The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
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Memorandum

October 21, 2024

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Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Mr. Christopher Kirkpatrick
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FDTA-INTERAGENCY RULE
c/o Legal Division Docket Manager
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Chief Counsel's Office,
Attention: Comment Processing
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Mr. Clinton Jones
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Ms. Melane Conyers-Ausbrooks
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Chief Counsel's Office
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Department of the Treasury
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Mr. James P. Sheesley
Assistant Executive Secretary
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Federal Deposit Insurance Corporation
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Ms. Vanessa A. Countryman
Secretary
Securities and Exchange Commission
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Washington, DC 20549

Re: Financial Data Transparency Act Joint Data Standards
OCC Docket ID OCC-2024-0012
FRB Docket No. R-1837; RIN 7100-AG-79

FDIC RIN 3064-AF96
3133-AF57; NCUA–2023–0019
FHFA RIN 2590-AB38
CFTC RIN number 3038-AF43
SEC File No. S7-2024-05
Docket No. CFPB-2024-0034

Dear Agencies:

The Investment Company Institute[1] is writing to comment on the proposal[2] by nine federal agencies (the "Agencies"),[3] including the Securities and Exchange Commission (the "Commission" or "SEC"), to jointly establish data standards for collections of information reported to the Agencies under the Financial Data Transparency Act of 2022 ("FDTA").[4] The Agencies propose to require, among other things, that financial entities utilize a common nonproprietary legal entity identifier ("LEI") that is available under an open license for information reported to each Agency.[5] In addition to the LEI, the Proposal identifies the

[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $37.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 100 million investors. Members manage an additional $8.7 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] *See Financial Data Transparency Act Joint Data Standards*, Rel. Nos. 33-11295; 34-100647; IA-6644; IC-35290; File No. S7-2024-05, 89 Fed. Reg. 67,890 (Aug. 22, 2024) (the "Proposal"), available at https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18415.pdf.

[3] 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 Securities and Exchange Commission, and the Department of the Treasury.

[4] Pub. L. 117-263, title LVIII, 136 Stat. 2395, 3421 (2022) (adding, among other things, a new section 124 of the Financial Stability Act of 2010, which is codified at 12 U.S.C. 5334 ("Section 124")).

[5] The Agencies propose to establish the International Organization for Standardization (ISO) 17442-1:2020, Financial Services - Legal Entity Identifier (LEI) as the legal entity identifier joint standard. *See* ISO 17442-1:2020, Financial services - Legal Entity Identifier (LEI), INTERNATIONAL ORGANIZATION FOR STANDARDIZATION, available at https://www.iso.org/standard/78829.html.

Financial Instrument Global Identifier ("FIGI")[6] as the proposed common identifier for financial instruments.

We understand and support the Agencies', including the Commission's, efforts to establish standardized, open-access identifiers and appreciate the potential such joint standards have to enhance transparency, access, flexibility, innovation, and efficiency within the financial industry. However, we have several concerns regarding the Proposal that we hope the Agencies will address in order to properly achieve the objectives of the FDTA.

In summary, we respectfully recommend that before proceeding with any final rulemaking, the Agencies, including the Commission, should consider the following concerns regarding the Proposal, and the proposed adoption of FIGI as the exclusive financial instrument common identifier:

1. The Proposal lacks any cost-benefit analysis and therefore fails to consider significant costs associated with the adoption of FIGI;
2. The Agencies have not adequately consulted with industry in issuing the Proposal;
3. FIGI is not truly under an open license;
4. FIGI is nonfungible and raises "many to one" operational concerns; and
5. The Agencies' should consider allowing for an alternative identifier to FIGI.

We offer the following comments in this letter regarding certain aspects of the Proposal as they apply to (i) registered investment advisers, in their capacity as advisers to regulated investment companies, retail separately managed accounts and collective investment trusts; (ii) regulated investment companies, including mutual funds, exchange-traded funds, closed-end funds, business development companies, UITs (together, "funds") and their investors; and (iii) registered broker-dealers that sell fund shares.

Background

ICI appreciates the purpose of the Proposal is to promote the interoperability of financial regulatory data across the Agencies. The FDTA requires several federal financial regulators to jointly issue a rule establishing data standards for information reported to each agency. Consistent with the criteria set forth in Section 124 of FDTA, these data standards must include a legal entity identifier and other common identifiers, which:

> (i) make data fully searchable and machine-readable,

[6] FIGI was established by the Object Management Group, which is an open-membership standards consortium. The FIGI is an international identifier for all classes of financial instruments, including, but not limited to, securities and digital assets.. *See* Standard Symbology for Global Financial Securities, OBJECT MANAGEMENT GROUP, available at https://www.omg.org/figi/. Bloomberg L.P. irrevocably contributed its FIGI intellectual property to Object Management Group in 2015 and continues to function as a registration authority for FIGI issuances.

