



ASSOCIATION OF
GLOBAL CUSTODIANS

October 21, 2024

VIA ELECTRONIC SUBMISSION

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Christopher Kirkpatrick
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre, 1155 21st Street NW
Washington, DC 20581

FDTA-INTERAGENCY RULE
c/o Legal Division Docket Manager
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

James P. Sheesley
Assistant Executive Secretary
Attention: Comments/Legal OES (RIN 3064-AF96)
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Chief Counsel's Office,
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, DC 20219

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

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

Clinton Jones
General Counsel
Attention: Comments/ RIN 2590-AB38
Federal Housing Finance Agency
9 400 Seventh Street SW
Washington, DC 20219

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

Re: Docket ID OCC-2024-0012 (OCC); Docket No. R-1837 and RIN 7100-AG-79 (Board); RIN 3064-AF96 (FDIC); 3133-AF57 (NCUA); Docket No. CFPB-2024-0034 and RIN 3170-AB20 (CFBP); RIN 2590-AB38 (FHFA); RIN 3038-AF43 (CFTC); S7-2024-05 (SEC); RIN [1505-AC86] (Treasury) - Financial Data Transparency Act Joint Data Standards Under the Financial Data Transparency Act of 2022

Dear Sir/Madam,

On August 22, 2024, nine federal agencies (the “Agencies”)¹ published in the Federal Register a proposal to establish joint data standards for collections of information reported to the Agencies pursuant to the requirements of Section 5811 of the Financial Data Transparency Act of 2022 (“FDTA”)² (the “Proposal”).³

The Americas Focus Committee of the Association of Global Custodians (“AGC”) appreciates the opportunity to comment on the Proposal and its implications for the financial services industry. The AGC, established in 1996, is a group of twelve financial institutions that provide securities settlement, safekeeping and asset-servicing functions, primarily to institutional investors globally.⁴

The FDTA aims to improve the standardization of financial regulatory data to facilitate the collection, sharing and analysis of information across the Agencies. The AGC recognizes the statutory intent of the FTDA and appreciates efforts to enhance transparency, interoperability, and consistency in regulatory reporting. However, our membership strongly opposes the recommendation in the Proposal to adopt the Financial Instrument Global Identifier (FIGI) as the common financial

¹ The Agencies include: the Office of the Comptroller of the Currency (the “OCC”), the Board of Governors of the Federal Reserve System (the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), the National Credit Union Administration (the “NCUA”), the Consumer Financial Protection Bureau (“the CFPB”), the Federal Housing Finance Agency (the “FHFA”), the Commodity Futures Trading Commission (“CFTC”), the Securities and Exchange Commission (“SEC”), and the Department of the Treasury (“Treasury”).

² 12 U.S.C. § 5334(b).

³ Financial Data Transparency Act Joint Data Standards, 89 FR 67890, Document Number 2024-18415, Pages 67890-67908 (proposed Aug. 22, 2024) (the “Proposal”), *See also* <https://www.govinfo.gov/content/pkg/FR-2024-08-22/pdf/2024-18415.pdf>

⁴ The members of the AGC are BNP Paribas, BNY, Brown Brothers Harriman & Co., Citibank, N.A., Deutsche Bank, HSBC Securities Services, J.P. Morgan, Northern Trust, RBC Investor & Treasury Services, Skandinaviska Enskilda Banken, Standard Chartered Bank, and State Street Bank and Trust Company. The AGC represents members’ common interests on regulatory and market structure matters through comment letters, white papers and interaction with legislative and regulatory authorities and financial industry organizations. Member banks are competitors, and the AGC does not involve itself in member commercial activities or take positions concerning how members should conduct their custody and related businesses.

instrument identifier in financial reporting; an approach that ignores both the current structure of the United States (U.S.) and global financial markets and the internal recordkeeping systems built by financial institutions over decades to manage client investment assets.

As an initial matter, the AGC would highlight to the Agencies the enormity of the proposed change for custodians, our clients and the broader financial markets. Notably, the mandate to use the FIGI as the common identifier for financial instruments for regulatory reporting purposes, will require significant changes to recordkeeping systems and processes across our member firms, their clients and the wider industry; and therefore result in significant costs. The introduction of the FIGI by the Agencies through regulation will require significant change and cost because, as noted by the Agencies in the Proposal, both the Committee on Uniform Security Identification Procedures (CUSIP) and the International Securities Identification Number (ISIN) are “widely used” across the market today, and our systems have correspondingly been developed and structured to these identifiers accordingly.

Furthermore, the Agencies have not performed any cost-benefit analysis associated with the Proposal; nor does it seem the Agencies have performed any meaningful pre-rulemaking industry outreach to gather information on how securities identifiers are used in the financial markets today. We would have welcomed engagement with the Agencies prior to the issuance of this Proposal to explain the cost implications of introducing new static data elements, including extensive regression testing across each system, messaging platform and client reporting modules in order to maintain consistent books and records.

