estimated the number of trades for municipal securities would be less than 2% of trades for other securities. Conservatively, two percentage points are used for estimating the ongoing costs related to municipal securities. The MSRB believes these estimates reflect an upper bound on the compliance costs.

The proposed rule change would promote regulatory consistency and market efficiency by adopting a consistent standard of completing the trade matching and affirmation process on the trade date for all securities and harmonizing with Exchange Act Rule 15c6-2. The proposed rule change would also facilitate compliance with the upcoming T+1 settlement obligations. As a result, the MSRB believes that by providing a uniform standard across all asset classes the proposed rule change would foster capital formation.

The proposed rule change would be applied equally to all dealers transacting in municipal securities. The MSRB assumes that firms that will be subject to newly adopted Exchange Act Rule 15c6-2 would be equipped with the necessary technology and personnel for the completion of the allocation, confirmation and affirmation process on trade date as of the effective date of those obligations. For the remaining limited number of municipal dealers who only trade municipal securities, the estimated upfront costs would be relatively minor though necessary. Finally, the estimated annual ongoing costs would also be minor and would be proportional to each firm's trading activities. Therefore, the MSRB believes any broader impact on competition in the municipal securities market is expected to be minor, and 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.

#### Reasonable Alternatives

One alternative the MSRB considered was instead of requiring dealers to develop written agreements or to establish, implement and enforce policies and procedures as prescribed in proposed Rule G-12(k), the proposed rule change would require dealers to have adequate policies and procedures in place that can support allocation. This principle-based approach would allow dealers to customize their policies and procedures while still proceeding towards the ultimate goal of same-day allocation, confirmation and affirmation. However, while this alternative may provide dealers more flexibility, it does not necessarily guarantee achieving same-day allocation, confirmation and affirmation, and does not facilitate the adoption of "timely

settlement.” For example, while this principle-based approach may accelerate the allocation, confirmation and affirmation process for dealers, it may not lead to a market-wide adoption of same-day allocation, confirmation and affirmation standard immediately without the prescriptive obligations specified in policies and procedures in the proposed rule change for all dealers. In any case, the proposed rule change would promote an orderly settlement process regardless of the length of the settlement cycle.

Another alternative would be to provide only one option for dealers to achieve a same-day allocation, confirmation and affirmation, for example, by withdrawing the written agreement requirement and instead only requiring the policies and procedures approach. This alternative would allow dealers to adopt their own internal policies and procedures to ensure that allocations, confirmations, and affirmations are completed on a timeline that would facilitate settlement on T+1. However, this approach could be more costly for certain dealers who may already have written agreements in place or would want to rely on written agreements over incurring compliance costs of establishing, implementing and enforcing policies and procedures. Thus, the MSRB has determined that the proposed rule change is superior to the potential alternative approaches because it would offer two options for dealers to work towards a same-day allocation, confirmation and affirmation standard, thereby facilitating a timely settlement.

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. However, in connection with the MSRB’s filing to adopt a T+1 settlement process for municipal securities,<sup>47</sup> one commenter expressed general support to have consistent rules for municipal securities with those for equities and corporate bonds whenever possible.<sup>48</sup> Specifically, the

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<sup>47</sup> Exchange Act Release No. 97257 (Apr. 6, 2023), 88 FR 22075 (Apr. 12, 2023) (File No. SR-MSRB-2023-03).

<sup>48</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (May 3, 2023), available at <https://www.sec.gov/comments/sr-msrb-2023-03/srmsrb202303-183739-336923.pdf>.

commenter encouraged the MSRB to consider 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.<sup>49</sup>

### 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-MSRB-2023-07 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-2023-07. This file number should be included on the subject line if email is used. To help the Commission process and review your

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<sup>49</sup> See id.

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. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to File Number SR-MSRB-2023-07 and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, pursuant to delegated authority.<sup>50</sup>

**Christina Z. Milnor,**

*Assistant Secretary*

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<sup>50</sup> 17 CFR 200.30-3(a)(12).