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VIA ELECTRONIC SUBMISSION

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October 21, 2024

Re: Request for Comments on Proposed Rule Regarding Financial Data
Transparency Act Joint Data Standards, 89 Fed. Reg. 67,890 (Aug 22, 2024)

Dear Mr. Dowd, Ms. Misback, Mr. Sheesley, Ms. Conyers-Ausbrooks, Mr. Frotman, Mr. Jones, Mr. Kirkpatrick, Ms. Countryman and Mr. Passante:

CUSIP Global Services (“CGS”) appreciates the opportunity to comment on the proposal (the “Proposal”)¹ by nine federal agencies (the “Agencies”)² to establish joint data standards for collections of information reported to the Agencies under Section 124 of the Financial Stability Act of 2010, which has been added pursuant to Section 5811 of the Financial Data Transparency Act of 2022 (“FDTA”). As background, CGS comments as operator of the CUSIP system on behalf of the American Bankers Association (“ABA”) and under contract with FactSet Research Systems Inc. and the ABA.³

CGS has long been a champion of the FDTA, supporting the FDTA and its predecessor bills in Congress. Promoting interoperability of financial data is a central part of CGS’s mission. The original Committee on Uniform Security Identification Procedures that developed the CUSIP identifier (“CUSIP”) was in fact created for a similar purpose—to improve operating efficiencies across the industry by developing a standard method of uniquely identifying securities. Within a short time, CUSIP became a heavily relied upon securities identification standard, and it remains so to this day. CGS was a key contributor to the development of the global securities identification standard known as the International Securities Identification Number (the “ISIN”), which was accredited by the International Organization for Standardization (“ISO”). Since 1968, CGS and its predecessor organization, CUSIP Service Bureau, have been administering the CUSIP system and expanding coverage to new financial instruments and geographies. CGS was also involved in the design of Legal Entity Identifiers (“LEI”) and has supported LEIs by, for example, providing mapping of LEIs to ISINs that is made freely available to all without restriction.

While there are aspects of this surprising proposal that we support, unfortunately, we found that one aspect of the Proposal sharply diverges from the intent of the FDTA and would cause significant harm to U.S. financial markets and market participants. That is the Proposal’s designation of the Financial Instrument Global Identifier (“FIGI”) as the exclusive common identifier of financial instruments. Therefore, our comment letter

¹ Financial Data Transparency Act Joint Data Standards, 89 Fed. Reg. 67,890 (Aug. 22, 2024).

² The nine agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, the Commodity Futures Trading Commission (“CFTC”), the U.S. Securities and Exchange Commission (“SEC”), and the Department of the Treasury.

³ CGS, the operator of the CUSIP system, is managed on behalf of the ABA by FactSet Research Systems Inc., with an advisory Board of Trustees that represents the voices of leading financial institutions.

primarily focuses on our concerns with that crucial aspect of the Proposal. Many of these concerns were raised in statements regarding the Proposal by Commissioner Hester Peirce of the SEC and Commissioner Caroline Pham of the CFTC; **Appendix 1** provides responses to questions raised in the Commissioners’ statements.⁴

CGS also supports and highlights for the Agencies’ attention comments on the Proposal by the Loan Syndications and Trading Association, Inc. (“LSTA”) (and their 10 trade association signatories, including the Securities Industry and Financial Markets Association (“SIFMA”)) and the Association of National Numbering Agencies (“ANNA”). We note in particular concerns raised by those letters relating to the Agencies’ sole designation of Bloomberg’s FIGI without any type of economic cost-benefit analysis of the likely market disruption to be caused by using an untested identification standard.

Executive summary

The FDTA and its legislative history make clear that the Agencies are not required to select a common identifier of financial instruments. Instead, Congress noted that the Agencies should use extreme caution in doing so, as establishing the wrong standard could pose significant risks to U.S. capital markets. Underscoring this point, Section 124(b) of the Financial Stability Act of 2010 makes clear that its factors for data standards should be imposed only “to the extent practicable.”⁵ It is therefore very surprising that the Proposal classifies (and effectively mandates market participants to use) Bloomberg’s FIGI as the sole common identifier of financial instruments—without any analysis of the practicability or other impact of such a federal regulatory action on financial market participants that rely upon such identifiers. This decision is inconsistent with the FDTA and Congress’s and the law’s clear intent.

