American Bankers Association

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[redacted]

Via Electronic Submission

Vanessa A Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, D.C. 20549-1090

March 21, 2022

Re: Prohibition Against Fraud, Manipulation, or Deception in Connection with Security-Based Swaps; Prohibition against Undue Influence over Chief Compliance Officers; Position Reporting of Large Security-Based Swap Positions, File No. S7-32-10

Dear Ms. Countryman:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the proposal by the Securities and Exchange Commission (Commission or SEC) designed to prevent fraud, manipulation, and deception in connection with transactions in security-based swaps. We specifically are writing to address the proposal's reliance on the Financial Instrument Global Identifier (FIGI) as the presumptive identifier for securities underlying security-based swaps for public reporting purposes. Originally the Bloomberg (BBG) ID, FIGI is the creation of Bloomberg LP and they continue to serve as its preeminent issuer and distributor. ABA comments as owner of the CUSIP – the Committee on Uniform Security Identification Procedures – identification system. We believe that the Commission should consider certain facets of an identifier of a financial instrument, beyond cost alone, that are necessary for the reporting of such identifier to serve the Commission's policy goals. We respectfully submit that any final standard should require securities identifiers that are fungible, for the reasons we express below.

We begin our comment letter by providing background information about CUSIP, followed by a discussion of how CUSIP and potentially other identifiers could fulfill the SEC's policy goals relating to the security-based swap proposal. We also comment on certain assumptions made in the SEC's economic analysis regarding the proposal's use of FIGI.

Background Information About CUSIP

As the Commission is well aware, the NY Clearing House Association approached ABA in 1964 to develop a more efficient system for the trading, clearing, and settlement of securities, as a means to emerge from the securities settlement "paper crisis." CUSIP is the system that ABA created, and the first CUSIP directory was published in 1968.[2] In the ensuing decades, in parallel with widespread adoption

[1] The American Bankers Association is the voice of the nation's $23.3 trillion banking industry, which is comprised of small, regional, and large banks that together employ more than 2 million people, safeguard $19.2 trillion in deposits, and extend nearly $11 trillion in loans. Learn more at www.aba.com

[2] "…The CUSIP system represents the foundation of the program to improve the speed and accuracy in the processing of securities and transactions involving them. We urge you to build upon that foundation as quickly as

and implementation by market participants, an increasing number of clearing corporations, regulators, and market authorities came to recognize the value and reliability of the CUSIP system. Under the direction and guidance of the CUSIP Board of Trustees, comprised of a cross-industry senior group of experts, CUSIP has continuously met new market needs by supporting identifiers for an ever-expanding universe of asset classes: municipal bonds, commercial paper, US treasury bonds, mortgage-backed securities, and bankers acceptances to name just a few. Over 50 years later, that spirit of innovation, sustained investment, and commitment to powering efficient capital markets lives on.

Any Final Rule Should Require Useful Identifiers that Meet the SEC's Goals

The SEC's proposal would require certain persons who directly or indirectly are owners or sellers of a security-based swap above a threshold amount to promptly file with the Commission a Schedule 10B. Information filed on Schedule 10B, which would be publicly available, would include identifying information regarding security-based swaps and their underlying securities. The SEC's stated purpose for requiring reporting of this identifying information is to promote market liquidity because the counterparties would be able to identify the market participant who exceeded the reporting threshold for different instruments and limit their counterparty risk exposure to them. The release further explains that the use of standard identifiers would augment transparency by providing consistent identification of entities and securities across datasets and jurisdictions, allowing market participants to cross-reference the data reported with data reported from any other sources that use those standard identifiers.

We agree with the SEC's goals of enhancing transparency, and thereby liquidity, through the use of identifiers. The proposing release mandates reporting of identifiers for the underlying securities. Moreover, the proposing release names only one such identifier to use for these purposes – the FIGI – and does not acknowledge that FIGI is a proprietary product of Bloomberg LP, which is a global software, financial, data, and media company.

We question whether FIGI or certain other identifiers would serve the purpose the SEC intends, and also question whether FIGI is a standard identifier for these purposes. We recognize that the proposal would permit the reporting of CUSIP, or any other unique identifier selected by the filer, but strongly suggests only the use of FIGI. However, we do not believe the use of FIGI as the default identifier will serve the Commission's transparency goals because it lacks fungibility.