(ii) clearly define the data element and its relationship to other data elements,
(iii) consistently identify data in accordance with its regulatory requirement; and
(iv) are non-proprietary or available under an open license.[7]

While we understand and are sympathetic to these objectives, we are concerned that the Proposal, in its current form, is unlikely to meet these stated statutory aims. Further, while we appreciate that the Proposal will only apply to the reporting of data, we are concerned that the potential impact on downstream operations will be adverse. As we discuss further below, we believe that the Proposal's misplaced selection of FIGI as the exclusive financial instrument common identifier will increase the risks of trading error, add operational cost and complexity, and likely severely disrupt an existing, well-functioning set of identifiers on which market participants have relied for decades.

We elaborate on these concerns below.

1. <u>The Proposal Lacks Any Cost Benefit Analysis and Fails to Consider Significant Costs of Adopting FIGI</u>

Executive Order 12866 directs agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).[8] The Proposal states, however, that this proposed rule "is not a significant regulatory action" and, therefore, was not reviewed by the Office of Management and Budget under Executive Order 12866.[9]

Executive Order 12866 defines a "significant regulatory action" to include any regulatory action that is likely to result in a rule that may adversely affect in a material way the economy, or a sector of the economy.[10] By that definition, the Proposal is likely a very significant regulatory action — it is likely to involve hidden, but material costs for securities market participants and therefore deserves a thorough cost-benefit analysis, which the Agencies have failed to undertake. Furthermore, the SEC has an obligation to conduct a cost-benefit analysis on a major rule even if the rulemaking was directed by statute.

These significant costs are apparent on any analysis of how firms operate or utilize data identifiers. For example, our members have noted with concern that a mandated transition to FIGI for reporting purposes

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[7] The FDTA amended the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Securities Exchange Act of 1934, and the Securities Act of 1933 by adding new provisions that require the SEC to issue rules (each rule, an "SEC Rule") adopting applicable data standards that have been established by the Joint Final Rule to various SEC data standards.

[8] Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 Fed. Reg. 51735, at 51736.

[9] Proposal, 89 Fed. Reg. at 67899.

[10] Executive Order 12866, Section 3(f).

will likely involve burdensome costs associated with switching from CUSIP and/or ISIN. Use of CUSIPs is widespread across the securities industry and identification through CUSIPS and ISIN constitute accepted practice across a range of transactions. It is customary, for example, for CUSIPs to be used:

> (i) by mutual fund complexes to populate data fields on a significant number of regulatory reports to the SEC, CFTC/NFA, Federal Reserve, etc. for securities offered and investments held;
> (ii) in notifications by pooled investment vehicles to their service providers for distribution of funds, and accounting for securities held, etc.;
> (iii) by transfer agents, custodians and broker-dealers to identify funds for transaction processing between counterparties on their respective systems; and
> (iv) by regulatory document distribution service providers to systematically process materials to the appropriate shareholders.

The uses enumerated above are only a few of the vast current range of uses of CUSIPs in transactional practice. Given the overwhelming reliance by market intermediaries on the CUSIP and ISIN codes, it is clear that any departure to a new system of identifiers would likely result in significant costs across the securities markets to update systems and maintain an additional field and mapping between CUSIP and FIGI for hundreds or thousands of securities on an ongoing basis.

Notwithstanding the many, easily available examples of current market usage and reliance on CUSIP and ISIN identifiers, the Proposal does not reflect how firms operate or utilize data identifiers. It therefore fails to fully appreciate the costs that a mandated transition to FIGI would impose. Instead, the Proposal incorrectly assumes, without further inquiry, that it is not a "significant regulatory action" and therefore mistakenly concludes that no cost-benefit analysis is required.

In cases where there has been "decades" of "industry reliance" on a prior policy, an agency must present a "more reasoned explanation" for "why it deemed it necessary to overrule its previous position."[11] Here, however, the Proposal fails to provide any compelling reasons as to why decades of industry reliance on identifiers such as CUSIP and ISIN should be overlooked in favor of an expensive and operationally complex transition to FIGI.