The Agencies’ designation of FIGI as the exclusive financial instrument identifier poses material market risks and threatens to impose significant costs in light of the widespread and longstanding market participant adoption of, and market clarity provided by, CUSIP. Markets and market participants depend on CUSIP for a wide array of critical functions including trading (such as pre-trade research and analytics), position management, performance measurement, attribution, accounting, reconciliation, pricing, risk management, trade confirmation and settlements, corporate action processing, collateral management, pre- and post-trade compliance, reporting, and maintaining the firm’s security master. Additionally, CUSIP plays a vital role in clearing and settlement processes as well as in regulatory reporting, ensuring streamlined operations and compliance across the financial industry. If the Agencies finalize the Proposal as it is

⁴ Commissioner Hester M. Peirce, *Data Beta: Statement on Financial Data Transparency Act Joint Data Standards Proposal* (Aug. 2, 2024), <https://www.sec.gov/newsroom/speeches-statements/peirce-statement-financial-data-transparency-act-080224>; Commissioner Caroline D. Pham, *Concurring Statement of Commissioner Caroline D. Pham on Joint Data Standards Proposal* (Aug. 8, 2024), <https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement080824>.

⁵ See 12 U.S.C. § 5334(c)(1)(B).

currently drafted, we anticipate widespread market disruption and confusion, incorrect reporting and needless additional costs associated with requiring the use of FIGI (an untested standard to the market) by market participants. Nowhere in the Proposal was there a cost-benefit analysis for the public to review and assess the significant costs, risks and impacts associated with the proposed sole designation of FIGI. This omission is consequential because the Agencies have ignored the enormous success and near-ubiquitous usage of the CUSIP system, which has brought countless efficiencies to the marketplace. If any meaningful cost-benefit analysis had been done, we believe that the Agencies would have found that many costs could be easily avoided by not mandating FIGI as the exclusive financial instrument identifier.

The designation of FIGI by the Agencies is further perplexing given that the SEC's and CFTC's recent final rules on Form PF (Release No. IA-6546; File No. S7-22-22) explicitly did not mandate the use of FIGI due to concerns regarding FIGI's lack of fungibility.⁶ Moreover, FIGI does not meet at least two of the applicable FDTA factors for being designated a financial instrument identifier. Meanwhile, the Agencies excluded CUSIP for its failure to meet a purported FDTA factor that identifiers be nonproprietary or open license despite its fungibility and widespread, longstanding market acceptance. Application of the FDTA in such a way is arbitrary, capricious and unjustified, especially in light of the considerable costs of the Proposal referenced above and the fact that Congress made selection of financial instruments identifiers subject to any FDTA factor only "to the extent practicable."⁷

Therefore, we respectfully submit that CUSIP and the closely related ISIN⁸ meet the FDTA's applicable factors and the Agencies should have considered them as permitted financial instrument identifiers. The exclusion of CUSIP and ISIN risks major disruption to the U.S. capital markets. If the Agencies nonetheless believe that CUSIP and ISIN do not sufficiently meet the applicable FDTA factors, we request that the Agencies not eliminate choice of financial identifiers for market participants by establishing a specific common identifier of financial instruments at this time. By not doing so at this time, the Agencies would avoid the significant costs and market disruption associated with the Proposal's exclusive designation of Bloomberg's FIGI while permitting the Agencies to determine which financial instrument identifier(s) sufficiently meet the applicable FDTA factors under the particular facts and circumstances of a specific Agency rulemaking.

⁶ See 89 Fed. Reg. 17984, 18019 (March 12, 2024) ("We agree that, for reporting on Form PF, a fungible identifier is preferable because it will allow for more consistent reporting of assets than a nonfungible identifier regardless of the venue of execution, resulting in more effective monitoring and assessment of systemic risk. We are not adopting a change to permit the substitution of FIGI for CUSIP.")

⁷ See *supra* note 5.

⁸ Since 1986, CUSIP has been integral to the interconnected global markets through ISIN because CUSIP is the national identifier used in ISIN for over 30 countries, including the United States and Canada. See CGS, *CGS ISIN Service* (last visited Oct. 15, 2024), <https://www.isin.cusip.com/isin/login.html>. Due to this close relationship between CUSIP and ISIN and for ease of discussion, our letter focuses on CUSIP.

