INVESTMENT ADVISER ASSOCIATION

October 21, 2024

Via Electronic Filing

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Attention: Comment Processing
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Consumer Financial Protection Bureau
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Vanessa A. Countryman
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U.S. Securities and Exchange Commission
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James P. Sheesley
Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-AF96)
Federal Deposit Insurance Corporation
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Clinton Jones
General Counsel
Attention: Comments/RIN 2590-AB38
Federal Housing Finance Agency
400 Seventh Street SW
Washington, DC 20219

Chief Counsel's Office
Attention: Comment Processing
Office of Financial Research
Department of the Treasury
717 14th Street NW
Washington, DC 20220

Re: Financial Data Transparency Act Joint Data Standards

OCC	Docket ID OCC-2024-0012; RIN 1557-AF22
FRB	Docket No. R-1837; RIN 7100 AG-79
FDIC	RIN 3064-AF96
NCUA	RIN 3133-AF57
CFPB	Docket No. CFPB-2024-0034; RIN 3170-AB20
FHFA	RIN 2590-AB38
CFTC	RIN 3038-AF43
SEC	Rel. No. 33-11295; 34-100647; IA-6644; IC-35290; File No. S7-2024-05; RIN 3235-AN32
Treasury	Docket No. TREAS-DO-2024-0008; RIN 1505-AC86

Dear Agencies:

The Investment Adviser Association (**IAA**)[1] appreciates the opportunity to comment on the joint proposal (**Proposal**)[2] of the nine federal financial regulators (each an **Agency** and together the **Agencies**)[3] to implement the first phase of the Financial Data Transparency Act (**FDTA**) to establish certain data standards across the Agencies.[4] The IAA's members range from global asset managers to the medium- and small-sized firms that make up the majority of the investment adviser industry. They manage more than $35 trillion in assets as fiduciaries for a wide variety of individual and institutional clients, including pension plans, trusts, mutual funds, private funds, endowments, foundations, and corporations. Our members have a significant interest in the Proposal because they use financial instrument identifiers in virtually all aspects of their business, and cannot access the markets, serve their clients, or meet their regulatory obligations without them. Our comments are limited to those parts of the Proposal that relate to the common identifier for financial instruments.

The IAA has long called for greater attention to the interrelatedness of financial regulation and we and our members strongly support the interoperability of financial regulatory data across the Agencies, as called for by the FDTA. However, we are concerned that the Agencies have not done the necessary analysis to support their conclusion that FIGI,[5] their proposed chosen common identifier, satisfies the statutory elements a common identifier must include, or that it will perform adequately in our complex global markets. Nor have they considered whether CUSIP,[6] the existing most-common identifier could, with important modifications and commitments such as those undertaken in Europe,[7] satisfy the statutory elements, with far fewer firm-wide and market-wide disruptions.

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[1] The IAA is the leading organization dedicated to advancing the interests of investment advisers. For more than 85 years, the IAA has been advocating for advisers before Congress and U.S. and global regulators, promoting best practices, and providing education and resources to empower advisers to effectively serve their clients, the capital markets, and the U.S. economy. For more information, please visit www.investmentadviser.org.

[2] *Financial Data Transparency Act Joint Data Standards*, 89 Fed. Reg. 67890 (Aug. 22, 2024), available at https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18415.pdf.

[3] The Agencies are the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Housing Finance Agency, Commodity Futures Trading Commission (**CFTC**), Securities and Exchange Commission (**SEC**), and Department of the Treasury.

[4] The Proposal implements Section 124 of the Financial Stability Act of 2010 (12 U.S.C. 5334), as added by the FDTA.

[5] FIGI stands for the Financial Instrument Global Identifier.

[6] CUSIP stands for the Committee on Uniform Security Identification Procedures. CUSIP is operated by CUSIP Global Services (**CGS**) on behalf of the American Bankers Association (**ABA**). CUSIP is a registered trademark of the ABA. CGS is managed by FactSet Research Systems Inc., which acquired CGS from Standard & Poor's, now known as S&P Global Market Intelligence LLC (**S&P**).

[7] See discussion below in Section C.1.

