

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵

Jonathan G. Katz,

Secretary.

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Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Relating to the Settlement Dates for "When, As and If Issued" Transactions, the Confirmation of Inter-Dealer Transactions, and Providing New Issue Information to Registered Securities Clearing Agencies

October 6, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on August 15, 1995, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-MSRB-95-14) as described in items I, II, and III below, which items have been prepared primarily 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 purpose of the proposed rule is to amend MSRB rules G-12 and G-34 to modify the requirements for the setting of settlement dates for "when, as and if issued" transactions and for the confirmation of inter-dealer transactions. The proposal also seeks to modify and reorganize the requirements for providing new issue information to registered securities clearing agencies. Finally, the proposal seeks to make technical changes to rule language to clarify the different processing requirements for transactions that are eligible for automated comparison through the facilities of a registered clearing agency as opposed to those that are not eligible. The MSRB requests that the amendments be made effective thirty days after approval by the Commission.

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.²

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 28, 1995, the Commission approved amendments to MSRB rules G-12(b) and G-15(b) redefining regular-way settlement as three rather than five business days ("T+3 settlement").³ Since that time, the MSRB has been reviewing its rules to determine other appropriate changes to accommodate T+3 settlement within the municipal securities market.

The proposed rule change seeks to amend MSRB rules G-12 and G-34 to modify the requirements for setting settlement dates for "when, as and if issued" transactions and for the confirmation of inter-dealer transactions. The proposed change also seeks to modify and reorganize the requirements for providing new issue information to registered securities clearing agencies. Finally, the proposal also seeks to make technical changes to rule language to clarify the different processing requirements for transactions that are eligible for automated comparison through the facilities of a registered clearing agency as opposed to those that are not eligible. These amendments seek to advance T+3 settlement in the municipal securities market and are designed generally to facilitate automated clearance and settlement of municipal securities and to support the MSRB's Transaction Reporting Program.⁴

MSRB rule G-12(f) requires all inter-dealer transactions eligible for automated comparison to be compared in an automated comparison system operated by a registered clearing

agency.⁵ Under the proposed rule change, revised MSRB rule G-12(b) would require that the settlement date for when, as and if issued ("when-issued") transactions eligible for automated comparison not be earlier than two business days after notification of the initial settlement date for the issue is provided by the managing underwriter to the register clearing agency. These changes reflect current capabilities of the automated comparison system to process when-issued transactions.

MSRB rule G-12(b) currently requires that the settlement date of a when-issued transaction for the rare inter-dealer transactions not eligible for automated comparison not be earlier than the fifth business day following the date the physical confirmation indicating final settlement date is sent (six days for syndicate transactions).⁶ The proposed rule change would require that the settlement date for such ineligible when-issued transactions, including syndicate transactions, not be earlier than the third business day following the date that the confirmation indicating final settlement is sent.

The proposed rule change also would amend MSRB rule G-12(c) concerning the sending of confirmations for inter-dealer transactions not eligible for automated comparison. For such ineligible when-issued transactions, the proposed rule change would reduce the time period for sending (i) the initial confirmation from two business days to one business day after trade date, and (ii) the final confirmation from five business days to three business days prior to final settlement. For regular-way transactions ineligible for automated comparison, the proposed rule change would change the requirement for sending a confirmation from one business day after trade date to trade date.

The changes to rules G-12(b) and G-12(c) generally accelerate the timing for sending confirmations and allow for the settlement of when-issued transactions in a shorter time frame. The MSRB

⁵ MSRB rule G-12(b) requires the underwriter to provide the initial settlement date for a new issue to the registered clearing agency offering automated comparison services as soon as the initial settlement date is known or immediately upon a change. This requirement continues in effect under the proposed rule change by cross-reference in revised rule G-12(b)(2)(C) to new rule G-34(a)(ii)(D)(2). Generally, the automated comparison system requires two days advance notice of the initial settlement date of an issue from the underwriter to process when-issued transactions for the underwriter and all other dealers.

⁶ Nearly all new issue municipal securities are eligible for automated comparison with the exception of those that do not meet the CUSIP numbering eligibility requirements.

² The Commission has modified the text of the summaries submitted by the MSRB.

³ Securities Exchange Act Release No. 35427 (February 28, 1995), 60 FR 12798 [File No. SR-MSRB-94-10] (order approving proposed rule change).