1. The FDTA does not require the Agencies to adopt a common identifier of financial instruments.

As an initial matter, the FDTA does not require the Agencies to adopt a common identifier of financial instruments. The plain language of section 5811 of the FDTA makes clear that the only common identifier that the Agencies are required to adopt is for legal entities. The FDTA provides that the “data standards established in the final rules promulgated under subsection (b)(2) shall—include a common nonproprietary *legal entity identifier* that is available under an open license for all entities required to report to covered agencies.”⁹

The legislative history of the FDTA and other principles of statutory interpretation confirm this reading. The House Appropriations Committee Report explains that the “Committee recognizes that the [FDTA] contains no reference to securities-level identifiers.”¹⁰ Moreover, Congress was clear in its requirement for the Agencies to identify a common nonproprietary *legal entity identifier* that is available under an open license. However, Congress made the explicit choice not to impose such a requirement for other types of common identifiers, including identifiers of financial instruments.¹¹

2. To the extent that the Agencies adopt a common identifier for financial instruments, Congress indicated that the Agencies should do so with extreme caution to avoid disrupting the capital markets.

As noted, the FDTA does not expressly require the Agencies to establish a common identifier for financial instruments, and the plain language and legislative history of the FDTA make clear that, if the Agencies choose to do so, they must proceed with extreme caution to avoid market disruption. The House Appropriations Committee Report stated: “The Committee recognizes that the [FDTA] contains no reference to securities-level identifiers. The Committee expects the SEC, in its joint rulemaking, to implement the FDTA consistent with Congressional intent *and avoid disrupting the U.S. capital markets*.”¹² Below we explain the risks of proceeding with the Proposal’s decision to select Bloomberg’s FIGI as the only common identifier of financial instruments.

⁹ 12 U.S.C. § 5334(c)(1) (emphasis added).

¹⁰ H.R. Rep. 118-556, 118th Cong., 2d Sess. 9 at 78 (June 17, 2024), <https://www.congress.gov/118/crpt/hrpt556/CRPT-118hrpt556.pdf#page=78>.

¹¹ This is commonly referred to as the principle of *expressio unius est exclusio alterius*. See, e.g., *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000).

¹² See *supra* note 10 (emphasis added).

3. The Agencies' adoption of FIGI as the sole common identifier of financial instruments would impose significant risks and unnecessary costs on U.S. markets and market participants.

a. FIGI is already a source of significant market confusion.

FIGI is a relatively untested identifier, and its use continues to be a significant source of confusion in the market. Although the use of FIGI is optional for reporting on the SEC's Form 13F, a brief review of some recent 13F filings evidences such confusion, which has resulted in widespread reporting inconsistencies. An analysis of 13F filings over approximately one year¹³ with a focus on two popular stocks (Amazon common – AMZN, and Alphabet – GOOG) shows that filers are reporting with a variety of nonfungible FIGIs for the same stock, FIGIs for the wrong company/stock, equity option FIGIs, and sometimes ISINs (a 12-character ISO standard used globally for cross-border trading). See **Appendix B** for examples of such erroneous reporting.

It is important to note that these Form 13F examples of market confusion with respect to FIGIs are already a present problem, and this has occurred when FIGI's use is only voluntary rather than mandatory. By mandating the use of FIGI, the Agencies would greatly compound this problem as well as investor and market participant confusion. In contrast, for the example above, the use of fungible CUSIPs for these two popular stocks—02079K305 for Amazon and 023135106 for Alphabet—avoids this confusion. Thus, assuming that FIGI does meet the applicable FDTA factors (which we do not believe it does),¹⁴ the proposed sole designation of FIGI nonetheless needlessly threatens interoperability and reliability of financial regulatory data—the very purpose of the FDTA—by threatening to greatly increasing the incidents of incorrect reporting.

b. Mandatory use of FIGI would incur significant costs that the Proposal and the Agencies did not consider.

CUSIP (and, by extension, ISIN) has been widely embraced by market participants and regulators since its inception. CUSIP's central role is due to its enormous success in the marketplace. CUSIP has long served the markets efficiently in a number of different functions, from trading, clearance and settlement to risk monitoring to regulatory reporting. Disrupting these efficiencies will impose significant costs on market participants. While the actual—and likely staggering—dollar amounts may be difficult to pinpoint with specificity, the costs would be very real and significant as market participants would be forced to jettison their and investors' known identifier to convert to FIGI. Legacy systems would need to be updated or mapped to the new standard, which among other problems and costs would create new possible errors and points of failure when it comes to transparency and continuity in reporting. If the Agencies finalize the Proposal as it is currently drafted, many market participants that have never used FIGI

¹³ Analysis based on EDGAR 13F-HR and 13F-HR/A filings dated Jan 12, 2023 to Jan 25, 2024.

¹⁴ See *infra* section 5.

before will almost certainly need either a paid consultant or Bloomberg’s assistance to ensure that the conversion work is done properly, exacerbating the potential costs and disruption this conversion will inflict on market participants.

