

October 15, 2024

Via Electronic Mail (rule-comments@sec.gov)

Vanessa Countryman, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Financial Data Transparency Act Joint Data Standards, File No. S7-2024-05¹

Dear Ms. Countryman:

The Healthy Markets Association² writes to offer our strong support for the Data Standards Proposal, which would implement the mandates of the Financial Data Transparency Act of 2022.³

Discussion

After years of failed regulatory efforts to link data between regulators, in May 2022, Senators Mark Warner (D-VA) and Mike Crapo (R-ID) introduced The Financial Data Transparency Act of 2022. The FDTA directed federal financial regulators to jointly issue regulations “establishing data standards for (1) certain collections of information reported to each Agency by financial entities under the jurisdiction of the Agency, and (2) the data collected from the Agencies on behalf of the Financial Stability Oversight Council (FSOC).”⁴

The FDTA was expressly intended to ensure that data collected by different federal regulators is reported in a manner that allows them to cost effectively share and use it.

As Senators Warner and Crapo made clear in their one-page description of their legislation,

¹ *Financial Data Transparency Act Joint Data Standards*, Sec. and Exch. Comm’n, 89 Fed. Reg. 67890 (Aug. 22, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18415.pdf> (“Data Standards Proposal”).

² The Healthy Markets Association is a not-for-profit member organization focused on improving the transparency, efficiency, and fairness of the capital markets. Healthy Markets promotes these goals through education and advocacy to reduce conflicts of interest, improve timely access to market information, modernize the regulation of trading venues and funding markets, and promote robust public markets. Its members include public pension funds, investment advisers, broker-dealers, exchanges, and data firms. To learn about HMA or our members, please see our website at <http://healthymarkets.org>.

³ Public Law 117–263, 136 Stat. 2395, 3421 (2022) (“FDTA”).

⁴ Data Standards Proposal, at 67894.

The new standards will include the use of common, non-proprietary legal identifiers for financial products, instruments, and transactions. The identifiers would be required to be available under an open license, at no cost to the public, per existing federal law. The new standards will ensure that covered data will be fully searchable and machine-readable for ease of use.⁵

Financial Product Identifiers

As the Data Standards Proposal notes, “[f]or the identification of securities, the Agencies also considered CUSIP and the ISIN (which includes the CUSIP).”⁶ However, while those identifiers are “widely used, they are proprietary and not available under an open license in the United States.”⁷ Accordingly, their use is expressly prohibited by the plain statutory language and clear Congressional intent.

Instead, the Data Standards Proposal would use the Financial Instrument Global Identifier (FIGI) established by the Object Management Group as the primary identifier for financial instruments, including securities.

As the Data Standards Proposal explains, FIGI has a lot going for it.⁸

- FIGI is legally permitted by the statute because it is available under an open license.
- FIGI covers a broad swath of financial instruments, not just securities. It can be used for digital assets or loans, for example.
- FIGI is available in not just the US, but globally.
- FIGI has “real-time availability.”
- FIGI has already been adopted as a US standard by the ANSI Accredited Standards Committee.

No other existing financial product standard meets all of these criteria.⁹

⁵ Sen. Mark Warner, Financial Data Transparency Act, *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> (one-page description).

⁶ Data Standards Proposal, at 67897.

⁷ Data Standards Proposal, at 67897.

⁸ Data Standards Proposal, at 67897.

⁹ We are not surprised that the joint work of the agencies over the past year and a half has led to a similar conclusion. The Data Standards Proposal and the standards selected reflect extensive input from regulators, market participants, and other experts. See, e.g., Data Standards Proposal at 67895, n. 22 (“Since March 2023, staff at the implementing Agencies and Treasury consulted with counterparts at the National Institute of Standards and Technology, Federal Chief Data Officers Council, Federal Evaluation Officer Council, the Federal Financial Institutions Examination Council (FFIEC), the Department of Health and Human Services, and the Department of Homeland Security.”); *accord*, 67895, at n. 23 (“Since March 2023, staff at the implementing Agencies and Treasury consulted with the Global Legal Entity Identifier



Moreover, the Commission has already acknowledge the value of FIGI. As the agency noted in its 2022 revisions to position reporting requirements, the use of FIGI “would enhance ... the usefulness of [reported] information to the Commission, other regulators, or members of the public and other market participants.”¹⁰ These benefits would accrue in other reporting contexts as well.