⁴ MSRB rule G-14 sets forth the Transaction Reporting Procedures for inter-dealer transactions.

⁵ 17 CFR 200.30-3(a)(12) (1994).

¹ 15 U.S.C. 78s(b)(1) (1988).

believes that these changes will allow for more efficient clearance and settlement and will help conform the municipal securities market to the shorter settlement cycle.

In addition, the proposed rule change would amend MSRB rule G-34 to require underwriters to submit interest rate and final maturity information about new issues to the registered clearing agency offering comparison services as soon as such information is known and would reformat the existing requirements of the rule. The MSRB is aware of instances in which incomplete or inaccurate security descriptions for new issue municipal securities are available in the initial days of trading in the issue. The MSRB's Transaction Reporting Program and participants in the municipal securities market rely on accurate and complete security descriptions in the automated comparison system. The new requirement is designed to ensure that the registered securities clearing agencies have the information necessary to provide accurate descriptions and to calculate accurately final money amounts. Because the MSRB's Transaction Reporting Program is linked to the National Securities Clearing Corporation's ("NSCC") automated comparison system,⁷ the proposed amendment also will facilitate accurate prices and security descriptions in NSCC system.

The proposed rule change moves the requirement that underwriters provide the registered clearing agency with notification of settlement date as soon as it is known from rule G-12(b) to rule G-34. The placement of this requirement within rule G-34 is part of the MSRB's plan to include basic new issue requirements for underwriters within one rule.⁸ Finally, the proposed rule change also makes technical changes in rule language to clarify the different processing requirements for transactions that are eligible for automated comparison as opposed to those transactions that are ineligible for automated comparison.

⁷ As set forth in detail in MSRB rule G-14, brokers, dealers, or municipal securities dealers must submit or cause the submission of specified transaction information for any transaction eligible to be compared in NSCC's automated system directly to NSCC or to another registered clearing agency linked with NSCC for the purpose of automated comparison.

⁸ Rule G-34 currently requires underwriters, for new issue municipal securities: (i) to apply for CUSIP numbers; (ii) to apply for depository eligibility; and (iii) to communicate CUSIP numbers and the initial trade date to syndicate and selling group members.

As set forth in Section 15B(b)(2)(C)⁹ of the Act, the MSRB has the authority to adopt rules to foster cooperation with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities. The MSRB also has the authority to adopt rules to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and in general to protect investors and the public interest. The MSRB believes the proposed rule change is consistent with Section 15B(b)(2)(C) because the proposal should facilitate more efficient clearance and settlement and should assist the municipal securities market in conforming with T+3 settlement by fostering efficient and accurate reporting of transaction information and accelerating the confirmation and settlement time frames for when-issued transactions.

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

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because it would apply equally to all brokers, dealers, and municipal securities dealers.

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

In April 1995, the MSRB published for comment an earlier version of the proposed rule change to rules G-12(b) and G-34. One comment letter was received in response to this request.¹⁰ The commentator was generally supportive of the proposed rule change. The proposed rule change was revised by the MSRB at its July 1995 meeting to add clarifying language to the amendments and to ensure consistency between the requirements of rule G-12(b) and G-12(c).

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

Within thirty-five days of the date of publication of this notice in the Federal

⁹ 15 U.S.C. 78o-4(b)(2)(C).

¹⁰ In addition to submitting comments pertaining to two other proposed rule changes by the MSRB, Goldman, Sachs & Co. stated that it fully supports the amendments proposed in this rule filing (SR-MSRB-95-14) but indicated that the mechanism for reporting prior to award both the interest rate and final maturity for any new issue will require some system developments. Letter from Edward C. Brisotti, Vice President, Operations Division, Goldman, Sachs & Co. to Judith A. Somerville, Uniform Practice Specialist, MSRB (May 31, 1995).

Register or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the MSRB consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

The MSRB requests that the Commission delay effectiveness of the proposed rule change until thirty days after the approval by the Commission is published in the Federal Register to ensure that underwriting practices are in compliance with the rule change.

IV. Solicitation of Comments

Interested people are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the MSRB. All submissions should refer to File No. SR-MSRB-95-14 and should be submitted by November 6, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.¹¹

Jonathan G. Katz,

Secretary.

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¹¹ 17 CFR 200.30-3(a)(12) (1994).