Additionally, and critically, FIGI is not—in practice—free. While the 12-digit FIGI code might be made available for free on OpenFIGI, the key data elements associated with that code are not available on OpenFIGI.¹⁵ Without a subscription to a commercial Bloomberg data product or another commercial vendor’s data feed, market participants cannot obtain the additional reference information about a particular security that would be necessary for accurate and consistent reporting.¹⁶ Therefore, many market participants would need to pay for reference data in order to uniquely identify a particular security from among the numerous nonfungible FIGIs and ensure they can distinguish and accurately report it.

These costs may be disproportionately borne by certain types of entities. For example, municipal issuers depend on CUSIP for their bond issuance activities and financial reporting. Among other dependencies, the Municipal Securities Rulemaking Board (“MSRB”) Electronic Municipal Market Access (“EMMA”) disclosure platform relies on CUSIP to link SEC Rule 15c2-12 continuing disclosure documents, which provide notification of specific events that may have an effect on repayment of a bond, such as substitution of credit or liquidity providers, defaults and rating changes (to cite a few), to their associated CUSIPs. Similarly, bond counsel, paying agents, trustees and other municipal market participants embed the CUSIP into these material event notices for market efficiencies.

To cite just one example regarding additional costs affecting the municipal bond market, market participants that would have to report using FIGI would not be able to distinguish between the A series and the B series for a municipal bond offering without additional reference data that sits behind a Bloomberg or another vendor’s paywall.¹⁷ In other words, although FIGIs are different, the free descriptions and free data attributes available under OpenFIGI are often identical, which would require market participants to pay Bloomberg or another vendor so that they do not provide misleading disclosure. This is just one example among many showing that—because of the nonfungibility of FIGI

¹⁵ See OpenFIGI.com.

¹⁶ For example, OpenFIGI’s public domain dedication is limited to the FIGI identifier itself; the dedication does not extend to reference data. See Bloomberg Finance L.P., OpenFIGI Terms of Service (Nov. 27, 2018), <https://www.openfigi.com/docs/terms-of-service>.

¹⁷ To illustrate this point, searching OpenFIGI for a municipal bond issued by Buckeye Valley Fire District in Maricopa County, Arizona, maturing July 1, 2037 with an interest rate of 4%, produces two FIGIs with identical results on OpenFIGI. OpenFIGI does not specify the series or provide the dated date, a field necessary for calculating interest payments and a distinguishing data attribute as these are two separate municipal offerings. Compare FIGI BBG00KD9CQ82 issued April 12, 2018 (Series A) (Official Statement: <https://emma.msrb.org/ES1127444-ES882176-ES1283443.pdf>) to FIGI BBG0165WTQ28 issued April 14, 2022 (Series B) (Official Statement: <https://emma.msrb.org/P21563671-P21208003-P21628660.pdf>).

and the additional data required for unique identification—FIGI’s sole designation would lead to cascading costs for market participants and a deepening of Bloomberg’s already dominant position in the marketplace; in the practical sense, FIGI is neither open nor free.

The fact that the Proposal does not contain a cost-benefit analysis of such considerations and other scenarios, let alone a meaningful discussion of these critical considerations, ensures that the Agencies will not adequately hear from the public on the scope of these costs and whether the approach by the Agencies is justified. Had a cost-benefit analysis been performed, the Agencies would not have designated FIGI as the exclusive financial instrument identifier.¹⁸ Therefore, we respectfully submit that finalizing this aspect of the Proposal would be arbitrary and capricious.¹⁹

- c. *The Proposal’s exclusive designation of FIGI for regulatory reporting blatantly elevates a single business interest above all other current or future competitors in commercial markets.*

The Proposal’s identification of an exclusive common identifier of financial instruments significantly advantages one business’s interests over those of its current competitors and discourages future competition. Worse still, establishing Bloomberg’s FIGI as the only option leaves financial markets vulnerable to any future changes to FIGI that make FIGI even less fit for purpose or less compliant with the FDTA than it currently is.

As noted above, FIGI is not, in the practical sense, open or free because the additional reference data made available by Bloomberg on OpenFIGI are in most cases not sufficient to uniquely identify the underlying security—a necessity for accurate reporting. Rather, much of the valuable data associated with a FIGI requires a Bloomberg subscription to a specific Bloomberg commercial service or a subscription to another data vendor’s data feed. Therefore, the Proposal would easily encourage greater reliance on Bloomberg services by market participants and data providers, and additional revenues to Bloomberg. All of this would impose additional costs on market participants.

