

provided in connection with such municipal securities business. However, any attorney or other professional used by the dealer as a "finder" for municipal securities business would be considered a consultant under the proposed rule.

Written Agreement

Proposed rule G-38 requires dealers who use consultants to evidence the consulting arrangement in writing (referred to as a "Consultant Agreement"), and that, at a minimum, the writing must include the name, company, role and compensation arrangement of each consultant used by the dealer. Such written agreements must be entered into before the consultant engages in any direct or indirect communication with an issuer on the dealer's behalf.

Disclosure to Issuers

Proposed rule G-38 requires each dealer to disclose to an issuer with which it is engaging or seeking to engage in municipal securities business, in writing, information on consulting arrangements relating to that issuer. The written disclosure must include, at a minimum, the name, company, role and compensation arrangements with the consultant or consultants. Dealers are required to make such written disclosures prior to the issuer's selection of any dealer in connection with the municipal securities business sought, regardless of whether the dealer making the disclosure ultimately is the one to obtain or retain that business. Thus, while dealers have an obligation to disclose their consulting arrangements to all issuers from which they are seeking municipal securities business, they have more leeway in the timing of their disclosures as long as the disclosure is made before the issuer selects a dealer for the municipal securities business sought.

Disclosure to the Board

Proposed rule G-38 requires dealers to submit to the Board, on a quarterly basis, reports of all consultants used by the dealer. For each consultant, dealers must report, in the prescribed format, the consultant's name, company, role and compensation arrangement, as well as the dollar amount of any payment made to the consultant during the quarterly reporting period. If any payment made during the reporting period is related to the consultant's efforts on the dealer's behalf which resulted in particular municipal securities business, whether the municipal securities business was completed during that or a prior reporting period, then the dealer must

separately identify that business and the dollar amount of the payment. In addition, as long as the dealer continues to use the consultant to obtain or retain municipal securities business (*i.e.*, has a continuing arrangement with the consultant), the dealer must report information concerning such consultant every quarter, whether or not compensation is paid to the consultant during the reporting period. The Board believes that the reporting of these continuing consulting arrangements each quarter will assist enforcement agencies and the public in their review of such arrangements.

For ease of compliance and reporting, the Board has determined to delete the current reporting requirements regarding consultants from rule G-37. It also has determined to merge the reporting requirements for both rules into a single form—Form G-37/G-38. Dealers must submit two copies of such reports on proposed Form G-37/G-38.¹² The quarterly due dates are the same as the due dates currently required under the rule G-37 (*i.e.*, within 30 calendar days after the end of each calendar quarter, which corresponds to each January 31, April 30, July 31, and October 31). Finally, consistent with current rule G-37, dealers are required to submit these reports to the Board by certified or registered mail, or some other equally prompt means that provides a record of sending.¹³ The Board will then make these documents available to the public for inspection and photocopying at its Public Access Facility in Alexandria, Virginia, and for review by agencies charged with enforcement of Board rules.

Recordkeeping Requirements

To facilitate compliance with, and enforcement of, proposed rule G-38, the Board also proposes to amend existing rules G-8 and G-9, concerning recordkeeping and record retention, respectively. The proposed amendments to rule G-8 require dealers to maintain:

- (i) A listing of the name, company, role

- and compensation arrangement of each consultant; (ii) a copy of each Consultant Agreement; (iii) a listing of the compensation paid in connection with each Consultant Agreement; (iv) where applicable, a listing of the municipal securities business obtained or retained through the activities of each consultant; (v) a listing of the issuers and a record of disclosures made to such issuers concerning each consultant used by the dealer to obtain or retain municipal securities business with each such issuer; and (vi) the date of termination of any consultant arrangement. The amendment to rule G-9 requires dealers to maintain these records for a six-year period.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable 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, 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 proposed rule change serves a number of the Board's enumerated purposes, including promoting just and equitable principles of trade, by ensuring that dealers compete for, and are awarded, municipal securities business on the basis of merit, and not political or financial influence. Such healthy competition will act to lower artificial barriers to those dealers not willing or able to hire consultants to obtain or retain municipal securities business, thereby maintaining the integrity of the municipal securities market, as well as the public trust and confidence that is essential to the long-term health and liquidity of the market.

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

The Board 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 since the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers. The Board believes that the proposed rule change will improve competition in the awarding of municipal securities business by ensuring that dealers compete for, and are awarded, such business on the basis of merit, not political or financial influence.

¹² Proposed Form G-37/G-38 is included in Exhibit 3 to the proposed rule change, along with instructions for filing the Form. In addition to the new rule G-38 consultant reporting requirements, Form G-37/G-38 includes revisions to the rule G-37 political contribution reporting requirements. Such revisions include, for each contribution, a required notation of the category of the contributor (*e.g.*, municipal finance professional or executive officer) and the amount of the contribution, as well as a separate section for the reporting of "payments" to political parties distinct from "contributions" to issuer officials.

¹³ For ease of compliance, the Board has included the Rule G-37 Filing Procedures within the language of rule G-37, and has included the Rule G-38 Filing Procedures within the language of new rule G-38.