Even apart from the considerable costs likely to be incurred in switching from CUSIP/ISIN to FIGI, the implementation of FIGI presents several unknown, but potentially significant costs to market participants. These costs include the administrative, systemic, and reporting costs associated with obtaining, storing, maintaining, and reporting a FIGI for each fund offered and each security held, as well as each venue the security is traded on. Our members have noted that the mandated use of FIGI would likely include multiple costly and disruptive changes. For example:

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[11] *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126-27 (2016).

(i) FIGI may need to be added to every transaction in the data that is fed to the Consolidated Audit Trail, which will likely materially increase reporting costs; and
(ii) FIGI would have to be added to a significant number of SEC, CFTC and Federal Reserve filings such as Form N-PORT, Form CPO-PQR, etc. which will drive up costs significantly, particularly for large fund complexes.

The Proposal considers none of these costs, because it erroneously concludes that no cost-benefit analysis is required. However, these as yet unquantified and likely material costs require that the Agencies conduct a proper cost/benefit analysis in accordance with Executive Order 12866. ICI respectfully suggests that any such cost benefit analysis should seek to accurately identify and, as far as possible, quantify:

(i) the operational impacts of a transition from identifiers such as CUSIP/ISIN to FIGI;
(ii) the time needed to alleviate disruptions; and
(iii) the associated costs of such transition, disruption and alleviation.

The Proposal's omission of any cost benefit analysis whatsoever, combined with its mistaken conclusion that no such analysis is required, may render the Proposal materially incomplete, and potentially vulnerable to legal challenge.[12] We note that even leadership at the Agencies, who have otherwise been supportive of the Proposal, have nevertheless noted the absence of a cost-benefit analysis and have sought data around both implementation costs as well as ongoing costs.[13] We respectfully ask that the Commission, along with the other Agencies, undertake a meaningful analysis of these costs, in light of any corresponding benefits.

2. <u>The Agencies Have Not Adequately Consulted with Industry in Issuing the Proposal.</u>

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[12] *See, e.g., Business Roundtable v. SEC*, 647 F.3d 1144, 1150 ("Although the Commission acknowledged that companies may expend resources to oppose shareholder nominees, see 75 Fed. Reg. at 56,770/2, it did nothing to estimate and quantify the costs it expected companies to incur; nor did it claim estimating those costs was not possible, for empirical evidence about expenditures in traditional proxy contests was readily available. Because the agency failed to 'make tough choices about which of the competing estimates is most plausible, [or] to hazard a guess as to which is correct,' *Pub. Citizen [v. Federal Motor Carrier Safety Admin.]*, 374 F.3d [1209] 1221[(D.C. Cir. 2004)], we believe it neglected its statutory obligation to assess the economic consequences of its rule...").

[13] *See*, SEC Commissioner Hester M. Peirce, Statement, *Data Beta: Statement of Financial Data Transparency Act Joint Data Standards Proposal*, (Aug. 2, 2024) available at https://www.sec.gov/newsroom/speeches-statements/peirce-statement-financial-data-transparency-act-080224. *See also,* CFTC Commissioner Caroline D. Pham, *Concurring Statement of Commissioner Caroline D. Pham on Joint Data Standards Proposal* (August 8, 2024) available at https://www.cftc.gov/PressRoom/SpeechesTestimony/phamstatement080824. Commissioner Pham stated in her concurring opinion: "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 (including small entities as set forth under the Regulatory Flexibility Act). While I support the FDTA's mandate, I believe the Joint Data Standards Proposal would be improved by addressing head-on the elephant in the room—the very real costs that will be imposed on potentially tens of thousands of firms of all sizes that will eventually have to update their systems and records to adhere to the new data standards."

When an agency proposes, amends, or adopts a new rule pursuant to congressionally delegated authority, the Administrative Procedure Act requires the Commission to provide the public with a meaningful opportunity to comment on the rule's content.[14] However, in addition to the formal notice and comment process which forms an essential part of rulemaking, agencies have historically engaged in a range of informal consultations with stakeholders as part of the rulemaking process.

The legislative history of the Administrative Procedure Act suggests that "[matters]...where the public submission of facts will be either useful to the agency or a protection to the public, should naturally be accorded more elaborate public procedures."[15] Here, despite the Proposal's potentially far-reaching disruptive effects for the securities markets, the Agencies have not engaged in meaningful consultations with industry participants before issuing the Proposal. (We note that the Agencies did, however, meet with the Global Legal Entity Identifier Foundation (GLEIF), Enterprise Data Management Council, XBRL US, Data Foundation, and American National Standards Institute (ANSI) Accredited Standards Committee X9.)[16] Like these bodies, securities market participants and their representatives would have been well placed to provide the Agencies with key data around the operation and accessibility of existing identifiers, the potential costs of transition to a new identifier, and the impact on transactional and compliance systems. Had such consultations taken place, the Proposal would have been supplemented by extensive inputs around existing practices, costs and benefits.