If the Agencies finalize the Proposal as it is currently drafted and wish to later designate another identifier, they may only designate another identifier post-finalization pursuant to separate FDTA authorities that are predicated on finding FIGI not feasible or more disruptive than alternatives.²⁰ This would significantly discourage the implementing Agency from selecting another identifier of financial instruments and establish a default barrier to competition, creating strong disincentives for current competitors as well as new entrants.

¹⁸ As explained in section 6 below, CUSIP meets the applicable FDTA factors to the extent practicable, and therefore its designation as a common identifier for financial instruments is permitted under section 5811 of the FDTA.

¹⁹ See, e.g., *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Susquehanna Int’l Grp., LLP v. Sec. & Exch. Comm’n*, 866 F.3d 442 (D.C. Cir. 2017).

²⁰ See Proposal at fn. 20.

In addition, as there is no contemplated future review of the FIGI designation or elaboration of the Agencies' evaluation of FIGI under section 5811 of the FDITA, there is little incentive or path for a current competitor or new market entrant to improve upon FIGI or qualify as a common identifier of financial instruments. It is particularly troubling that, if the Agencies finalize the Proposal as it is currently drafted, FIGI could remain the exclusive financial instruments identifier even if Bloomberg were to later decide to change its commercial model and/or reclaim the rights to FIGI from the Object Management Group ("OMG").²¹

These concerns are exacerbated by Bloomberg also being one of the largest LEI Issuing Organizations within the Global LEI System and generating tens of millions of dollars assigning and certifying LEIs, a business that would expand exponentially if the Proposal were finalized as drafted. Overreliance on one commercial data vendor for both FIGI *and LEI* introduces supplier risk, further discourages competition and makes a dominant, for-profit, private company that much more entrenched.

4. The Agencies should ensure that they apply the correct factors for common identifiers of financial instruments.

The Proposal indicates that the Agencies may be conflating the standards for designating common identifiers of legal entities with those applicable to financial instruments. To the extent that the Agencies choose to designate common identifiers of financial instruments, the FDITA is clear that the factors for designation are different than for those associated with legal entity identifiers found in 12 U.S.C. § 5334(c)(1). Unlike for common legal entity identifiers, the FDITA does not mandate that other common identifiers be nonproprietary or open license. The Agencies had great flexibility under the FDITA.

Specifically, although the Agencies made no reference to it in the Proposal when discussing common identifiers, at most common identifiers other than LEI would be subject to subparagraph (c)(1)(B), which provides that data standards established "shall ... *to the extent practicable*" meet a list of six factors (the "General FDITA Factors").²² Moreover, although nonproprietary and open license are also part of the General FDITA Factors, the two are articulated in a disjunctive manner ("be nonproprietary *or* made available under an open license"). In other words, there is no standard that any common

²¹ See *supra* note 16 (noting that OpenFIGI's public domain dedication is limited to the FIGI identifier itself; the dedication does not extend to reference data).

²² 12 U.S.C. § 5334(c)(1)(B) (emphasis added). These factors are "(i) render data fully searchable and machine-readable; (ii) enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements; (iii) ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata; (iv) be nonproprietary or made available under an open license; (v) incorporate standards developed and maintained by voluntary consensus standards bodies; and (vi) use, be consistent with, and implement applicable accounting and reporting principles."

identifier (other than that for legal entities) be both nonproprietary and available under an open license. In addition, in each case, a common identifier must meet this disjunctive standard—or any other General FDTA Factor—only “to the extent practicable.”²³

5. FIGI does not meet the General FDTA Factors.

The General FDTA Factors include factors for the data standards to “incorporate standards *developed* and maintained by voluntary consensus standards bodies” and “use, be consistent with, and implement applicable accounting and *reporting principles*.”²⁴ The Proposal does not explain how the Agencies determined that FIGI meets these or the other General FDTA Factors; indeed, FIGI clearly fails to meet both of the quoted factors.

With respect to the first factor quoted above, while most widely used standards are developed organically with broad input and via industry working groups (or, in the case of CUSIP, the original Committee on Uniform Security Identification Procedures—an ad hoc standards body at the time), that did not occur with FIGI. FIGI was developed in 2009 by the commercial interest currently behind it, Bloomberg LP, and started out as the BBGID. The BBGID was only later presented to the OMG for consideration and adoption, then subsequently rebranded as FIGI.²⁵ The re-branding of this identifier did not in any way change the commercial interests behind it. Mere votes of adoption by consensus standards bodies are not the same as development. Market participants and standards practitioners had no input in the actual development of the BBGID/FIGI. In fact, when FIGI was presented for accreditation to ISO, the most widely respected consensus standards body, it was rejected by the Technical Committee for Financial Services (TC68).²⁶ We note that this is the same standards body that developed the LEI, Unique Product Identifier (“UPI”), and Classification of Financial Instruments code (“CFI”), which are all standards that CGS has an active role in promoting and are all incorporated into the Proposal. The only prescribed identifier in the Proposal without ISO accreditation is FIGI, which is surprising considering the ISIN, including CUSIP-based ISINs, is an ISO-accredited standard and is used extensively for regulatory reporting on a global basis.