Selection of the common identifier at this phase of the rulemaking – the joint standards phase – is critically important because its impact will not be limited to reporting between and among the Agencies, as the Agencies suggest. Rather, its selection will drive the second phase of rulemaking, during which each individual Agency will be required to adopt its own data standards pursuant to the FDTA for collections of information that are regularly filed with that Agency.[8] Because each individual Agency will be required to "incorporate and ensure compatibility with, to the extent feasible, applicable joint standards"[9] in its rule, selection of a specific common identifier in this first phase will set in motion a course of action that will make it virtually impossible for any individual Agency to change course later. It is thus imperative that the Agencies conduct a thorough and thoughtful analysis of the issues, including a robust cost-benefit analysis, before proceeding with choosing a common identifier now.

For these reasons, and as discussed more fully below, we cannot support the Agencies' proposal to establish FIGI as the common identifier for financial instruments at this time. We urge the Agencies to withdraw this aspect of the Proposal and issue a reproposal following further study of the issue.

Executive Summary

We make the following comments and recommendations:

A. Because of the essential nature of financial instrument identifiers, which function as a public utility, the IAA strongly supports the statutory directive that any common identifier selected by the Agencies be nonproprietary and/or available under an open license, to the extent practicable.

B. We are concerned that the Agencies have proposed to select FIGI as the common identifier without sufficient analysis, including as to whether there are meaningful limitations on FIGI's open license or whether FIGI works sufficiently well across all asset classes.

C. FIGI should not be analyzed in a vacuum but should be studied alongside CUSIP and the pros and cons of both should be thoroughly examined before either is selected.

    1. As part of this analysis, the Agencies should consider current licensing and other practices that negatively impact end users' ability to access their own data feeds, serve their clients, or meet their regulatory obligations and, before selecting either identifier, ensure they do not

[8] *See* 89 Fed. Reg. at 67894.

[9] *Id.* at 67895.

select or entrench an unaccountable commercial identifier permitted to charge commercial licensing fees or set its own terms.

D. Before selecting a new identifier, the Agencies should carefully study whether the potential benefits outweigh the significant disruptions and costs of switching, and that study must recognize that any decision in the first phase will drive the individual Agency decisions in the second phase.

E. In the second phase of rulemaking, each Agency should consider the costs and impacts of choosing either FIGI or CUSIP on smaller entities, and, if a common identifier other than CUSIP is ultimately adopted, each Agency should provide an ample transition period.

Comments and Recommendations

A. Because of the essential nature of financial instrument identifiers, which function as a public utility, the IAA strongly supports the statutory directive that any common identifier selected by the Agencies be nonproprietary and/or available under an open license, to the extent practicable.

The FDTA requires the Agencies to adopt joint standards under two separate statutory provisions. The first, Section 124(c)(1)(A), requires the Agencies to designate a common legal entity identifier (**LEI**) that is both nonproprietary and available under an open license. The second, Section 124(c)(1)(B), requires the Agencies to designate other joint standards for collections of information reported to the individual Agencies and collected on behalf of the Financial Stability Oversight Council. These include a financial instrument identifier. These joint standards must satisfy several specified elements, "to the extent practicable," one of which is that the identifier must be "nonproprietary or made available under an open license."[10]

This statutory directive is good public policy for a financial instrument identifier. As a practical matter, end users such as investment advisers cannot participate in the financial markets, serve their clients, or, indeed, conduct their business, without access to financial instrument identifiers. These identifiers are essential for virtually every aspect of a fiduciary investment adviser's business, from managing a client's account to fulfilling a variety of investment, compliance, and regulatory responsibilities. Identifiers are necessary for the clearing and settlement of trades, the pricing of securities, risk management, back-office functions, accounting, internal reporting, and regulatory reporting, among other things. Nor can the SEC,

[10] The term "open license" is defined as a legal guarantee that a data asset is made available at no cost to the public and with no restrictions on copying, publishing, distributing, transmitting, citing, or adapting such asset. 44 U.S.C. 3502(21). We believe that this is consistent with Congressional intent. *See Financial Data Transparency Act Fact Sheet*, available at https://www.warner.senate.gov/public/_cache/files/1/2/12a8927c-f495-4904-ad99-c9dcf96b122a/CCD42332C3EFA07CF4B6F481745F1D20.financial-data-transparency-act-fact-sheet.pdf and Letter from House Financial Services Committee and Senate Banking Committee (May 14, 2014), available at https://financialservices.house.gov/uploadedfiles/2024-05-14_fdta_implementation_letter.pdf.

the primary regulator of investment advisers, perform key regulatory functions without using these identifiers.[11]

In this way, financial instrument identifiers act as an essential public utility—and should be treated as such, not just for regulatory reporting purposes, but for all purposes. Congress understood this when it directed in the FDTA that common financial instrument identifiers should not be provided by a proprietary, for-profit, commercial enterprise, but, rather, to the extent practicable, they should be nonproprietary or made available under an open license. The IAA strongly supports this statutory directive and urges the Agencies to follow it.