ICI therefore respectfully recommends that the Agencies engage in the outreach and coordination necessary to understand the operational consequences of mandating a new data identifier. We would respectfully suggest that the Agencies withdraw the Proposal, engage more fully with market participants, and then re-propose a suitable rule following adequate consultations. We believe this process would allow the Agencies to develop a solution that is more appropriately tailored to meet the requirements of the FDTA. We also believe that this process would limit costs and disruption to markets that are otherwise operating effectively and efficiently with respect to data standards and the regulatory reporting of data.

3. <u>FIGI is Not Truly Under an Open License.</u>

Section 124(c)(1)(B) of the Financial Stability Act requires that the data standards must, to the extent practicable, be nonproprietary or available under an open license. The Proposal states that an open license

[14] 5 U.S.C. § 553.

[15] Administrative Procedure Act: Legislative History, S. Doc. No. 248, at 259 (1946); CHARLES H. KOCH JR., 1 ADMINISTRATIVE LAW AND PRACTICE 329-30 (2010 ed.).

[16] Proposal, 89 Fed. Reg. at n.23.

must be available at no cost to the public.[17] However, ICI is concerned that FIGI may not truly be under an open license, and therefore does not satisfy the FDTA's requirement that data standards must be available at no cost to the public.

The Proposal notes, correctly, that entities may obtain a FIGI at no cost. However, we understand that FIGI only offers users access to a limited set of data at no cost. In order to access several key attributes of the security under FIGI, users would need to use a Bloomberg terminal or third-party provider platform that is only available through subscription.

The CUSIP database offers users more than 60 critical reference data fields for each security.[18] By contrast, OpenFIGI only offers users access to a very limited data set, while critically important fields (including the primary exchange on which the security is traded and distinguishing characteristics like call features, issuance volumes, etc.) remain locked behind a paywall, available only to users with a paid subscription to a Bloomberg terminal. As a practical matter, therefore, FIGI does not provide access to these necessary data elements at no cost and is not under an open license for the purposes of the FDTA.

4. Unlike CUSIP, FIGI is Not Fungible and Raises "Many to One" Operational Concerns.

The FIGI identifier is not fungible. We define "fungibility", in this context, to mean that a specific security is represented by the same identification code regardless of the venue on which the instrument is traded. This is true for the Committee on Uniform Security Identification Procedures ("CUSIP") and the closely related International Securities Identification Number ("ISIN") security identification codes, for example — those identifiers remain invariable regardless of the exchange, trading system, or other venue on which the securities to which they attach are traded. We would note in particular that the Agencies have previously acknowledged the critical importance of fungibility in ensuring consistent reporting, and the monitoring and assessment of systemic risk.[19]

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[17] "The term 'open license' means 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." *See* the Proposal, 89 Fed. Reg. at 67894 at n.14.

[18] Further, it is not practicable for the Commission to mandate a new identifier which is a non-proprietary or open license when the industry has used CUSIP and ISIN for decades without any issues and they are deeply embedded in the industry today. Likewise, in the Proposal, the Agencies acknowledge that CUSIP and ISIN are widely used. *See* the Proposal, 89 Fed. Reg. at 67897.

[19] *See Reporting Requirements for All Filers and Large Hedge Fund Advisers*, 89 Fed. Reg. 17984, 18019 (Mar. 12, 2024) ("[A] fungible identifier is preferable because it will allow for more consistent reporting of assets than a nonfungible identifier . . . resulting in more effective monitoring and assessment of systemic risk. We are not adopting a change to permit the substitution of FIGI for CUSIP.").

The Proposal proposes what, on the surface, may seem like a simple exercise – asking market participants to simply switch out the current identifier with the FIGI. However, trading platforms, compliance systems, accounting platforms, and their operators, among others, must consider extensive technical changes because FIGI is not fungible across venues, and uses a different security identification code for each trading venue on which the same security trades.

