



January 18, 2024

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File Number SR-MSRB-2023-07; Release No. 34-99226; 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

Dear Ms. Countryman,

The Securities Industry and Financial Markets Association (“SIFMA”)¹ appreciates this opportunity to provide input to the SEC on the Municipal Securities Rulemaking Board’s (“MSRB’s”) filing.² SIFMA applauds the MSRB’s goal to modernize its rule book and align municipal securities settlement with regular-way settlement on T+1 for equities and corporate bonds under Exchange Act Rule 15c6-1, as amended.³ Shortening the settlement process can reduce operational risks between trade date and settlement date, which can promote investor protection and reduce the risk of counterparty default and the capital required to mitigate this risk. In furtherance of these goals:

- SIFMA supports T+1 settlement.
- SIFMA supports the adoption of Rule G-12(k), which harmonizes municipal securities allocations, confirmations and affirmations consistent with SEC Rule 15c6-2.
- Practical implementation guidance would be helpful.

¹ SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry’s nearly 1 million employees, we advocate for legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).

² 88 Fed. Reg. 89796 (Dec. 28, 2023) (the “Filing”).

³ <https://www.sec.gov/rules/final/2023/34-96930.pdf>.

- Delayed enforcement of Rule G-12(k) is warranted due to the short implementation time-frame.

SIFMA does have some specific comments and concerns on the Filing, as set forth below.

I. SIFMA Supports T+1 Settlement.

SIFMA has been a leader in the effort to accelerate the U.S. securities settlement cycle from trade date plus 2 days (T+2) to trade date plus one day (T+1) since 2020. We believe this acceleration of the settlement cycle will improve market resiliency by further reducing risk that exists while a trade is being finalized, benefit investors by shortening the execution time frame between buying or selling their securities and reduce the level of margin market participants must post to offset the settlement risk. Market resiliency is a top priority for SIFMA. Enhancing our securities settlement process is critical to the continued resiliency of our markets and market operations.

II. SIFMA Supports the Adoption of Rule G-12(k), which Harmonizes Municipal Securities Allocations, Confirmations and Affirmations Consistent with SEC Rule 15c6-2.

The industry's transition from a T+2 to T+1 settlement cycle is a complex undertaking, which will require an immense amount of planning and effort by industry participants. These changes are a forcing mechanism that will, on their own accord, help achieve increased same-day affirmation even without a mandate from an additional rule similar to new SEC Rule 15c6-2. There are many commercial incentives in place for industry participants to meet market standard settlement timelines, as was successfully demonstrated in 1995 and 2017 for the two prior settlement cycle changes. These incentives for firms to achieve on-time settlement include:

- Increased costs for trades that do not settle through netting and related financing;
- Increased costs for unaffirmed trades;
- Significant costs for buy-ins; and
- Potential for customer dissatisfaction which may negatively impact the customer relationship.

That said, SIFMA is supportive of aligning rules for municipal securities with those for equities and corporate bonds whenever possible. We appreciate the MSRB's amendments which seek to harmonize Rule G-12(k) with SEC Rule 15c6-2(a)(2), which in the absence of a written agreement with the customer to ensure completion of the allocation, confirmation, affirmation, requires broker-dealers to:

[e]stablish, maintain, and enforce written policies and procedures reasonably designed 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.

In particular, allowing broker-dealers the option to establish adequate policies and procedures to support faster processing is helpful. This allows individual firms to customize their policies and procedures to their business model, products and unique customer base while meeting regulatory objectives. This language assists in achieving our mutual goal of successfully transitioning the industry to T+1 while maintaining current settlement rates. As noted above, we feel strongly that the MSRB should continue to conduct outreach with stakeholders in the municipal securities community, particularly investors, prior to the implementation of the rule to aid the industry in its compliance efforts.