Lastly, we wish to acknowledge long standing investor and broader financial market industry complaints with the monopolistic use and pricing practices of the proprietary Committee on Uniform Security Identification Procedures (CUSIP) which is anything but a Committee. CUSIP is a monopoly owned by a single entity – the American Bankers Association (ABA) -- and licensed to a single company, Factset. CUSIP’S licensing program is currently the subject of an antitrust action pending in the U.S. District Court for the Southern District of New York.¹¹ Separately, the International Securities Identification Number (ISIN) financial product identifier has a history of monopolization concerns prompting the European Commission’s antitrust authorities to enter into binding commitments to force the abolishment of fees.¹²

Over the years, HMA members have essentially been charged intellectual property licensing fees for using identifiers for their own internal compliance and financial reporting obligations. With the FDIA, Congress clearly intended to crack this monopoly practice on securities identifiers.

As one market participant shared with HMA staff in early 2022,

The vast majority of market participants consider CUSIP a utility. ... The governance of this critical piece of market infrastructure is highly conflicted and clearly putting profit above what is right for the smooth running and evolution of the market. This situation reflects poorly on the US – as the only national numbering agency (ISIN provider) that behaves in this way.¹³

Legal Entity Identifiers

Foundation (GLEIF), Enterprise Data Management Council, XBRL US, Data Foundation, and American National Standards Institute (ANSI) Accredited Standards Committee X9.”).

¹⁰ *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*, Sec. and Exch. Comm’n, 87 Fed. Reg. 38943, 38951 (June 30, 2022).

¹¹ See *Dinosaur Fin. Grp. LLC v. S&P Global, Inc., American Bankers Association, and FactSet Research Systems, Inc.*, 22 Civ. 1860 (S.D.N.Y. July 14, 2023).

¹² See, e.g., Press Release, *Antitrust: Commission makes Standard & Poor’s commitments to abolish fees for use of US International Securities Identification Numbers binding*, European Comm’n, Nov. 14, 2011, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_11_1354.

¹³ Email to Tyler Gellasch, HMA, Jan. 13, 2022 (on file with the author).



The Data Standards Proposal would establish the Legal Entity Identifier (LEI) as the legal entity identifier standard.¹⁴ That’s appropriate.

In the aftermath of the Global Financial Crisis, regulators around the world began work on what would ultimately become the Global Legal Entity Identifier Foundation and the LEI framework.¹⁵ For over a decade, market participants have been working with regulators to develop and implement LEI, which is a “20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO).”¹⁶

As the Data Standards Proposal explicitly recognizes,

The LEI is nonproprietary, and the LEI data is made publicly available under an open license, free of charge to any interested user.

...

The LEI is used worldwide in the private and public sectors and, in certain jurisdictions, including the United States, is used for regulatory reporting. In some cases, the LEI can be used to identify the filer of a particular report, as well as entities related to the filer, such as its subsidiaries or parents. Regulators have the discretion to determine whether firms are obligated to renew LEI and corresponding legal entity reference data. While the LEI codes and reference data may be used free of charge, entities must pay a fee to local operating units to register and renew the LEI assigned to them. The LEI system is based on a cost-recovery model, meaning the costs associated with obtaining and renewing an LEI cover the administrative expenses associated with the LEI system.¹⁷

The Data Standards Proposal itself doesn’t “impose any requirements that any particular entity obtain an LEI and incur the associated costs,” however, as the LEI requirements would be individually established at each agency pursuant to those subsequent rulemakings.¹⁸

We urge the agencies to broadly adopt, to the extent possible, the use of LEI. However, we further note that the Commission and other agencies should take steps reasonably designed to ensure that GLEIF and other entities are not using revenues for any

¹⁴ Data Standards Proposal, at 67896.