This lack of fungibility is likely to require extensive reprogramming, testing and deployment of new code for both internally developed systems and vendor solutions. The costs associated with storing FIGI would be substantial, as would the creation and implementation of systems to verify all FIGI codes associated with a single instrument. Thus , the seemingly simple transition from a single, invariant identifier to an identifier that changes with every change in trading venue increases costs and complexity with no added benefit to market participants or regulators. However, and as we discuss further below, because the Proposal entirely fails to consider the relative costs and benefits of FIGI, it fails to consider the considerable operational burden caused by FIGI's non-fungibility.[20]

5. The Commission Should Consider Allowing Alternatives to FIGI.

The Commission's Office of General Counsel notes that "High-quality economic analysis is an essential part of SEC rulemaking" and that "the basic elements of a good regulatory economic analysis" include (i) the identification of **alternative regulatory approaches**; and (ii) an evaluation of the qualitative and quantitative benefits and costs of the proposed action and the main alternatives identified by the analysis.[21] (Emphases added). Executive Order 12866 requires agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).[22] Federal courts too have repeatedly stated that "'where a party raises facially reasonable alternatives … the agency must either consider those alternatives or give some reason…for declining to do so.'"[23]

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[20] We raise these concerns as the Commission (and Agencies) have not specified in the Proposal whether they would mandate reporting using the Unique FIGI identifier which identifies the security as well as the exchanges on which it trades or whether they would require reporting using a Composite FIGI which represents the security across all exchanges. If the Agencies intend to use the Composite FIGI, we understand that may address some of the one-to-many issues we articulate above.

[21] *See* Memorandum to Staff of the Rulewriting Divisions and Offices from RSFI and OGC (Mar. 16, 2012) ("OGC Memorandum") *available at* https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.

[22] Executive Order 12866, Section 1.

[23] *Chamber of Commerce v. SEC*, 412 F.3d 133 at 144 (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Auto. Ins. Co.*, 463 U.S. 29, 51 (1983)).

Contrary to the Commission's stated best practices and the requirements of Executive Order 12866, the Proposal appears to fail to meaningfully consider existing alternatives, including freely available identifiers currently in use by the Commission, such as the Central Index Key ("CIK"). The Proposal incorrectly concludes that a consideration of alternatives is not required, based on the erroneous view that the Proposal is not a "significant regulatory action".[24] However, as we have discussed above, the Proposal would have considerable regulatory costs and consequences for a broad range of market participants and transactions, and should therefore be reviewed as a significant regulatory action.

We respectfully submit the Agencies should view the Proposal as a significant regulatory action, and should review all reasonable alternatives to the establishment of FIGI as the sole eligible identifier. If, in spite of our submissions, the Agencies do view FIGI as a suitable identifier, we ask that the Agencies consider whether market participants could use an alternative identifier to FIGI, such as, for example, the existing CUSIP / ISIN identifiers. We note, in this context, that Footnote 20 of the Proposal states that an Agency could decide to use an identifier that is not in the joint standards, including an Agency-specific identifier, rather than, or in addition to or in combination with, an identifier established by the final joint rule.[25] We agree with this approach, and would respectfully ask the Commission to expressly permit the continued use of identifiers such as CUSIP or ISIN as alternatives to FIGI. This would help mitigate potential burdens on market participants while ensuring compliance with regulatory requirements.

6. LEI is Not Sufficiently Widespread for Smaller Entity Reporting.

While the majority of our concerns relate to FIGI and the manner in which the Proposal seeks to put FIGI forth as the exclusive financial instrument common identifier, we also have concerns regarding the Agencies' proposal to establish the LEI as the legal entity identifier joint standard. While LEI satisfies the FDTA's requirements for a joint data standard, it is provided by a third party and entities must pay the third party a fee both to initially obtain an LEI and to renew the LEI annually.[26]

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[24] Proposal, 89 Fed. Reg. at 67899.

[25] Footnote 20 in the Proposal states:

> In connection with an Agency-specific rulemaking, an Agency could determine to use an identifier that is not in the joint standards, including an Agency-specific identifier, rather than, or in addition to or in combination with, an identifier established by the final joint rule if, for example, the Agency exercised its authority to tailor the joint standards in its Agency-specific rulemaking (FDTA section 5891(c)) or the Agency determined either that using the identifier established by the final joint rule was not feasible (FDTA section 5841 (OCC); FDTA section 5861(a), (b), (c), (d) (Board); FDTA section 5831 (FDIC); FDTA section 5871 (NCUA); FDTA section 5851(a)(2) (CFPB); FDTA section 5881 (FHFA); FDTA sections 5821(a)(2), (b)(2), (c), (d), (e), (f), (g), (h), 5823(a), 5824(a) (SEC)) or that using an identifier that is not in the joint standards, including an Agency-specific identifier, would minimize disruptive changes to the persons affected by those standards.