As a general policy matter, we believe that the Agencies should be neutral and not be in the business of choosing commercial winners or losers. However, we appreciate that the FDTA requires that the Agencies – and, in the second phase, each individual Agency – select a common financial instrument identifier. In doing so, the Agencies should certainly not establish, facilitate, or entrench monopoly power for a provider of identifiers by allowing it to charge commercial prices or control its own pricing and terms. Identifiers are simply too vital a public service. Because no one can access the markets without them, no gatekeeper should be allowed to have unfettered control over that access.[12] We thus very much appreciate Congress's and the Agencies' recognition of the importance that a common identifier be nonproprietary or available under an open license to its users. To mitigate these risks with respect to financial instrument identifiers, if a single identifier is selected, whether at the joint standards phase or the individual Agency phase, we urge the Agencies to consider ways they could exercise oversight over the

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[11] Financial instrument identifiers are used in many regulatory reports filed by investment advisers, e.g., Form 13F, Schedules 13D and 13G, and Form X-17F-1A under the Securities Exchange Act of 1934 (**Exchange Act**); Form PF under the Investment Advisers Act of 1940; and Form N-CSR, Form N-CEN, Form N-PORT, and Form N-MFP under the Investment Company Act of 1940.

As discussed further below, even the SEC's use of its own securities list is currently restricted based on the ABA's view that CUSIP numbers are copyrighted. *See* American Bankers Association, letter to the SEC re *Proposed Rules for Nationally Recognized Statistical Rating Organizations* (Feb. 2, 2010), available at https://www.sec.gov/comments/s7-28-09/s72809-9.pdf ("While we support the SEC's attempts to provide transparency to this market, we wish to remind the SEC of ABA's intellectual property ownership of the CUSIP numbering system. Specifically, ABA holds U.S. copyright registration (certificate # TX 6-146-660) for the CUSIP database, which is a master file of CUSIP numbers and accompanying data elements … Accordingly, ABA retains the copyright in the selection and arrangement of data compiled in the data base as well as in the CUSIP numbers themselves … ABA also holds a valid trademark registration in the word mark 'CUSIP'.").

[12] In her statement on the Proposal, SEC Commissioner Hester Peirce noted the same concern with respect to LEIs: "Mandating the adoption of any product or service managed by a third-party carries risks, including the possibility that the third-party could use its regulatory-mandated advantage to, for example, raise fees inordinately, demand obtrusive information from registrants, or provide poor service." Statement of Commissioner Hester M. Peirce, *Data Beta: Statement on Financial Data Transparency Act Joint Data Standards Proposal* (Aug. 2, 2024), Question 3, available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-financial-data-transparency-act-080224 (**Commissioner Peirce Statement**).

identifier to protect access and ensure fair pricing and other practices.[13] We discuss these concerns further below.

B. We are concerned that the Agencies have proposed to select FIGI as the common identifier without sufficient analysis, including as to whether there are meaningful limitations on FIGI's open license or whether FIGI works sufficiently well across all asset classes.

We appreciate the Agencies' efforts to select a nonproprietary, open license identifier. Unfortunately, their conclusory selection of FIGI as the common identifier is premature as it is not supported by any analysis or evidence in the Proposal. We understand, for example, that the data available under the FIGI open license is quite limited so that, as a practical matter, it is not truly "free," which is something the Agencies should examine.

They should consider, for instance, whether paid subscriptions to a Bloomberg terminal data feed are in fact required for an end user to be able to access the full information it needs to "map" the identifier to a specific security for many asset classes, such as municipal securities, U.S. Treasuries, and bank loans. Indeed, it is unclear whether this could even be done at all, which would create insurmountable challenges not only for regulatory reporting, but for internal reporting, accounting, risk management, client reporting, etc.

