

October 19, 2024

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

Re: File number S7-2024-05, FDTA

Dear SEC:

I would like to comment on the proposed rule (Proposed Rule) regarding the Financial Data and Transparency Act (FDTA). Although I work for an issuer, these comments are my own, and not of my employer. I support the request of various organizations to extend the comment period on the Proposed Rule. In order to submit a response in time, the following are my limited comments. Had more time been available, more thoughtful comments could have been provided.

It appears that the Proposed Rule primarily addresses “Data Standards”, and leaves reporting rules for the future (2 years after final rules are promulgated, issue rules to adopt the data standards). The following comments are primarily on the proposed data standards, as there is little to comment on regarding reporting. There may be issues identified in the Data Standards that are not easily identified until the reporting rules are released. The Final Rule should anticipate the reporting rules and provide for changes to the Data Standard after they can be reviewed in conjunction with the future proposed reporting rules. My comments are focused on the Municipal Market.

A general observation is that Section 5823 of the FDTA directs the SEC to “adopt data standards for information submitted to the MSRB”. Most importantly, it goes on to state that “nothing in this paragraph may be construed to affect the operation of paragraph (1) or (2) of subsection (d)”, which is what we affectionately know as the Tower Amendment. My interpretation is: the SEC can adopt the data standard for the MSRB, but should do it in such a way as to not infringe upon the Tower Amendment that prohibits the SEC and MSRB from directly or indirectly requiring municipal issuers to file documents with the SEC or MSRB prior to a sale. Will OS’s have to comply (a sale document)? If so, how? Some type of inline xbrl, or can we file a separate CSV file with the extracted data (data transmission standards)? Similarly, what about annual financial reports? Will the SEC mandate inline xbrl, or allow for a CSV extract? The final rule for Data Standards should take into account likely reporting rules that are required to be consistent with Tower Amendment, and require a revisit of the data standard rules when they can be reviewed in light of the reporting rules.

### **Standard Data**

For the Municipal Market, a Governmental Accounting Standards Board (GASB) based standard for financial data may be the least disruptive. Most municipalities develop their financial statements under GASB rules. However, more than just a customized semantic model is needed because the amount of common data that could be “required” for everyone is nominal.

At a minimum, the SEC will need one semantic model that accommodates reporting differences between corporate and governmental entities. A municipal market specific semantic model is justifiable. Corporates have “Retained Earnings”, and Governments have “Fund Balance”, that have similar meanings. While the same title “total revenues”, has a slightly different meaning for Corporates under Financial Accounting Standards Board (FASB) Full Accrual Basis, than for Governments under GASB Modified Accrual, fund accounting, basis (FASB fully accrues revenues, whereas GASB mostly recognizes revenues in the period it is received). I have not looked, but I can image that financial

statements for a water utility that is a publicly traded stock corporation is different from the financial statements for a water utility that is an enterprise fund municipal utility. The two different water utilities should have different data standards.

It is possible that we may all be able to use mostly the same dictionary for semantic definitions (taxonomy includes which accounting standard is being used – FASB, GASB, ???), and ignore the words that municipal entities do not use (“retained earnings”, “shares outstanding”, etc.). I surmise that multiple Data Standards will be developed for each category of credits to detail a mandated list of data points tailored to each category, such as GO vs Revenue credits. Even the various levels of GO credits, State, County, School District, have slightly different key elements.

Then there is the question of municipalities that prepare financial statements pursuant to State Law, and not GASB. The entire state of NJ and its municipalities are non-GAAP. Do they pick the GASB based data name that is “close”, or will they be forced to produce and report data pursuant to the adopted semantic definition (GASB GAAP)?

### **Cost/Benefit**

Pursuant to (8)(C) in Section 5823, I highly implore the SEC to consult with market participants (investors and credit analysts) for what information is useful for them. There is a cost to producing any piece of data, and there is no reason to incur the cost for data that is not used. Also, what is the value of providing FDTA formatted data for bonds that never trade (buy and hold investors)? Municipal bonds have a historically low default rate compared to other asset classes. And, when they do default, a higher recovery rate (less money actually “lost”). That is not to say that Investors do not want to monitor their investments. But, FDTA is more beneficial to the trader to quickly compare one bond to another, than the buy and hold investor that reviews the entire financial statement to be comfortable holding the bond for another year.

FDTA may make the trading market 5 basis points more “efficient”. Is the benefit of FDTA to the market as a whole, beneficial enough to justify its cost? My guess is “no”. Stocks do not have a credit rating, so an easily comparable data is really helpful in making a first cut. Credit ratings for bonds (almost all publicly traded bonds have a credit rating from a NRSRO) provide a first cut for an investor to decide whether a deep dive is desirable. If there is not enough FDTA data for an investor to perform a deep dive or annual surveillance, has FDTA really accomplished anything for the majority of the municipal market? It would be a huge cost to get deep dive, or annual surveillance level of, detail into a format mandated by FDTA. If only high level FDTA data mandated, and is then used by a broker to sell a bond to an investor, does that broker have a reasonable basis in making that recommendation? Could the side effects of the cure be worse than the illness?