[26] LEI is managed by the Global Legal Entity Identifier Foundation ("GLEIF") and issued through "local operating units" ("LOUs"). Although GLEIF is overseen by the Regulatory Oversight Committee, of which the Commission is a member, neither the committee nor any LOU is a federal or state regulator.

ICI members have expressed concerns regarding reporting costs for small businesses and smaller entities that may not have an LEI. The use of LEI is not widespread among small businesses and it is impractical for firms to rely on smaller businesses to provide that information for their reporting purposes. For example, customers, vendors and third parties are not mandated to obtain an LEI and firms do not have a mechanism to require them to obtain an LEI (nor should they be required to do so). Any such requirement would need to be imposed directly by regulators. We note, in this regard, the very similar concerns voiced by Commissioner Uyeda regarding mandating the LEI:

> While the fee may be *de minimis* to some entities, mandating payments to a private third party as a condition to satisfying legal requirements raises significant concerns – especially when such fees are not subject to approval by Congress or the Commission. If a company wants to raise capital by filing a registration statement, then it needs to first purchase an LEI from a third party. If a school or water district seeks to issue tax-exempt bonds to pay for infrastructure, then it needs to purchase an LEI before it can submit materials to the Municipal Securities Rulemaking Board.[27]

We respectfully agree with Commissioner Uyeda that the Commission should consider alternatives to requiring regulated entities to pay for the LEI. The Commission may, for example, consider as potentially alternatives to the LEI:

> (i) alternatives that are currently freely available, such as the CIK used to make EDGAR filings with the Commission or the file number issued by the Delaware Department of State's Division of Corporations; and
> (ii) consistent with certain of the Commission's forms—only require an entity to use and disclose its LEI if that entity has already obtained one for other purposes.

Mandating a truly free alternative to the LEI would reduce the regulatory burden on smaller entities, thus furthering the objectives of the FDTA.

Conclusion

The FDTA seeks to promote interoperability of financial regulatory data. We, at ICI, entirely understand and are in sympathy with this aim. We would also take this opportunity to express our support for the objectives of section 124(c)(1)(B) of the Financial Stability Act, which require that data standards be consistent, nonproprietary, freely available, and that they enable the collection of high quality data.

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[27] *See* Statement of Commissioner Mark T. Uyeda, August 2, 2024, available at https://www.sec.gov/newsroom/speeches-statements/uyeda-statement-financial-data-transparency-act-080224#_ftn8.

It is in support of these stated statutory objectives that we respectfully request that the Commission and the other Agencies:

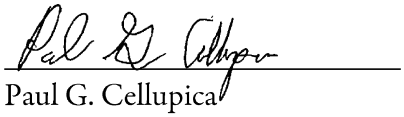
(i) Re-assess the suitability of FIGI as the exclusive financial instrument common identifier;
(ii) Engage in greater depth with market participants regarding the operational costs and challenges of transitioning from existing widely-accepted identifiers;
(iii) Permit market participants to continue to use such established, widely-accepted, and fungible identifiers such as CUSIP and ISIN; and
(iv) Mandate a truly free, easily accessible alternative to LEI as a legal identifier.

Further, given the short comment period and lack of analysis in the Proposal, ICI and its members (like other market participants) would have benefited from additional time to consider the complex issues and downstream operational implications of this Proposal. We respectfully acknowledge that had there been more time to do a more in-depth analysis, we may have identified additional comments, or reached different conclusions on certain points.

* * * * *

We appreciate the opportunity to provide comments on the Proposal. If you have any questions or require further information regarding our comments, please do not hesitate to contact me at paul.cellupica@ici.org, Mitra Surrell, Associate General Counsel, at mitra.surrell@ici.org, R.J. Rondini, Director, Securities Operations, at rj.rondini@ici.org or Jason Nagler, Senior Director, Accounting and Compliance at Jason.nagler@ici.org.

Sincerely,



Paul G. Cellupica
General Counsel
Investment Company Institute

cc: The Honorable Gary Gensler
The Honorable Hester M. Peirce
The Honorable Caroline A. Crenshaw
The Honorable Mark T. Uyeda
The Honorable Jaime Lizárraga

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Hon. Janet Yellen, Secretary of the Treasury, U.S. Department of the Treasury
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