The Agencies should also consider whether FIGI can provide sufficient standardization. The SEC has recognized that "CUSIP numbers and FIGIs are both able to provide the unique identification of a reported security in a manner that is standard across datasets."[14] It is not clear, however, that this statement is accurate with respect to information that may not be available under the FIGI open license.[15] The Agencies should be able to answer these and similar questions before settling on FIGI as the common identifier.

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[13] To help mitigate our concerns about unfair licensing and other practices by the predominant identifier, which we discuss below, in the past we have recommended that the SEC provide a choice of identifier in certain of its regulatory filings. We thus appreciate that the SEC now allows managers to disclose, for any security reported on Form 13F, the security's share class level FIGI in addition to CUSIP numbers. *See Electronic Submission of Applications for Orders under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F*, 87 Fed. Reg. 38943 (June 30, 2022), available at https://www.govinfo.gov/content/pkg/FR-2022-06-30/pdf/2022-13936.pdf. While we recognize the need to adopt a standard identifier given the interconnectedness of the global financial markets, our concerns remain.

[14] *Id.* at 38951.

[15] *See About OpenFIGI*, available at https://www.openfigi.com/about. We note that not all securities have CUSIP numbers, and advisers may need to use a combination of Stock Exchange Daily Official List numbers, which are issued by the London Stock Exchange and widely used in the United Kingdom and Ireland (**SEDOLs**), International Securities Identification Numbers (**ISINs**), and ticker symbols in some cases. ISINs are the primary security identifier used in some European countries. ISINs consist of a country code, CUSIP number, and "check digit" to help ensure authenticity. *See About International Securities Identification Number (ISIN)*, available at https://www.isin.org/isin/ and *Difference Between ISIN and CUSIP*, available at https://www.isin.net/difference-between-isin-and-cusip/.

We understand that FIGI might present some other practical challenges as well. For example, reporting could be inaccurate or confusing if more than one FIGI is associated with the same ticker symbol, as we understand may frequently be the case. We also understand that FIGI lacks "fungibility," i.e., uniqueness or standardization across different platforms (including non-U.S. exchanges), which may limit its usefulness. On the other hand, FIGIs do not change if an issuer undergoes a corporate action such as a merger, acquisition, or stock split, which is an advantage that CUSIPs do not have. The bottom line is that much more work needs to be done to examine these issues before deciding whether FIGI should be adopted as the common identifier.

C. FIGI should not be analyzed in a vacuum but should be studied alongside CUSIP and the pros and cons of both should be thoroughly examined before either is selected.

For the identification of securities, the Agencies also considered CUSIP and ISIN (which includes CUSIP). As the Agencies stated, while these identifiers are widely used, they are proprietary and not available under an open license in the United States.[16] Today, CUSIP is the almost universally used financial instrument identifier in the United States and globally. It is used in trading, settlement, asset servicing, risk management, client and internal reporting, and regulatory reporting, among other things.

While we urge the Agencies to study FIGI, FIGI should not be analyzed in a vacuum. It should be studied alongside CUSIP, and the pros and cons of each should be thoroughly evaluated before the Agencies select a common identifier. Further, because Section 124(c)(1)(B) includes the "to the extent practicable" qualifier, as part of this analysis, the Agencies should also evaluate whether CUSIP's proprietary structure and/or licensing and other practices, which we discuss below, could be sufficiently modified and the Agencies could obtain adequate commitments so that CUSIP could meet the statutory criteria, potentially with less disruption to the markets.[17]

We note that the IAA is not advocating for either FIGI or for CUSIP at this time. Rather, we are calling on the Agencies to proceed cautiously and deliberately because their selection of an identifier will have major ramifications not only for our members and other end users of identifiers but for the global financial markets, which will face significant disruption if a new identifier is put in place.[18]

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[16] *See* 89 Fed. Reg. at 67897.

[17] In response to Commissioner Peirce's Question 4 (If CUSIP does not now meet the criteria, what changes would enable it to do so?), we believe CUSIP does not now meet the criteria for designation as a joint standard, but that its licensing and other practices could be modified along the lines of the changes that were accomplished for ISINs in Europe, as discussed below in Section C.1.