The AGC, who’s members service the majority of registered funds, pension funds and asset managers in the U.S., believes the Agencies have failed to provide a satisfactory explanation for their decision to adopt FIGI as the standard financial instrument identifier and have not provided or conducted a sufficient cost-benefit analysis to support this decision. Under the Administrative Procedure Act (“APA”)⁵, agency actions must be based on reasoned decision-making that includes a thorough analysis of relevant data and potential economic impacts. The introduction of a standard identifier such as FIGI for financial instruments is intended to set a baseline for the standard to be used in future rulemakings which touch upon financial instrument identifiers and reporting; and if insufficient cost-benefit analysis is performed as part of the current Proposal then the industry may not have sufficient opportunity to raise concerns with the implementation of the standards. As such, the Agencies are vastly underestimating the cost and complexity of the intended changes and the imperative of ensuring broad industry consensus on the most appropriate solution to meet the underlying policy goal.⁶

⁵ <https://www.epa.gov/laws-regulations/summary-administrative-procedure-act>

⁶ The Agencies affirm that their rulemaking “*is not a significant regulatory action*” and “*does not create a new information collection or revise any existing collection of information*” and, therefore, was not reviewed by the Office of Management and Budget (OMB) under E.O. 12866, *Regulatory Planning and Review*”. The AGC the does not agree with this position from the Agencies and views the Proposal as a significant regulatory action.

Lastly, given that the industry primarily uses the CUSIP and ISIN, which are effectively a market driven standard (rather than a regulatory driven standard), and that no specific policy deficiency has been identified by the Agencies relative to their use, it is not clear what problem the Agencies are trying to solve relative to financial instrument identifiers.

Below we outline more detailed comments with respect to our membership's concerns relative to the Agencies' proposal to adopt the FIGI which, in the AGC's view, does not correspond to the intent of the FDTA.

The Agencies outline in the Proposal their view that the data standards being introduced by the Agencies are required to *"be nonproprietary or made available under an open license"*. The Agencies then go on to propose using *"the Financial Instrument Global Identifier established by the Object Management Group"* as the common identifier for financial instruments based on FIGI being a *"global non-proprietary identifier available under an open license."* Furthermore, the Proposal also asserts that the Agencies are proposing the use of the FIGI over the *"widely used"* Committee on Uniform Security Identification Procedures (CUSIP) and International Securities Identification Number (ISIN) because *"they are proprietary and not available under an open license"*.

As a threshold matter, the AGC notes that **the FDTA does not in fact mandate that all common data standards be open-license and non-proprietary**, a requirement that is limited only to the selection of the legal entity identifier. Instead, the FDTA specifies that data standards (beyond *"legal entity identifiers,"*) *"shall - to the extent practicable - ...be nonproprietary or made available under an open license."*⁷ Given this mandate, the AGC questions the need for the Agencies to introduce FIGI as the standard financial instrument identifier for regulatory reporting purposes on grounds that it is not practicable.

To this point, today, and as acknowledged by the Agencies, the most commonly used financial instrument identifiers in the market globally are ISIN and CUSIP. Our member firms have been using these identifiers for decades, including in the development of their internal recordkeeping systems; and therefore **the forced transition to the use of FIGI for regulatory reporting purposes would be enormously costly and complex to implement**. For example, the transition to FIGI would require significant data mapping and system modifications within our member firms and the wider industry, alongside substantial project management staffing and retraining costs. We also understand the FIGI handles certain securities life cycle events, such as asset servicing and corporate action events, differently to the CUSIP - due to limitations related to FIGI and the segregation of pre-and-post corporate action events (which CUSIP does intrinsically). As such, the mandated use of FIGI would force a redesign of asset servicing and corporate action systems, including those interacting with the U.S. Securities Depository - the Depository Trust Clearing Company (DTCC) - which solely functions using CUSIP. This redesign would also introduce unwarranted new risks to key financial markets processes that have worked well for decades. The operational burden of implementing FIGI in areas such as asset servicing, when established identifiers already provide comprehensive coverage,

⁷ 12 U.S.C. § 5334(b)(1)(B).

would ultimately lead to higher costs for custodians and our clients with no added benefit to the financial system.

Furthermore, even if the Agencies mandate the use of FIGI for the purpose of regulatory reporting in the U.S., it is **highly unlikely that FIGI will become the global standard for reporting financial instrument identifiers** in other national jurisdictions. For example, although the Proposal talks about the “global” nature of FIGI, it is in fact only currently mandated in Brazil for reporting purposes. Also, AGC members expect Europe to continue to use the ISIN as the market wide “standard” - given ISIN has been in operation since 1986, and securities depositories and national numbering agencies rely on it as the primary cross-border instrument identification standard. This is because the ISIN was developed to expedite international cross-border trading and eliminate costs and operational risks created by multiple instrument identification standards; and it has been successful at achieving this goal. The ISIN is used today in more than 200 jurisdictions (<https://www.isin.net/country-codes/>) and at least 68 global stock exchanges (<https://www.isin.org/stock-exchanges/>).

