March 11, 2013

Lawrence P. Sandor, Deputy General Counsel, Regulatory Support
Darlene Brown, Assistant General Counsel
Municipal Securities Rulemaking Board
1600 Duke Street
Alexandria, VA 22314

Re: MSRB Notice 2013-04 (February 11, 2103); Request for Comment
on Codifying Time of Trade Disclosure Obligation

Dear Mr. Sandor and Ms. Brown:

Lumesis, Inc. ("Lumesis") welcomes the opportunity to comment on the Municipal Securities Rulemaking Board's ("MSRB's") proposed rule that would codify the time of trade disclosure obligation of brokers, dealers, and municipal securities dealers ("Market Participants") currently set forth in the interpretive guidance to MSRB Rule G-17.

Lumesis is a software company focused on the development and delivery of software solutions for the fixed income municipal market. Started in 2010, Lumesis has delivered its *Analytics* platform to provide Market Participants demographic and economic data and a series of analytical tools to support credit research where CAFRs are, on average, delivered more than 180 days after the end of the fiscal year. In late 2012, we delivered *Advisor* to specifically address the requirements of G-17 and FINRA Regulatory Notice 10-41 while providing Market Participants additional data and information about their client's municipal securities positions. Our client base is more than 35 institutions.

We applaud the ongoing efforts of the MSRB to enhance transparency and disclosure and support the codification of the interpretive guidance of Rule G-17. The MSRB's steps to consolidate the current obligations into one easy-to-follow rule and utilize a structure used by FINRA will benefit the market. While we recognize the limited intent of proposed Rule G-47, we suggest the MSRB ensure its codification contemplates more than "established industry sources," as currently defined, in requiring market participants to disclose "material information about the security that is reasonably accessible to the market." This would be consistent with the MSRB's goal to continue to support transparency and disclosure of material information by making the definition broad enough to encompass current or future technology and/or dissemination systems and improvements that are or become reasonably accessible to the market. We also suggest the definition of "established industry sources" not include "rating agency reports."

In response to the query set forth in the Request for Comment, we see the primary benefit to Market Participants being clarification of the disclosure obligation. Such clarification is needed as some Market Participants subscribe to the view that "checking the box" that continuing disclosure filings were reviewed and/or basic terms of a bond were disclosed is satisfactory to meet their disclosure obligations. G-17, its associated guidance and FINRA's Regulatory Notice 10-41 suggest otherwise as they clearly refer to "Material information about the security that is reasonably accessible to the market."

Clarification or Removal of "Established Industry Sources"

We express our reservations as to language contained in subpart (b), Definitions, where "Reasonably accessible to the market" is defined. The proposed rule provides:

> ... shall mean that the information is made available publicly through ***established industry sources***. Emphasis supplied.

"Established industry sources" is defined to include EMMA, "rating agency reports and other sources of information ... generally used by [Market Participants] ..."

The emphasis on "established industry sources" may have the effect of retarding the introduction of new tools, resources and technologies. It may also cause some Market Participants to rely on policies and procedures premised on "established industry sources" that are no longer comprehensive when it comes to information that is "reasonably accessible." The MSRB's 2002-16 Notice specifically recognized the importance of technological enhancements to the advancement of disclosure and transparency:

> The MSRB expects that, as technology evolves and municipal securities information becomes more readily available, new "established industry sources" are likely to emerge.

In this context, it is important for Market Participants to understand if an "established industry source" is, in fact, the standard and, if so, what qualifies as such? Alternatively and, perhaps more relevant, is to ensure Market Participants are focused on making available "material information about the security that is reasonably accessible to the market." If, as we suspect, it is the latter, the continued inclusion of "established industry standards" (or, absent a refinement to the definition) may have the unintended consequence of Market Participants not periodically reassessing their policies and procedures to ensure they are complying with the MSRB Rules and FINRA Regulatory Notices.

FINRA's Regulatory Notice 10-41 seemingly underscores this important distinction between "established industry sources" and "material information about the security that is reasonably accessible to the market."

> In meeting these disclosure, suitability and pricing obligations, firms must take into account all material information that is known to the firm or that is available through "established industry sources," including official statements, continuing disclosures, and trade data, much of which is now available through EMMA. Resources outside of EMMA may include press releases, research reports and other data provided by independent sources... Therefore, firms should review their policies and procedures for obtaining material information about the municipal securities they sell to make sure they are reasonably designed to access all material information that is available, whether through EMMA or other established industry sources.

FINRA's citing "established industry sources" points to Official Statements, continuing disclosures and trade data. Regulatory Notice 10-41 also makes clear that one must look beyond the same and ensure "policies and procedures are designed to access all material information that is available."

Based on the foregoing, we respectfully suggest "established industry sources" be removed or clarity be provided to ensure Market Participants focus on disclosing "material information about the security that is reasonably accessible to the market." This would support transparency and disclosure and continue to encourage innovation.

Refining "Established Industry Sources" to Remove Reference to "Rating Agency Reports"

To the extent "established industry sources" is included in Rule G-47, we suggest removing the reference to "rating agency reports" from the definition. Initially, its inclusion may prove to be inconsistent with the Rule's intent around material information that is timely. Continued inclusion of the reference may also be construed as an implicit endorsement of a private, for profit enterprise's offering as fulfilling the requirement. Further, the inclusion of rating agency reports seems inconsistent with critical aspects of Dodd-Frank, legislation that impacts most Market Participants.

With regard to timeliness, ratings repots, while current at time of issuance, are not regularly updated. This is not a criticism of the raters but recognition that, even with the best of intentions, it is impossible for rating agencies to continually update their reports to reflect material information. The explicit reference to "rating agency reports" fails to consider that these reports may have been issued months (or longer) prior to the trade for which the disclosure is required.

Moreover, the reference to "rating agency reports" and reality that there are three primary agencies to which the market turns, implies that the MSRB is endorsing the rating agencies as the "established industry source" (other than EMMA). This implicit endorsement can be to the detriment of and is to the exclusion of other sources that deliver "material information about the security that is reasonably accessible to the market." We suggest this is a disservice to Market Participants and to other providers of information and data seeking to bring new and better technology to the municipal market.

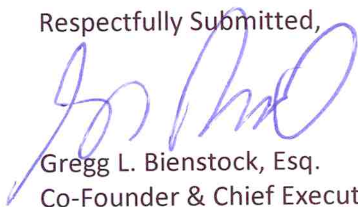
Finally, the applicable provisions of Dodd-Frank and the rating agencies themselves make clear that Market Participants using ratings or rating reports should do more than simply rely on the same. Thus, the inclusion of "rating agency reports" may give Market Participants a false sense of satisfying their obligation when current legislation and associated rules instruct otherwise.

Conclusion

As noted above, we agree with and support the MSRB's codification efforts. We offer these comments in hopes of helping to refine the final rule so that it reflects the importance of cost-effective tools and resources and benefits to the market of the continued evolution of technology, tools and resources. In this regard, we request the MSRB consider removing its reference to "established industry sources" or clarifying the same and also removing its reference to "rating agency reports." This will turn the emphasis and focus on material information about the security as opposed to a specific source. Moreover, it will continue to encourage technological innovation and competition which will support Market Participants.

Thank you for the opportunity to comment on this proposed rule.

Respectfully Submitted,



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