[18] We also recommend that, as part of its analysis, the Agencies study other common identifiers such as SEDOL.

1. **As part of this analysis, the Agencies should consider current licensing and other practices that negatively impact end users' ability to access their own data feeds, serve their clients, or meet their regulatory obligations and, before selecting either identifier, ensure they do not select or entrench an unaccountable commercial identifier permitted to charge commercial licensing fees or set its own terms.**

CUSIP today is far removed from its public service origins. In the early 1960s, the ABA "was asked to create [CUSIP]" to help "move[ ] the stock market into a new era … to ensure that clearance and settlement functioned smoothly and accurately."[19] Since its introduction into the market, CUSIP's wide adoption by regulators, self-regulatory organizations, clearinghouses, exchanges, and brokerage firms, among others, allowed it to become entrenched in the marketplace. End users like investment advisers had also used CUSIP as standard practice for years without any requirement that they should pay for its use. CUSIP numbers were supplied on confirmations and in account statements, electronic data sources, and the like, and were used by investment advisers for their back-office and risk management functions, and regulatory, client, and internal reporting, etc., further embedding them in the financial system.

Today, however, most IAA members and other end users of CUSIP are charged substantial commercial licensing fees that demonstrate no regard for the identifier's public service origins or the public utility purposes of its many uses.[20] CGS has no accountability or regulatory oversight, and its fees appear disconnected from the cost of maintaining the identifier.[21] Through control over CUSIP – which, as CGS itself explains, was allowed to

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[19] In 1969, then SEC Chairman Hamer Budge described the newly released CUSIP Directory as "a long-needed tool that would provide 'the foundation of the program to improve the speed and accuracy in the processing of securities and transactions involving them.'" According to CGS, by 1972, all brokerage firms had adopted CUSIPs for stocks, in 1975, the Federal Reserve began using CUSIPs "to speed up transfer of US Treasury issues," in 1983, the Municipal Securities Rulemaking Board "embraced CUSIPs for municipal bonds," and, "in the next 20 years, the coverage expanded to include virtually all asset classes, including certificates of deposit (CDs), commercial paper, mutual funds, indexes, loans, insurance products, options contracts, hedge funds, and private placements, among others. Since 1989, CGS has created identifiers on the CUSIP model for non-US markets and for securities trading on more than one exchange or in more than one currency." *CUSIP: A Common Language for Efficient Markets* (2022), available at CUSIP_Pages_01-24.indd (**CGS Pamphlet**).

[20] End users that use under 500 unique CGS identifiers annually must enter into a license, but the fee is waived, and asset managers with assets under management of less than $500 million are eligible for a 90% discount on fees. *See* CUSIP Global Services, *CGS License Structure for End User Customers*, available at https://www.cusip.com/services/license-fees.html#/licenseStructure. In practice, however, we understand that few of our members meet these low thresholds. It is easy to exceed the *de minimis* threshold very quickly based on the number of securities in a data feed. Moreover, every use, such as in reports to clients, must be checked for licensing restrictions. Even CUSIP numbers from investments that are decades old may remain in an investment adviser's system and count toward the 500 threshold.

[21] CUSIP licensing fees are calculated based on the end user (e.g., the size of its regions and business lines) rather than the maintenance cost to CGS. *See* CUSIP Global Services, *CGS License Fees For End-User Customers* (2022) (**CGS Licensing Policies**), Establishing the Base Fee, available at https://www.cusip.com/pdf/LicenseFeesFAQ2022.pdf.

become entrenched through regulatory and self-regulatory action – CGS can now cut off any investment adviser's access to its data feed, and, thereby, to its ability to serve its clients, meet its regulatory obligations, and otherwise conduct its business.[22]

The IAA first raised significant concerns about CUSIP licensing and other practices – which include fees, audits of all uses by end users, and other unfair terms and conditions regarding advisers' ability to maintain CUSIPs in their database and the use of CUSIPs to identify securities in marketing materials – with the SEC in 2010,[23] and, since then has urged the SEC to study these practices and look holistically at the policy of mandating the use of licensed identifiers in any regulations or regulatory filings.[24]

In addition, licensing fees are charged to both the vendors distributing the CUSIP data and to the end users themselves, and they appear to be unrelated to the costs of maintaining the identifier. CGS Licensing Policies FAQ #8 (Why do both Authorized Distributors and indirect End-user customers have to pay license fees to CGS?) makes clear that that both vendors and end-users must pay license fees not to cover any costs to maintain CUSIPs but, because, in CGS's view, they "derive separate benefit from their access to and usage of CGS Data and CGS charges them according to such access and usage."