¹⁵ Global Legal Entity Identifier Foundation, *History of the Global LEI System*, available at <https://www.gleif.org/en/about/history> (last visited Oct. 11, 2024); see also Data Standards Proposal, at 67896.

¹⁶ Global Legal Entity Identifier Foundation, *Introducing the Legal Entity Identifier (LEI)*, available at <https://www.gleif.org/en/about-lei/introducing-the-legal-entity-identifier-lei> (last visited Oct. 11, 2024).

¹⁷ Data Standards Proposal, at 67896.

¹⁸ Data Standards Proposal, at 67896.



purposes other than operating the system. Put simply, it must remain a not-for-profit, public interest utility. These steps should include periodic reviews of fees charged and costs for the operations of the LEI system.

Machine-Readable Formats

Where possible, we urge the agencies to more narrowly limit the use of different data formats.

While we appreciate the emphasis on machine-readable formatting generally, we are concerned that permitting too much flexibility in the precise format of the data (e.g., whether XBRL or pdf or something else) may limit the interoperability of the data provided, and utility for regulators and market participants.

Federal regulators have been encouraging the use of machine-readable data, and eXtensible Business Reporting Language (XBRL), in particular, for well over fifteen years. For example, in early 2009, the Commission adopted rules to require companies to provide their financial statements¹⁹ and mutual funds to provide their risk/return summaries²⁰ to the Commission and on their websites in XBRL.

As the Commission justified this determination over fifteen years ago,

The rules are intended not only to make ... information easier for investors to analyze but also to assist in automating regulatory filings and business information processing. Interactive data has the potential to increase the speed, accuracy, and usability of mutual fund disclosure, and eventually reduce costs.²¹

We urge the agencies to work together to encourage, as much as reasonably possible, the use of XBRL as the mandated, default, or strongly preferred format for reporting.

Implementation Timelines

While market participants have been using machine readable formats for many years, the actual entity and financial product identifiers needed to make this effort successful will take time to integrate into firms' internal business, compliance, and reporting systems.

We recognize that moving from CUSIP to FIGI, for example, will involve technological building, testing, and implementation. However, as the Commission and FINRA have

¹⁹ *Interactive Data to Improve Financial Reporting*, Sec. and Exch. Comm'n, 74 Fed. Reg. 6776 (Feb. 10, 2009), available at <https://www.govinfo.gov/content/pkg/FR-2009-02-10/pdf/E9-2334.pdf>.

²⁰ *Interactive Data for Mutual Fund Risk/ Return Summary*, Sec. and Exch. Comm'n, 74 Fed. Reg. 7748 (Feb. 19, 2009), available at <https://www.govinfo.gov/content/pkg/FR-2009-02-19/pdf/E9-3359.pdf>.

²¹ 74 Fed. Reg. 7748.



already found,²² mapping CUSIP to FIGI should not be particularly difficult or challenging, in part because mapping is already available.

Accordingly, we recommend that the agencies avoid unnecessary delays, and instead consider risk-based, phased approaches to implementation, starting with the largest, most interconnected firms and working out to smaller, less essential, and more resource-constrained firms.

Conclusion

The Financial Data Transparency Act of 2022 was an important step towards improving data collection by regulators, and the ability of regulators and market participants to use that data. The Data Standards Proposal seeks to faithfully implement it, and should be adopted without delay.

If you have any questions, please contact me at (202) 909-6138 or ty@healthymarkets.org. Thank you for your consideration.

Sincerely,

President and CEO
Healthy Markets Association

²² See, e.g., 87 Fed. Reg. at 38951, n.99 (“FIGI is an open-sourced, non-proprietary, data standard for the identification of financial instruments across asset classes, including all 13(f) Securities. FIGI allows users to link various identifiers for the same security to each other, which includes mapping the FIGI of a security to its corresponding CUSIP number.” (citing Object Management Group Standards Development Organization, *Financial Instrument Global Identifier*, available at <https://www.omg.org/figi/>.”)).