



February 1, 2024

Vanessa Countryman  
Secretary  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

**Re: Response to Comments on File No. SR-MSRB-2023-07**

Dear Ms. Countryman,

On December 20, 2023, the Municipal Securities Rulemaking Board (“MSRB”) filed with the Securities and Exchange Commission (“Commission”) a proposed rule change, File No. SR-MSRB-2023-07, to amend MSRB 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”).<sup>1</sup>

The proposed rule change was published for comment in the Federal Register on December 28, 2023.<sup>2</sup> The MSRB appreciates the participation of commenters in the rulemaking process. Two written comment letters were filed with the Commission in response to the proposed rule change.<sup>3</sup> Both ICI and SIFMA expressed support for the proposed rule change with some concerns raised by SIFMA that are addressed below.

Both SIFMA and ICI expressed support for the proposed rule change for municipal securities, which aligns with the same-day allocation, confirmation, and affirmation (“same-day affirmation”) process for equities and corporate bonds under Exchange Act Rule 15c6-2, as

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<sup>1</sup> The proposed rule change, File No. SR-MSRB-2023-07 (December 20, 2023), is available at <https://www.msrb.org/sites/default/files/2023-12/MSRB-2023-07.pdf>. Except as expressly defined herein, the defined terms used in this letter shall have the meanings as defined in the proposed rule change.

<sup>2</sup> See Exchange Act Release No. 99226 (December 21, 2023), 88 FR 89796 (December 28, 2023) (File No. SR-MSRB-2023-07).

<sup>3</sup> See Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association (“SIFMA”) (January 18, 2024) (“SIFMA Letter”); and Letter from RJ Rondini, Director, Securities Operations, Investment Company Institute (“ICI”) (January 18, 2024) (“ICI Letter”).

adopted.<sup>4</sup> Both commentors also believed that the proposed rule change will help facilitate the industry’s move to a settlement cycle of one business day (“T+1”). ICI expressly recognized that the proposed rule change’s alignment with Exchange Act Rule 15c6-2 would promote consistency and operational efficiency. ICI further stated that “the MSRB’s proposal, if adopted, will provide dealers with the flexibility necessary to comply in a manner best suited to their infrastructure, customers, and products.”<sup>5</sup> SIFMA expressed support of the MSRB harmonizing the proposed rule change with the Exchange Act Rule 15c6-2, particularly to allow for the adoption of policies and procedures in the absence of a written agreement with the customer to ensure same-day affirmation.

The MSRB believes the further comments on the proposed rule change raised by SIFMA, as described below, were generally addressed by the MSRB in its filing, which is incorporated herein by reference. However, the MSRB is addressing the relevant concerns described below.

### **Implementation Guidance – After-hours Trading**

SIFMA noted that it is not practical for securities trading after 4:30pm to meet the same-day affirmation and “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.”<sup>6</sup> SIFMA further stated that “[s]etting 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.”<sup>7</sup>

While the MSRB appreciates SIFMA’s feedback, it disagrees with the suggestion of extending the affirmation process from the end of trade date to the next day as it would deter the core purpose of the proposed rule change of facilitating the industry’s move to T+1 settlement. It would also disrupt the regulatory consistency and market efficiencies to be achieved 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 is fully aligned with the requirements of Exchange Act Rule 15c6-2, and the Commission’s guidance as noted in the Commission’s release adopting its rule, which notes that firms have the option to structure either its written agreements or policies and procedures to address challenges

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

<sup>5</sup> ICI Letter at 2.

<sup>6</sup> SIFMA Letter at 3.

<sup>7</sup> *Id.*

associated with the timing considerations.<sup>8</sup> Specifically, as noted in the Commission T+1 Adopting Release, firms can “choose to specify how to accelerate the process to accommodate end of day trading, as well as how to staff their operations to ensure that the parties are available to complete allocations, confirmations, and affirmations across multiple time zones.”<sup>9</sup>

SIFMA specifically objected to the timing of same-day affirmation by stating “[w]e question the practicality of process flows that require trade allocations by 7pm and affirmations by 9pm on trade date.”<sup>10</sup> It further noted that “[w]e 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.”<sup>11</sup> After careful deliberation, the MSRB purposefully did not impose a requirement for the firms to complete trade allocations by 7pm and affirmations by 9pm. Both options under proposed Rule G-12(k)(ii) of entering into a written agreement or establishing policies and procedures require the time frame as the “end of the day on trade date.” As noted in the filing, and in alignment with the Commission T+1 Adopting Release, the proposed rule change intentionally 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.<sup>12</sup> 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>13</sup>

The MSRB believes that the proposed rule change is necessary to ensure same-day affirmations are completed and that industry continues to move to T+1, in harmony with the Exchange Act Rule 15c6-2, in an orderly manner minimizing undue disruption in the securities market.