CGS explains its "basic licensing structure" in CGS Licensing Policies FAQ #3: "CGS's end-user customers fall into two basic categories. The first group of end-user customers subscribe to a particular CGS commercial database service directly from CGS (a 'direct customer'). The second group of end-user customers elects to receive CGS Data through one or more Authorized Distributors or any third-party vendors distributing CGS Data ('indirect customers'). CGS provides Authorized Distributors with the right to incorporate CGS Data and make such CGS Data available to their own customers as part of such Authorized Distributor's own products. Both direct and indirect end-user customers must enter into a license agreement with CGS that establishes the appropriate license fees (if any) and terms of use for that end-user customer's access to and usage of CGS Data. CGS's license fees are based upon that end-user customer's own particular access to and usage of the CGS Data."

[22] *See* CGS Pamphlet and CGS Licensing Policies.

[23] *See* Letter from The Bond Dealers of America, the IAA, and the Government Finance Officers Association of the United States and Canada, *Request for Commission action re CUSIP identifiers* (Nov. 10, 2010), available at https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/publications/101110cmnt.pdf.

[24] *See., e.g.,* Letter from IAA General Counsel Gail C. Bernstein to the SEC, *Reporting Threshold for Institutional Investment Managers* (Sept. 29, 2020), available at https://www.sec.gov/comments/s7-08-20/s70820-7859973-223872.pdf; Letter from IAA President & CEO Karen L. Barr to Chair Gary Gensler, *Regulation of Investment Advisers* (May 17, 2021), available at https://investmentadviser.org/resources/regulation-of-investment-advisers/; IAA Presentation to the SEC's Asset Management Advisory Committee (Sept. 27, 2021), available at https://www.sec.gov/files/iaa-presentation-karen-barr-gail-bernstein-092721.pdf; and Letter from IAA General Counsel Gail C. Bernstein to the SEC, *Electronic Submission of Applications for Orders Under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F* (Dec. 17, 2021), available at https://www.sec.gov/comments/s7-15-21/s71521-20109989-264314.pdf.

The SEC itself is hamstrung by this situation. We understand, for example, that, because the ABA asserts that it has a copyright over the CUSIP numbers themselves, and not just the database, *see supra* n. 11, the SEC will not make its Official List of 13F Securities available to registrants and the public in an easy-to-use format, like Excel. While this restriction contradicts the very nature of a public regulatory filing and, in our view, goes against sound public policy, the PDF format made available today also makes compliance efforts far more difficult and expensive since it is cumbersome to incorporate into investment advisers' systems and takes resources to convert into a usable format.

We urge the Agencies to study these practices as part of their consideration of which identifier should be chosen as the common identifier for financial instruments. Clearly, CUSIP is not available under an open license in the United States but because it would be so difficult to change identifiers, as we discuss below, we believe that it is incumbent on the Agencies to explore whether CUSIP could be offered free of charge or close to free of charge.

The Agencies should consider conditioning their selection of an identifier on an irrevocable commitment by the provider – whether FIGI or CUSIP – that *all* uses of the identifier will be provided under an open license. The SEC could also implement this change by mandating that any common financial instrument identifier must be available under an open license per the FDTA. At the very least, the Agencies (or the SEC) should be able to obtain a commitment that any selected identifier can be provided free of charge to end users for uses such as compliance and other back-office functions, internal, client-facing, and regulatory reporting, and trade reconciliation. At a minimum, the cost to use the identifier should be a reasonable service fee or it should be tied to the identifier's true maintenance cost.[25] Because identifiers function as an essential public utility, we do not believe that the Agencies' exercising regulatory oversight should be viewed as interfering in private contracts.