In a cost analysis, AI in its current state should NOT be considered for FDTA reporting purposes (inexpensive way to generate FDTA required reporting). While AI is great at producing a response, it is not so good at showing how it figured it out. The accuracy of AI produced data is unknown. Current AI technology has “hallucination” issues, and should not be relied upon to provide error free data. Issuers are responsible for the accuracy of reported information, and should not use a method that is prone to error. Any assumption by the SEC that AI can be used to reduce the cost of compiling data is premature. AI produced data must be heavily reviewed and compared with non-AI produced data, so the Issuer might as well use the non-AI produced data. If AI is argued to provide the cost savings, then why not keep with current reporting, and let the investor use AI to scrape the data.

## Legal Entity Identifier

FDTA discusses a “common legal entity identifier” (CLEI), and the Proposed Rule identifies GLEIF’s Legal Entity Identifier (LEI) for the CLEI. LEI was developed for Corporations where there is a more direct parent/child relationship. In order to use LEI for municipal issuers, a more complex relationship association is required. Is a county a parent of a City? What if the City crosses two counties? Even if all municipalities and agencies are children of the State, what about the Port Authority of New York and New Jersey? Who is the Parent? What LEI should be used for conduit financings (issuer or obligor)?

FDTA requires the CLEI to be both “non-proprietary” and “open license”. It is not clear to me if LEI meets the “non-proprietary” requirement. I could not find a definition of “non-proprietary”. GLEIF exercises a lot of control over the issuance of LEI’s. At what point does that control become “proprietary”? To me, the requirement to pay for an LEI number implies some “proprietary” aspects, especially when such payment is forever (annual renewal) and not regulated in any way.

I did not see a requirement that all agencies use the same CLEI. For the municipal market, different CLEI’s are possible.

The Municipal Securities Rulemaking Board (MSRB) has been working on an EMMA “naming convention” project to associate each financing with a standard issuer name. This project could serve as a foundation for an EMMA CLEI, and could truly be “non-proprietary” and “open license”. Even if the MSRB charges an annual fee, such fee is subject to regulatory review.

TIN (EIN) was mentioned and dismissed in the Proposed Rule. The reasons mentioned for not using TIN do not apply to municipal issuers. All municipal issuers have an EIN, and there are no privacy concerns with the municipality’s EIN.

The 6-digit base CUSIP for an issuer could also be used as a CLEI. I do not see how CUSIP is any less “proprietary” than GLEIF’s LEI. Regarding “open license”, the SEC could negotiate with CUSIP to allow it to be used as the CLEI. Absent successful negotiations there is a class action lawsuit pending that could result in CUSIP being “open license” enough, *Hildene Capital Management, LLC, on behalf of itself and all others similarly situated v. American Bankers Association, et. al.*, 22-cv-1929 (Southern District of NY).

## FIGI/CUSIP

Systems for the municipal market have been designed to use a 9-digit CUSIP. If you call DTC, the first thing they ask for is the CUSIP number. Even IRS Form 8038 in all its incarnations asks for the CUSIP number. I cannot imagine the cost and confusion of adding FIGI to our various systems.

Section 124 states that, other than for CLEI, data standards shall “to the extent practicable” be “nonproprietary OR open license”. An argument can be made that the cost of converting systems to accommodate FIGI is “not practicable”, especially when compared to the cost of continuing the CUSIP based system.

I could envision a data standard that permits the use of either FIGI or CUSIP, and let the market decide. The SEC could work with FIGI and CUSIP to allow a CUSIP based FIGI number. In the USA, FIGI is 12 digits beginning with “BBG”, leaving 9 digits available. FIGI could reserve “BBC” (or some other 3 digits) as a signal that the following 9 digits are a CUSIP number. That would be much cheaper to implement. Compared to tracking a unique FIGI number, it is not as difficult to add “BBC” to the front of

each already tracked CUISP number when a FIGI field is specified for reporting purposes. If and when desired, an issuer can convert from CUSIP FIGIs to “BBG” FIGIs.

As previously mentioned for CLEI, absent successful negotiations with CUSIP, there is a class action lawsuit pending that could result in CUSIP being “open license” enough, *Hildene Capital Management, LLC, on behalf of itself and all others similarly situated v. American Bankers Association, et. al.*, 22-cv-1929 (Southern District of NY). CUSIP would then meet the requirement of being EITHER “nonproprietary” OR “open license”.

Finally, EMMA is the reporting system used for municipal securities. It is already CUSIP based. Is there a need for CUISP to be any more “open license” than it currently is (“to the extent practicable”)?

Richard Li