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<sup>8</sup> See Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 at 13894 (Mar. 6, 2023) (File No. S7-05-22) (the “Commission T+1 Adopting Release”).

<sup>9</sup> *Id.*

<sup>10</sup> SIFMA Letter at 3.

<sup>11</sup> *Id.*

<sup>12</sup> See File No. SR-MSRB-2023-07 at 7.

<sup>13</sup> *Id.* In addition, proposed Rule G-12(k)(iii)(D) expressly provides that a dealer may adopt reasonably designed written policies and procedures that, among other things, 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.

### **Implementation Guidance – Examination and Enforcement of Proposed Rule G-12(k)**

SIFMA expressed concerns over examination and enforcement of proposed Rule G-12(k). SIFMA noted that firms are concerned whether “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.”<sup>14</sup> SIFMA further noted that firms “want to ensure that their definitions of ‘prompt’, ‘best efforts’, and ‘reasonableness’ meet examiners’ expectations.”<sup>15</sup> The MSRB has already noted in its filing that “[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>16</sup>

The MSRB does not have enforcement or examination authority, with such duties assigned to the Commission, the Financial Industry Regulatory Authority (FINRA) and other appropriate regulatory agencies under the Exchange Act. The MSRB believes that such regulators will undertake their examination and enforcement duties with respect to the proposed rule change in a manner consistent with such duties with respect to Exchange Act Rule 15c6-2.

### **Delayed Enforcement of Proposed Rule G-12(k)**

SIFMA noted that dealers effecting transactions in municipal securities will have a shorter time frame to implement the provisions of proposed Rule G-12(k) as compared to the implementation of Exchange Act Rule 15c6-2, which was adopted at an earlier date. SIFMA asked for a delayed enforcement until November 28, 2024.<sup>17</sup>

The MSRB filed amendments of its Rules G-12 and G-15 to shorten the settlement cycle for regular way transactions to T+1 to align with the Commission’s adoption of its T+1 rules, including Exchange Act Rule 15c6-2, in March 2023, within one month after the Commission’s adoption of its rules.<sup>18</sup> In the MSRB T+1 Rule Filing, the MSRB stated that it was considering

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<sup>14</sup> SIFMA Letter at 3.

<sup>15</sup> *Id.*

<sup>16</sup> *See* File No. SR-MSRB-2023-07 at 7. This same principle would apply for dealers that rely on reasonably designed written policies and procedures.

<sup>17</sup> SIFMA Letter at 4.

<sup>18</sup> *See* File No. SR-MSRB-2023-03 (March 28, 2023) (the “MSRB T+1 Rule Filing”).

whether to adopt the requirements of Exchange Act Rule 15c6-2.<sup>19</sup> Thereafter, in July 2023, the MSRB approved, and announced to the public, the filing of such requirement with the Commission. While the MSRB believes that dealers have had adequate notice to allow them to make the necessary preparations to comply with the proposed rule change in time for the May 28, 2024 industry-wide T+1 compliance date, the Commission, FINRA and the other appropriate regulatory agencies under the Exchange Act can make appropriate determinations, based on the particular facts and circumstances, regarding their examination or enforcement postures in connection with the initial steps taken by dealers in meeting this new obligation..

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In conclusion, the MSRB continues to believe that the proposed rule change is reasonable and is necessary to 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 affirmation across all asset classes.

If you have any questions, please feel free to contact me or Abha Mohla, Senior Associate Director, Market Regulation, at 202-838-1500.

Sincerely,



Ernesto A. Lanza  
Chief Regulatory and Policy Officer

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<sup>19</sup> *Id.* at 5, footnote 15.