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Stakeholders

Municipal Securities
Dealers, Bank Dealers

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Approval Notice

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May 28, 2024

Category

Uniform Practice

Affected Rules

[Rule G-12](#)

SEC Approves Amendment to MSRB Rule G-12 to Promote the Completion of Allocations, Confirmations, and Affirmations by the End of Trade Date

Overview

On February 7, 2024, the Municipal Securities Rulemaking Board (MSRB) received approval¹ from the Securities and Exchange Commission (the “Commission”) 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 (“dealers”) and their institutional customers. The amendment to Rule G-12, which establishes new section (k) of the rule, is designed to facilitate the move to a settlement cycle for municipal securities transactions of one business day (“T+1”)² and aligns with the same-day allocation, confirmation, and affirmation process for equities and corporate bonds required by new Rule 15c6-2 (“Exchange Act Rule 15c6-2”) under the Exchange Act. Exchange Act Rule 15c6-2 was adopted by the Commission to facilitate the move to a T+1 settlement cycle for such other securities markets.³

¹ See Securities Exchange Act of 1934 (“Exchange Act”) Release No. 99484 (Feb. 7, 2024) (File No. SR-MSRB-2023-07).

² The MSRB previously amended its Rule G-12(b)(ii)(B)-(D) and Rule G-15(b)(ii)(B)-(C) to establish the T+1 settlement cycle for regular-way transactions consistent with the Commission’s new T+1 settlement cycle, with a compliance date of May 28, 2024. See Exchange Act Release No. 97585 (May 25, 2023), 88 FR 35961 (June 1, 2023) (File No. SR-MSRB-2023-03).

³ See Exchange Act Release No. 96930 (Feb. 15, 2023), 88 FR 13872 (Mar. 6, 2023) (File No. S7-05-22) (“Commission T+1 Adopting Release”), amending Exchange Act Rule 15c6-1 to establish a T+1 settlement cycle and adopting Exchange Act Rule 15c6-2.



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Compliance Date

The compliance date for new Rule G-12(k) is May 28, 2024, which is aligned with the implementation date for Exchange Act Rule 15c6-2 and the transition to T+1 settlement.⁴

Summary of the Amendment

Rule G-12(k) establishes 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 Rule G-15(b)(ii)(B).

I. Confirmation, Affirmation and Allocation

For purposes of 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 15c6-2.⁵ 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.

II. Core Standard for Same-day Allocation, Confirmation and Affirmation

Rule G-12(k)(ii) provides two options by which dealers may comply with the rule to meet the standard of same-day allocation, confirmation and affirmation for all regular-way transactions in municipal securities.

⁴ See Commission T+1 Adopting Release. If the Commission’s compliance date for Exchange Act Rule 15c6-2 were to change, the MSRB will issue a regulatory notice to modify the compliance date for the amendment to remain aligned with the Commission’s revised compliance date.

⁵ The term “confirmation” under 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.

A. First Option – Written Agreement

The first option under Rule G-12(k)(ii)(A) allows 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 date⁶ in such form as necessary to achieve settlement of the transaction.

For purposes of Rule G-12(k), the term “relevant parties” is meant to be read more broadly than merely customers and would include, for example, investment advisers, custodians, or other agents to the extent that such parties would participate in the allocation, confirmation, and affirmation process. 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 will have a role in completing the allocation, confirmation and affirmation process.

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.⁷ 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. A dealer would not be deemed to have violated Rule G-12(k) based on the actions of the counterparty (*e.g.*, if an investment adviser fails to provide allocation information to the dealer

⁶ Rule G-12(k) 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. This is intended to 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.

⁷ Thus, an executing broker that does not participate in allocation, confirmation, and affirmation processes would face no obligations under Rule G-12(k).

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.

B. Second Option – Written Policies and Procedures

The second option to meet the core standard of same-day allocation, confirmation and affirmation is listed in Rule G-12(k)(ii)(B). Under this option, dealers are 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 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 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.

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.

Under 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. 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.

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.⁸ 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. 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.

Rule G-12(k)(iii)(C) requires that policies and procedures lay out the ex ante steps that the dealer would take to promptly communicate trade information, as well as to investigate discrepancies and adjust trade information in response to information the dealer receives. 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.

⁸ 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.

Rule G-12(k)(iii)(D) requires 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.

Rule G-12(k)(iii)(E) requires 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 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. While 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 Rule G-12(k)(iii)(E) to assess how well its policies and procedures ensure the completion of same-day affirmation and update its policies and procedures over time with improvements.

Questions about this notice should be directed to Abha Mohla, Senior Associate Director, Market Regulation, or Ernesto Lanza, Chief Regulatory and Policy Officer, at 202-838-1500.

February 8, 2024

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Text of Amendments*

Rule G-12: Uniform Practice

(a) – (j) No change.

(k) Same-day allocation, confirmation, and affirmation.

* Underlining indicates new language.

(i) For purposes of this section (k) only, the terms “confirmation,” “affirmation” and “allocation” shall have the same meaning as used in the Securities Exchange Act Rule 15c6-2.

(ii) Any broker, dealer or municipal securities dealer engaging in the allocation, confirmation, or affirmation process with another party or parties to achieve settlement of a municipal securities transaction required to be settled on the first business day following the trade date under Rule G-12(b)(ii)(B) or G-15(b)(ii)(B) shall:

(A) 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; or

(B) Establish, 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.

(iii) 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, the reasonably designed written policies and procedures required by section (k)(ii)(B) of this rule shall:

(A) Identify and describe any technology systems, operations, and processes that the broker, dealer or municipal securities 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 broker, dealer or municipal securities dealer will follow to ensure the prompt communication of trade information, investigate any discrepancies in trade information, and 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 broker, dealer or municipal securities 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 broker, dealer or municipal securities 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.