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

Dear Ms. Countryman:

Thank you for providing the opportunity to comment on the proposed Financial Data Transparency Act Joint Data Standards. I am commenting in my capacity as a municipal finance researcher who often relies on government data, regulatory filings, and resources provided by the Municipal Securities Rulemaking Board (MSRB).

The proposed regulations represent an important first step toward implementing the FDTA in a manner consistent with its legislative intent of “making financial data used by federal regulators more accessible and understandable to the American public.”ⁱ

The proposing release contributes to this objective by replacing proprietary identifiers with the freely reusable Financial Instrument Global Identifier (FIGI) in regulatory disclosure. The incumbent municipal market identifier, CUSIP, comes with onerous licensing restrictions which greatly complicate the tasks of assembling and analyzing municipal securities data sets.

The decision to replace CUSIP was well within regulatory authority conferred by Congress when it passed FDTA as part of the NDAA in 2022. Section 5811(c) of the legislation instructs regulators to adopt common identifiers that are “nonproprietary or made available under an open license”. It does not restrict the types of common identifiers to which this standard should be applied.

The law’s specific mention of a legal entity identifier does not restrict regulators from ensuring that any other category of identifiers is freely redistributable. Just as regulators were correct to apply the open licensing criterion to currency and country identifiers, they were equally justified in applying it to securities identifiers

The fact that CUSIPs are restricted is clearly reflected in the terms of use posted on the MSRB’s website which users must accept before accessing municipal securities data.ⁱⁱ These terms include the following language:

You agree that you shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions.

MSRB enforces this term (apparently at the insistence of CUSIP Global Services (CGS) and the American Bankers Association (ABA)) by preventing the copying and pasting of individual CUSIP identifiers on its user interface and prohibiting the bulk download of MSRB data.

These restrictions together with the unavailability of data in machine readable form have prevented the creation of freely available municipal finance data sets beneficial to investors, regulators, and researchers alike. It is notable that anyone can freely access user-friendly compilations of public equity data through sites like Market Watch and Yahoo! Finance but cannot obtain a similar free resource for municipal securities.

The proprietary nature of CUSIP affects regulatory data beyond the municipal bond market. For example, CUSIPs are included in NRSRO rating histories filed in accordance with SEC Rule 17g-7. Users of Fitch Ratings' history files must assent to usage termsⁱⁱⁱ that include the following:

VISITOR agrees that VISITOR shall not publish or distribute in any medium the CUSIP Database or any information contained therein or summaries or subsets thereof to any person or entity except in connection with the normal clearing and settlement of security transactions.

The language of these terms of use is quite broad and apparently inconsistent with the position ABA and CGS are taking in their litigation against Dinosaur Financial Group LLC, Swiss Life Investment Management Holding AG, and Hildene Capital Management, LLC (Case Number 1:22-cv-01860, District Court, S.D. New York).

Specifically, the terms prohibit the user from republishing *any* information from or subset of the CUSIP database which implies that even individual CUSIPs may not be reproduced. However, the ABA is only claiming a copyright over the entire CUSIP database, a data compilation comprising millions of rows and sixty columns of data. As its council admits "the ABA has not separately registered any copyright in CUSIP identifiers since the U.S. Copyright Office publishes registration information on its website,"^{iv}

If ABA and CGS would like CUSIP to be added to the list of identifiers accepted under FDTA, they should remove contractual language with MSRB, credit rating agencies, and other public facing data distributors that inhibit the free use and redistribution of CUSIP identifiers.

Sincerely,

Marc D. Joffe

Marc D. Joffe
Public Policy Analyst

ⁱ Senator Mark Warner, “Warner & Crapo Introduce Legislation to Boost Transparency Around Financial Data”, May 25, 2022. <https://www.warner.senate.gov/public/index.cfm/2022/5/warner-crapo-introduce-legislation-to-boost-transparency-around-financial-data>

ⁱⁱ Municipal Securities Rulemaking Board's Website Terms of Use. <https://emma.msrb.org/AboutEmma/UserAgreement>.

ⁱⁱⁱ Fitch Ratings. VISITORs Terms. <https://www.fitchratings.com/ratings-history-disclosure>

^{iv} Case 1:22-cv-01860-KPF Southern District of New York. Memorandum of Law in Support of Defendants’ Motion to Dismiss Second Amended Class Action Complaint.

<https://storage.courtlistener.com/recap/gov.uscourts.nysd.576062/gov.uscourts.nysd.576062.91.0.pdf>