With respect to the second factor quoted above, both the SEC and CFTC have previously acknowledged that *fungibility* is a critical financial reporting principle. In their final rule

²³ This is in sharp contrast to the FDTA’s requirement for a legal entity identifier, which requires—without regard to practicability—the legal entity identifier to be both nonproprietary and available under an open license.

²⁴ 12 U.S.C. § 5334(c)(1)(B)(v)-(iv) (emphasis added).

²⁵ See Bloomberg, *Bloomberg Promotes FIGI as Primary Global Security Identifier* (Sept. 19, 2014), <https://a-teaminsight.com/blog/bloomberg-promotes-figi-as-primary-global-security-identifier/?brand=ati>.

²⁶ See, e.g., Jamie Hyman, *How Bloomberg’s Failed FIGI Vote Reveals a Substandard Standards Process*, *WatersTechnology* (May 8, 2019), <https://www.waterstechnology.com/data-management/4310516/how-bloombergs-failed-figi-vote-reveals-a-substandard-standards-process>.

on Form PF (Release No. IA-6546; File No. S7-22-22), the SEC and CFTC noted “...We agree that, for reporting on Form PF, a fungible identifier is preferable because it will allow for more consistent reporting of assets than a nonfungible identifier regardless of the venue of execution, resulting in more effective monitoring and assessment of systemic risk. We are not adopting a change to permit the substitution of FIGI for CUSIP.”²⁷ It is clear that the SEC and CFTC specifically excluded FIGI due to nonfungibility.²⁸ The very purpose of the FDFTA is to improve financial reporting. Yet the Proposal indicates that the Agencies ignored—without acknowledgement or explanation—the importance of fungibility and its impact on interoperability.

By contrast, CUSIP meets the General FDFTA Factors to “incorporate standards developed and maintained by voluntary consensus standards bodies” and “use, be consistent with, and implement applicable accounting and reporting principles,” since CUSIP was both developed with industry input and consensus *and* is built on the critical principle of fungibility. This has allowed CUSIP to effectively serve for decades as the identifier of choice in reporting and many other market functions, including numerous reporting forms and rules by the Agencies.

6. CUSIP meets the General FDFTA Factors “to the extent practicable.”

In addition to meeting the two General FDFTA Factors discussed in the preceding section, CUSIP also meets the other General FDFTA Factors “to the extent practicable.” With respect to the first three General FDFTA Factors, although they would not appear to be directly relevant to a common identifier of financial instruments, the use of CUSIP would allow other data standards to meet these three factors.²⁹ Thus, CUSIP should be considered to meet these first three General FDFTA Factors.

It is CGS’s stated policy to not charge subscribers to its database services where the subscriber’s sole usage is to fulfill regulatory reporting requirements. Thus, with respect to usage limited to regulatory reporting, CUSIP is available at no cost to a market participant, and CGS does not otherwise restrict reporters in using CUSIP to complete their regulatory reporting obligations.³⁰

²⁷ 89 Fed. Reg. 17984, 18019 (March 12, 2024).

²⁸ Although FIGI may also provide data at the common share class level like CUSIP, such an ability does not fully address fungibility and market confusion concerns, as demonstrated by the final rule on Form PF.

²⁹ These factors are “to the extent practicable—(i) render data fully searchable and machine-readable; (ii) enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements; (iii) ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata.” 12 U.S.C. § 5334(c)(1)(B).

³⁰ CUSIP identifiers and related information also are available without license or fee from certain public sources. *See generally* CGS, *CGS Licensing Policies FAQ*, <https://www.cusip.com/services/license-fees.html> (last visited Oct. 16, 2024).

Moreover, no other U.S.-based identifier of financial instruments that currently has sufficient industry adoption meets the General FDTA Factors as well as CUSIP. In fact, CUSIP is already incorporated into other common identifiers that Agencies would adopt if the Proposal were finalized as it is currently drafted. The UPI record, for example, incorporates ISINs, which in turn incorporate CUSIPs.³¹

Therefore, it would be both arbitrary and not “practicable” to impose the General FDTA Factors in a manner that would exclude CUSIP or include only FIGI. As explained above, CUSIP meets the General FDTA Factors better than FIGI, the costs of imposing a FIGI-only requirement are significant, and, in practice, FIGI is not really free.