We note that ensuring free and open access to identifiers for end users would be similar to the approach taken by the European Commission, which in 2011 made legally binding commitments offered by S&P to abolish the licensing fees that banks pay for the use of ISINs within the European Economic Area because ISINs are "essential for managing securities and reporting" and S&P "may have charged unfairly high prices for their use and distribution in Europe, in breach of EU antitrust rules on the abuse of a dominant market position."[26] It in effect imposed a cap on the fees that S&P could charge to data vendors and, importantly, abolished all charges to end users of ISINs. Today, ISINs are free of cost and not subject to a license in the European Economic Area.[27]

The IAA takes this opportunity to urge the SEC to work with the ABA while both phases of the rulemaking are pending to obtain permission to make publicly available the SEC's Official List of 13F Securities in Excel format for ease of compliance. See SEC, *Official List of Section 13(f) Securities*, available at https://www.sec.gov/divisions/investment/13flists.

[25] If the Agencies determine that it is not practicable for an identifier to be completely free to end users, we recommend incorporating a cost recovery principle, similar to that used by the International Organization for Standardization (**ISO**). Under ISO's cost recovery principle, National Numbering Agencies (**NNAs**) generally do not charge for ISIN allocation. In the few instances where fees are charged for ISIN allocation, they are based on the distribution cost and not usage, and are no more than necessary to recover the costs incurred. *See* the Association of National Numbering Agencies, *Identifiers*, available at https://anna-web.org/identifiers/.

[26] *See* European Commission Press Release, *Antitrust: Commission makes Standard & Poor's commitments to abolish fees for use of US International Securities Identification Numbers binding* (Nov. 15, 2011), available at https://ec.europa.eu/commission/presscorner/detail/en/IP_11_1354. As noted above (*see supra* n. 15), ISINs include CUSIPs. Given their similarity, we believe it is possible for the Agencies to take the same approach with CUSIPs as the European Commission has taken with ISINs.

[27] *See* Letter from BVI to the SEC re *File Number S7-2024-05 - Financial Data Transparency Act* (Sept. 6, 2024), available at https://www.sec.gov/comments/s7-2024-05/s7202405-516895-1489422.pdf. We also understand that the

D. Before selecting a new identifier, the Agencies should carefully study whether the potential benefits outweigh the significant disruptions and costs of switching, and that study must recognize that any decision in the first phase will drive the individual Agency decisions in the second phase.

As we have discussed, CUSIP is deeply rooted in our global markets and replacing it with a new or different identifier would be massively disruptive. We urge the Agencies not to do so without first conducting a robust cost-benefit analysis. While we have significant concerns with CUSIP's licensing and other practices and their impact on our members, the Agencies have not shown at this time that the benefits of switching to FIGI outweigh what we believe would be enormous costs. In addition to market-wide disruptions, costs to our members will include sunk costs in infrastructure, technology, and license fees already paid, among other costs. Because of this, we expect that most end users that have relied on CUSIP for a variety of purposes would want to continue to do so even if required to use FIGIs for other purposes; thus, we would not expect the costs to add FIGIs to be substantially offset by no longer using CUSIPs.

Our concerns are exacerbated because the second phase of the rulemaking under the FDTA will be driven by decisions made in the first phase, but the Agencies will not have had the benefit of thorough public feedback on all the issues. Therefore, the enormity of the likely impact of switching identifiers without sufficient analysis should be considered now.

E. In the second phase of rulemaking, each Agency should consider the costs and impacts of choosing either FIGI or CUSIP on smaller entities, and, if a common identifier other than CUSIP is ultimately adopted, each Agency should provide an ample transition period.

The FDTA requires the SEC, the primary regulator of virtually all of our members, to adopt standards in the second phase of the rulemaking for reports filed by investment advisers and collections of information, such as reports filed under Section 13 of the Exchange Act.[28] Because we believe it will be so difficult to change course at a later date, we make the following comments in response to this joint Proposal.

To the extent that the Agencies move forward with the Proposal at this time without substantial further study, we urge the SEC to take its time in the second phase to thoroughly consider the issues we have raised in this letter, including the significant operational costs and burdens of changing to a different identifier such as FIGIs and our longstanding concerns with CUSIP licensing and other practices. We recommend engaging with the investment adviser industry, such as through industry groups and public roundtables, to explore the most appropriate framework. As part of its study, we recommend that the SEC conduct a robust cost-benefit analysis of the very real switching costs of changing identifiers. Identifiers are one of many

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majority of NNAs do not charge for ISIN allocation (*see supra* n. 25) and that the United States is an outlier in this regard. *See* https://anna-web.org/.