III. Practical Implementation guidance would be helpful.

New MSRB Rule G-12(k) on its face applies only to “regular way trades” pursuant to Rule G-12(b)(ii)(B) or G-15(b)(ii)(B). Rule G-12(k) clearly does not apply to newly-issued “when, as and if issued” municipal securities transactions, for which settlement is covered by Rule G-12(b)(ii)(C) or G-15(b)(ii)(C). SIFMA greatly appreciates the MSRB’s clarity in drafting which avoids an ambiguity in the SEC rules by making clear that allocations, confirmations, and affirmations of “cash”, “when, as and if issued”, and other extended settlement transactions are not required same day.

An issue that could use clarity is the treatment of securities that trade after 4:30pm. Allocations, confirmations and affirmations related to securities that trade after 4:30pm should only be required not later than a specified time on T+1, such as Noon, due to the practical realities of staff coverage issues at broker-dealers, buy-side customers, custodians, agents or other necessary parties. Setting regulatory deadlines for allocations, confirmations, and affirmations after 4:30pm creates an unrealistic situation where broker-dealers may need allocations and affirmations after normal business hours. We question the practicality of process flows that require trade allocations by 7pm and affirmations by 9pm on trade date. We feel it is unreasonable to expect customers, or related custodians or agents, to act on these trades so late in the evening after the markets have closed. SIFMA urges the MSRB to take a commonsense approach to such regulatory deadlines to avoid creating a rule with which compliance is unnecessarily challenging or impossible.

Further, SIFMA would like to ensure that broker-dealers have a complete understanding of the examination and enforcement paradigm for Rule G-12(k). Broker-dealers want to ensure that their reasonable efforts to comply will be sufficient, as their compliance will in part be dependent on outside parties including customers, custodians, and agents over which they have limited control. Broker-dealers want to ensure that their definitions of “prompt”, “best efforts”, and “reasonableness” meet examiners’ expectations. There should not be absolute targets or rigid thresholds that the broker-dealers will be held to, but instead examiners should gauge compliance against industry averages. Over time, as the industry adapts to the new T+1 environment, we assume the industry average rates for allocations, confirmations and affirmations will rise.

Any significant change in rulemaking brings uncertainties, and we appreciate working with the MSRB to ensure that broker-dealers have the compliance tools and implementation guidance to achieve the goals of the rulemaking.

IV. Delayed Enforcement of Rule G-12(k) Is Warranted Due to the Short Implementation Timeframe.

SEC Rule 15c6-2⁴ was approved on February 15, 2023, almost a full year ago, which was 15 months prior to the scheduled transition to T+1 on May 28, 2024. MSRB's Rule G-12(k) was filed with the SEC less than six months prior to the move to T+1 and has not yet been approved. As such, municipal securities dealers have a materially shorter time frame to implement the provisions of Rule G-12(k) as compared to the implementation timeframe provided for SEC Rule 15c6-2. Given this short timeframe to the implementation date, SIFMA members have concerns about the examination and enforcement of this new rule. There are many areas in the municipal securities market that are nuanced, and where significant analysis of relevant processes may be necessary, both before and after May 28, 2024, for broker-dealers to ensure their compliance. Also, there may be broker-dealers in the municipal securities market that do not currently have automated systems in place to track down allocations and affirmations. These broker-dealers would likely need additional time to effectively comply with this new rule. For these reasons, we ask FINRA, the SEC, and the banking regulators to delay enforcement of Rule G-12(k) for six months until November 28, 2024.

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Thank you for considering SIFMA's comments. SIFMA appreciates the MSRB's work to harmonize rules on municipal securities allocations, confirmations and affirmations consistent with SEC Rule 15c6-2. If a fuller discussion of our comments would be helpful, I can be reached at (212) 313-1130 or lnorwood@sifma.org.

Sincerely,



Leslie M. Norwood
Managing Director
and Associate General Counsel

cc: ***Municipal Securities Rulemaking Board***

Ron Smith, Corporate Secretary

Ernesto A. Lanza, Chief Regulatory and Policy Officer

⁴ <https://www.sec.gov/files/rules/final/2023/34-96930.pdf>.