7. Conclusion and Requests

As described above, Congress made clear that the Agencies are not required to select a common identifier of financial instruments and that they should not do so to the extent that it would introduce the risk of disrupting the U.S. capital markets. Yet, the Agencies are proposing the selection of an untested identifier that would threaten such disruption, and are doing so without engaging in any cost-benefit analysis of this outcome. Had such an analysis been done, it would have revealed that requiring the use of FIGI as the exclusive common identifier of financial instruments threatens to impose significant costs and risks to the financial markets and reporting data quality, as well as the potential adverse impact on market participants. This outcome cannot be reconciled with the express intent of Congress. As just one example from above, the Proposal would adversely impact all municipal issuers, from the largest cities to the smallest townships, which depend on CUSIP for their bond issuance activities and financial reporting.

Moreover, the Agencies appear to inappropriately and inconsistently apply the General FDTA Factors to a common identifier of financial instruments. While FIGI does not meet at least two of the General FDTA Factors, the Proposal would exclude CUSIP for its purported failure to meet one of these factors. Application of the FDTA in such a way is arbitrary, capricious and unjustified, especially because CUSIP has been fit for purpose since its inception and because CGS does not and will not charge a fee to obtain and use CUSIP information solely for regulatory reporting. Moreover, the Proposal’s application of the General FDTA Factors to impose the needless costs and market disruption described above is inconsistent with the FDTA’s requirement to apply those factors only “to the extent practicable.”

Therefore, we respectfully request that the Agencies not designate FIGI as the exclusive financial instruments identifier because of the costs and risks to the U.S. capital markets and market participants associated with not including CUSIP (and ISIN) would be significant and widespread. We also request that, if the Agencies nonetheless believe that

³¹ The UPI-ISIN provides additional data and transparency as compared to the UPI. See Derivatives Service Bureau, *The UPI-ISIN: It’s not an ‘either or’ choice* (Mar. 1, 2024), <https://www.anna-dsb.com/2024/03/01/the-upi-isin-its-not-an-either-or-choice/>.

CUSIP and ISIN do not sufficiently meet the General FDTA Factors, the Agencies not finalize a common identifier of financial instruments at this time; this would avoid the significant disruption and costs associated with the Proposal's sole designation of Bloomberg's FIGI while permitting the Agencies to perform the necessary cost-benefit analyses to determine which financial instrument identifier(s) sufficiently meet the General FDTA Factors "to the extent practicable" under the particular facts and circumstances of the specific rulemaking.

CGS welcomes further engagement with the Agencies regarding the Proposal. Please do not hesitate to contact me at scott.preiss@cusip.com regarding this comment letter, CUSIP identifiers or CUSIP Global Services.

Best regards,

A handwritten signature in black ink that reads "Scott J. Preiss". The signature is written in a cursive, flowing style.

Scott J. Preiss
Senior Vice President, Global Head
CUSIP Global Services
Operated for the American Bankers
Association by
FactSet Research Systems Inc.

Appendix A
Responses to Statements by Commissioners Peirce and Pham

Does the FDTA's statutory mandate extend to financial instruments? (Commissioner Peirce)

No. As discussed in section 1 of this letter, the FDTA does not require the Agencies to adopt a common identifier of financial instruments.

Is the proposing release correct that the FIGI does and the CUSIP does not meet the FDTA's criteria for designation as a joint standard? (Commissioner Peirce)

No, the Proposal is not correct that FIGI does and CUSIP does not meet the FDTA's criteria for designation as a joint standard. As discussed in section 5 of this letter, FIGI does not meet at least two of the General FDTA Factors while CUSIP does meet such factors. In addition, section 6 explains that, consistent with the FDTA standard, CUSIP meets the General FDTA Factors "to the extent practicable."

What are the largest hurdles to interoperability of financial regulatory data across financial regulators? How should we address those hurdles? (Commissioner Peirce)

As explained in sections 3.a. and 5 of this letter, the issue of fungibility for financial instrument identifiers is a giant hurdle to interoperability for financial data reporting. The nonfungible nature of FIGI works against the FDTA's purpose of promoting interoperability of financial regulatory data across the Agencies.

What are the total direct and indirect costs of adopting the contemplated data standards? (Commissioner Peirce) There is insufficient discussion of the impact and costs associated with the adoption of these new data standards that will apply across the banking and financial services sector. (Commissioner Pham)

Section 3 explains that the Proposal's adoption of FIGI as the sole common identifier of financial instruments would impose significant risks and costs on U.S. markets and market participants. These include widespread market confusion, incorrect reporting, additional compliance costs for market participants and a variety of anticompetitive effects associated with elevating a single business interest above all other current or future competitors.