[28] We have similar recommendations for the CFTC on behalf of our members that are commodity pool operators and/or commodity trading advisors, i.e., those that report cleared swap transactions.

increasingly expensive types of data that investment advisers must access as part of doing business. As discussed above, these identifiers are ubiquitous and their use extends well beyond regulatory filings.[29]

We also urge the SEC in the second phase of rulemaking to consider the costs and impacts on smaller advisers.[30] According to the Proposal, "in issuing an Agency-specific rulemaking, each implementing Agency (1) may scale data reporting requirements to reduce any unjustified burden on smaller entities affected by the regulations and (2) must seek to minimize disruptive changes to those entities or persons."[31] Smaller advisers continue to be disproportionately burdened by one-size-fits-all regulations—both in isolation and cumulatively. We have frequently called on the SEC to take steps to tailor its rules to minimize these impacts, for example through tiering and staggering compliance timetables within and among rules.[32]

Finally, if a common identifier other than CUSIP is ultimately established and adopted by the SEC, we urge the SEC to allow sufficient transition time for investment advisers to change their systems, update their reporting processes, and otherwise comply with the massive undertaking that changing multiple parts of their businesses will require. We recommend at least 24 months for larger firms and at least 30 months for smaller firms.

Conclusion

For the foregoing reasons, we urge the Agencies to withdraw that part of the Proposal that relates to a common identifier for financial instruments. Because of the importance and complexity of the issues, we urge the Agencies to take their time to thoroughly study all aspects of the proposed identifier, the concerns expressed with the current identifier, and the significant

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[29] We appreciate Commissioner Peirce's question, "How could we achieve the benefits of interoperability without imposing unnecessary costs on reporting firms, particularly smaller ones?" Commissioner Peirce Statement, Question 2.

[30] According to our most recent report on the industry, 92% of SEC-registered advisers reported having 100 or fewer non-clerical employees. *See IAA-COMPLY Investment Adviser Industry Snapshot 2024* (June 2024), p. 24, available at https://www.investmentadviser.org/wp-content/uploads/2024/06/Snapshot2024_FINAL.pdf.

[31] 89 Fed. Reg. at 67895, referring to FDTA Sections 5821, 5823, and 5824 with respect to the SEC.

[32] *See* Letter from IAA President & CEO Karen L. Barr to the SEC, *Petition for Rulemaking to Amend the Definition of "Small Entity" in Rule 0-7 under the Investment Advisers Act of 1940 for Purposes of the Regulatory Flexibility Act* (Sept. 14, 2023), available at https://www.investmentadviser.org/resources/iaa-petitions-sec-to-more-accurately-consider-impact-of-regulations-on-smaller-advisers/. We note that the SEC Asset Management Advisory Committee similarly recommended that the definition of small entity used for purposes of the Regulatory Flexibility Act be modernized to more accurately identify smaller advisers. *See AMAC Final Report and Recommendations for Small Advisers and Funds* (Nov. 3, 2021), available at https://www.sec.gov/files/final-recommendations-amac-sec-small-advisers-and-funds-110321.pdf.

operational costs and burdens of changing to a different identifier, before they select a common identifier that will have a major impact on the interconnected global financial markets.[33]

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We appreciate the Agencies' consideration of our comments on the Proposal and stand ready to provide any additional information that may be helpful. Please contact the undersigned at (202) 293-4222 if we can be of further assistance.

Respectfully,

/s/ Gail C. Bernstein
Gail C. Bernstein
General Counsel and Head of Public Policy

/s/ Laura L. Grossman
Laura L. Grossman
Associate General Counsel

cc: The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
The Honorable Mark T. Uyeda, Commissioner
The Honorable Jaime Lizárraga, Commissioner
Natasha Vij Greiner, Director, Division of Investment Management

[33] We are concerned that the short comment period for the Proposal has not allowed sufficient time for commenters, including the IAA, to provide thorough feedback to improve the Proposal or highlight additional potential unintended consequences and we regret that the Agencies did not provide the extension of time that we had requested. See IAA Letter to the Agencies, *Financial Data Transparency Act Joint Data Standards* (Oct. 7, 2024), available at https://www.sec.gov/comments/s7-2024-05/s7202405-527336-1514722.pdf.