The **ISIN also has a close interoperable relationship with the CUSIP** and therefore it is relatively simple to cross-identify the two standards. For instance, the ISIN is built on a 12-digit code that includes a two-character jurisdictional component, a nine-digit “local identifier” and a one-digit check. In the US, this nine-digit “local identifier” is the CUSIP, which as noted in the Proposal, is “widely used” for regulatory reporting, trading and settlement. Therefore, the introduction of FIGI in an effort to harmonize financial reporting in the U.S. will likely mean that AGC members, and the wider industry, will need to have systems managing an even greater number of financial instrument identifiers, which will add further complication, complexity and cost for the industry with no clear benefit.

The AGC also notes that the Agencies themselves have also previously determined that **fungibility is critical for minimizing trade failures, ensuring transparent reporting, and monitoring and assessing systemic risk**⁸. However, the Agencies have failed in the Proposal to outline how the FIGI standard is more fungible than CUSIP or ISIN.

The **Agencies characterize the FIGI in the Proposal as being available under an open license**. While this may be true for the basic use of the identifier (OpenFIGI), which offers users a limited data set, it does not extend to certain other important data attributes that are used to support various functions, such as asset servicing, which are locked behind a paywall and are only available to subscribers of proprietary data terminals. Thus, the use of FIGI would require industry reliance through regulation for the reporting of financial data on certain commercial providers. Furthermore,

⁸ 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.”).

this will mean that firms will need to pay fees for FIGI in addition to having to pay for the costs of more widely used identifiers such as ISIN and CUSIP - which will continue to be used for trading and settlement and asset administration functions globally.

Moreover, it is **not clear at this stage what some of the indirect impacts of implementing FIGI as the common standard for regulatory reporting in the U.S would be for the industry.** For example, it is likely that the Proposal would have substantial downstream implications for our clients, forcing them to adapt their systems and processes to absorb the new identifier even though many will remain outside of the scope of the FDTA mandate. This is also true of the financial market infrastructure, for instance DTCC as already noted above, that supports and facilitates day-to-day activities in the U.S. financial markets. These and other similar considerations reinforce the fundamental importance of broad industry outreach ahead of the rulemaking process which the Agencies have unfortunately not undertaken.

Given the arguments set out above, **the AGC believes that the Agencies do not need to, and should not, mandate a common data standard for financial instrument identifiers.** Instead, the Agencies should continue to leave this down to the market so firms can make commercial based decisions to implement new identifiers where appropriate, and continue to utilize widely accepted industry driven standards such as CUSIP and ISIN.

Conclusion

The AGC and its members recognize the statutory intent of the FTDA and appreciates efforts to enhance transparency, interoperability, and consistency in regulatory reporting, and welcome the opportunity to provide comments on the joint Agency Proposal.

However, as a group of twelve financial institutions that provide securities settlement, safekeeping and asset-servicing function to the majority of registered funds, pension funds and asset managers in the U.S., as well as institutional investors globally, the AGC does not believe the Agencies have performed sufficient cost-benefit analysis associated with the Proposal, particularly with respect to mandating FIGI, which will be enormously costly and complex to implement across the industry. Furthermore, given this cost and complexity of implementation, as well as the acknowledgement by the Agencies that CUSIP and ISIN are “widely used” today across the industry, the AGC does not believe the mandated introduction of FIGI as a standard financial instrument identifier for regulatory reporting purposes is practicable.

The AGC respectfully requests that the Agencies seriously consider the arguments made in this letter, and ultimately reconsider the FIGI component of the joint Proposal. If you have any questions or require further information regarding our comments, please do not hesitate to contact us.

Sincerely,

Walter Palmer
Chair of the Americas Focus Committee
The Association of Global Custodians
info@theagc.com

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

Natasha Vij Greiner, Director
Sarah G. ten Siethoff, Deputy Director
Division of Investment Management

Megan Barbero, General Counsel
Jessica Wachter, Director, Division of Economic Risk and Analysis
Haoxiang Zhu, Director, Division of Trading and Markets
Erik Gerding, Director, Division of Corporation Finance
David Bottom, Chief Information Officer
Austin Gerig, Chief Data Officer

Hon. Janet Yellen, Secretary of the Treasury, U.S. Department of the Treasury
Hon. Jerome Powell, Chairman, Board of Governors of the Federal Reserve System
Hon. Martin J. Gruenberg, Chairman, Federal Deposit Insurance Corporation
Hon. Rostin Behnam, Chairman, Commodity Futures Trading Commission
Hon. Michael J. Hsu, Acting Comptroller, Office of the Comptroller of the Currency
Hon. Todd M. Harper, Chairman, National Credit Union Administration
Hon. Rohit Chopra, Director, Consumer Financial Protection Bureau
Hon. Sandra L. Thompson, Director, Federal Housing Finance Agency