Will certain types of entities, such as municipal issuers, bear disproportionate FDTA-related costs? If so, what can we do to reduce those costs? (Commissioner Peirce)

As explained in section 3.b. of this letter, certain types of entities, such as municipal issuers, would be disproportionately affected. As a result of CGS's strong relationship with the MSRB, CUSIP continues to be embraced throughout the municipal bond market because it is the most efficient and effective identification system. Municipal issuers,

from the largest cities to the smallest townships, depend on CUSIP for their bond issuance activities and financial reporting.

How much of the FDTA compliance burden is likely to stem from the one-time cost of setting up new data systems as opposed to ongoing compliance costs? (Commissioner Peirce)

The cost burden likely would be largest up front with the initial conversion, and there would be ongoing compliance costs over time. Market participants are largely unfamiliar with the new standards, so it follows that reporting errors would continue and need to be corrected—a clean-up project that could take years.

Appendix B

Example of FIGI Market Confusion in Form 13F Reporting

CUSIP	FIGI	Security	FIGI Description	Number of Filings with the Combination
02079K305	BBG000CH53T5	GOOGL: Alphabet Common Stock	Unitedhealth Group Inc UNH Common Stock	1
02079K305	BBG009STMYC4	GOOGL: Alphabet Common Stock	ALPHABET INC-CL A traded on the Bolsa de Valores de Lima	4
02079K305	BBG009S1XNF4	GOOGL: Alphabet Common Stock	No response in OpenFIGI; maybe the FIGI for a past CALL. These are listed as common stock though	11
02079K305	BBG009S39JY5	GOOGL: Alphabet Common Stock	Share Class FIGI for Alphabet Common Stock	2225
02079K305	BBG00B0RPN25	GOOGL: Alphabet Common Stock	ALPHABET INC-CL A traded on X TERA	1
02079K305	US02079K3059	GOOGL: Alphabet Common Stock	Not a FIGI, the corresponding ISIN instead	3
02079K305	BBG00GQ6RYQ0	GOOGL: Alphabet Common Stock	ALPHABET INC-CL A traded on Wiener Boerse AG	1
02079K305	BBG009S39JX6	GOOGL: Alphabet Common Stock	US Composite for Alphabet Common Stock	226
02079K305	BBG01JDVX882	GOOGL: Alphabet Common Stock	US Composite for put GOOGL 10/20/23 P128	OK
02079K305	BBG000DWG505	GOOGL: Alphabet Common Stock	US Composite for BERKSHIRE HATHAWAY INC-CL B	2
02079K305	BBG009S4MT03	GOOGL: Alphabet Common Stock	ALPHABET INC-CL A traded on NASDAQ/NGS (GLOBAL SELECT MARKET)	25
023135106	BBG000PC4J09	AMZN: Amazon Common Stock	NUVEEN AMT-FR QLTY MUNI INC	1
023135106	BBG01BCNN950	AMZN: Amazon Common Stock	October 23 Puts on AMZN US	OK
023135106	BBG001FK8HZ2	AMZN: Amazon Common Stock	Nothing shows up on OpenFIGI; may have been a previous call	9
023135106	US0231351067	AMZN: Amazon Common Stock	This is not a FIGI, but the corresponding ISIN	2
023135106	BBG000BVQ4Z3	AMZN: Amazon Common Stock	Amazon common stock traded on NADAQ/NGS	34
023135106	BBG000BVPV84	AMZN: Amazon Common Stock	US Composite for Amazon Common Stock	204
023135106	BBG001S5PQL7	AMZN: Amazon Common Stock	Share Class FIGI for Amazon Common Stock	2361
023135106	BBG000CRF6Q8	AMZN: Amazon Common Stock	US Composite for SPDR GOLD SHARES	1
023135106	BBG000CH53T5	AMZN: Amazon Common Stock	Unitedhealth Group Inc UNH Common Stock	1
023135106	BBG00GQ6RYZ0	AMZN: Amazon Common Stock	Amazon common stock traded on Wiener Boerse	2
023135106	BBG000BQ2C28	AMZN: Amazon Common Stock	Northrop Grumman Common Stock	1
023135106	BBG000BB0NB9	AMZN: Amazon Common Stock	Amazon common stock traded on Bolsa Valores de Lima	4

Highlighted rows are of incorrect use of equity option FIGIs.