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. However, the Board cautions dealers that the time period set forth in the proposed rule represents the last possible opportunity to comply with the disclosure requirement, and therefore strongly recommends that dealers make such disclosures as early as possible. For example, a dealer seeking certain municipal securities business may not be aware of the issuer's selection of another dealer for that business. So too, an issuer may select a pool or group of dealers from which the issuer intends to choose underwriters for particular issues over the next few years. If a dealer has used a consultant to help secure any of this business, the Board believes that dealers should make their required disclosures to issuers as soon as possible to ensure that the disclosure is received by the issuer prior to the selection of any dealer for the municipal securities business.

Disclosure of Consulting Arrangements to the Public Through Disclosure to the Board

The April 1995 Draft Rule would have required a dealer to submit reports to the Board of all consultants with which the dealer entered into Consultant Agreements, not just those consultants that are connected with particular municipal securities business awarded during the reporting period (*i.e.*, as currently required under rule G–37). These reports would have been submitted on Form G–38 on a quarterly basis, within one month after the end of each calendar quarter. Form G–38 would have required dealers to list the names of all consultants and complete for each consultant an Attachment to Form G–38 that provides in the prescribed format the consultant's company, the role to be performed by the consultant, and the compensation arrangement. Dealers also would have been required to report all dollar amounts paid to each consultant during the reporting period and, if any amounts paid were connected with particular municipal securities business, such issue and the amount paid would have been separately identified.

A number of commenters believe that disclosures to the Board should be merged with the reporting requirements of rule G–37.[62] In the alternative, two of these commenters suggest removing the disclosure requirements from rule G–37 and incorporating them into a modified version of the April 1995 Draft Rule.[63] One such commenter believes that ''consolidation and combination is sensible not only from an administrative and compliance point of view but will help ensure * * * consistency in terminology and interpretation in this complex area.'' [64]

Another commenter notes that rule G–37 currently requires disclosure of consulting relationships if business is obtained or retained, *i.e.*, ''after the fact.'' [65] This commenter believes that the public would benefit if information were available ''before a piece of business was awarded or a transaction completed'' and thus recommends that dealers be required to report all consulting relationships entered into by (or ongoing with) firms during quarterly reporting periods, regardless of whether business is obtained during that reporting period.[66] Similarly, another commenter believes that dealers should be required to report all consultant arrangements whether or not such arrangements result in the awarding of business to the dealer.[67] And another commenter also supports disclosure of ''*all* existing business consulting arrangements * * * whether or not they have resulted in a particular transaction. * * *'' [68] This commenter further suggests that ''such 'bulk disclosure' be organized by reference to the jurisdictions (from largest to smallest) in which each consultant is directly or indirectly employed to operate and, if applicable, to the issuers with which such consultant is employed, directly or indirectly, to intercede.'' [69] Finally, the commenter supports linking particular consulting relationships with particular transactions in order to avoid ''a blizzard of accurate but general information [that] could conceal more than it reveals.'' [70]

One of the commenters suggests that dealers be required to report ''a continuing arrangement, rather than report it repeatedly, each quarter.'' [71] Another commenter ''believes that dealers should be required to list continuing arrangements each quarter and to note when any such arrangement has concluded * * *. However, if the compensation arrangements remain the same * * * [the commenter recommends] that dealers not be required to restate these terms quarterly.'' [72]

Board Response

The proposed rule's requirement concerning disclosure to the Board is similar to the April 1995 Draft Rule. The proposed rule 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.

As recommended by certain commenters, the Board has determined, for ease of compliance and reporting, to delete the current reporting requirements regarding consultants from rule G–37. It also has determined to merge the reporting requirements of both rules G–37 and G–38 into a single form—Form G–37/G–38. Dealers must submit two copies of such reports on proposed Form G–37/G–38.[73] The quarterly due dates are the same as the due dates currently required under 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,

[62] A.G. Edwards; Artemis; Chemical; GFOA; PSA; and Smith Barney.

[63] A.G. Edwards; Morgan Stanley.

[64] Morgan Stanley.

[65] Smith Barney.

[66] *Id.*

[67] Chemical Securities.

[68] Morgan Stanley.

[69] *Id.*

[70] *Id.*

[71] Chemical Securities.

[72] Artemis.

[73] Proposed Form G–37/G–38 is included in Exhibit 3 to the proposed rule change, along with instructions for filing the Form.