Fungibility is Critically Important to Promoting Market Transparency

To avoid extreme disruption to market transparency, any identifier required to be reported to the public must be fungible. Fungibility means that a security of an issuer is the same instrument for the purpose of unique identification *regardless of the venue of execution.*

With FIGI and certain other identification schemas, a different method is employed: there are multiple identifiers for the same common stock *depending on the US Exchange where the shares are purchased.* For Microsoft Common Stock, for example, there are more than 100 FIGIs, such as the following sample set:

BBG000BPH9J3
BBG000BPH459

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possible and again congratulate all of the organizations and individuals who participated in the development of the CUSIP system for their noteworthy achievement." – SEC Chairman Hamer Budge, June 20th, 1969.

BBG000BPH6D5
BBG000BPH654
BBG000BPH958
BBG000BPHG07
BBG000BPHD40
BBG000BPH583
BBG000BPH8J5
BBG000BPH4R5

If one security-based swap owner reports Microsoft shares on the NASDAQ main market and another purchased Microsoft shares on the NASDAQ PHLX (Philadelphia) market, they could report using two different FIGI identifiers in their respective Schedule 10B *even while using the same identification schema.*

This multiplicity of identifiers is a deliberate feature of the FIGI system and would likely lead to inefficiency and errors in the reporting and monitoring of investments under management, thus undermining the very purpose of Schedule 10B.

One of the hallmarks of the CUSIP system is the critical, industry-driven notion of fungibility: simply put, Microsoft Common Stock is the same instrument for the purpose of unique identification *regardless of the venue of execution*. All market participants know that holdings of Microsoft are to be submitted with just one CUSIP:

594918 10 4

Important reference data for each FIGI is not, in fact, available "at no cost"

The SEC's proposal assumes that FIGI is available on an almost cost-free basis. Useful reference data for each FIGI is in fact not available "at no cost." We are aware, as the SEC points out, that FIGI provides some limited and, in our view, inconsequential data fields at "no cost" – the for-fee services are where the useful content resides. Specifically, the FIGI offers 10 fields for free, three of which are themselves other FIGIs, three that represent the type of security (e.g., Bloomberg's textual classification of "Equity," "Index," "Commercial Paper," etc. instead of using the widely adopted ISO standardized Classification of Financial Instruments), the Bloomberg ticker symbol, the Bloomberg exchange code (instead of the widely accepted ISO standardized Market Identifier Codes), a short description that with few exceptions is a copy of the Bloomberg ticker symbol, and the issuers' name.

For the FIGI to be of even some limited value to the SEC's policy goals, a user would need access to additional reference data elements alongside the FIGI that Bloomberg chooses to only make available in their fee-services (e.g., coupon, expiration, maturity, contract size, put or get indicators, issue status, domicile, IPO). In addition to the disruption FIGI would cause if allowed for Schedule 10B reporting purposes as a result of its lack of fungibility, there is also the hidden cost associated with needing the richer content set that is essential to make the FIGI data somewhat relevant and usable for the purpose the SEC intends for Schedule 10B. A complete reference set for a set of securities is not free, whether using FIGI or not.

While we have no window into the operational model behind the FIGI, or the costs associated with its generation, it should not be lost that the FIGI is backed and promoted by Bloomberg LP, a prominent presence across a broad swath of the financial market data and analytics landscape. Playing a

commanding role in so many aspects of the markets, it follows that they can afford the luxury of subsidizing certain ventures and activities with other, lucrative revenue streams. As Milton Friedman, famously said, there's no such thing as a free lunch.

For purposes of the SEC's cost-benefit analysis, we wish to describe the costs associated with CUSIP. For CUSIP, there is a one-time fee charged to the issuers of securities to obtain a CUSIP identifier. That fee is established on a cost-recovery basis and all issuer-paid fees are publicly disclosed here.

The data distribution fees charged to users who are given access to the entire CUSIP database (or its subsets), which not only include the CUSIP identifier, but the 70 reference data fields with associated descriptive data, is based on the value extracted for consumers of the CGS Database. This data distribution model based on usage creates parity amongst all consumers of the CUSIP database and is consistent with standard industry practice among data providers, exchanges, and other financial data service providers. Moreover, this model ensures that the constant updates to the CUSIP data, whether due to new issuances, corporate actions, or other changes, are available to these customers in a reliable and near real-time manner.

We understand that CGS regularly reviews and, when necessary, will refine our data distribution model based on market developments, like the evolution of technology, while also incorporating industry feedback. CGS has demonstrated transparency and flexibility with its data distribution model over the years.

The fees CGS generates under its database distribution business allow for continued reinvestment in initiatives to benefit our customers and industry-at-large. Recent examples include capturing new green and social bond data attributes, creating special government stimulus CUSIP files, implementing robotic data automation to further accelerate the turn-around for the issuance of certain CUSIPs, implementing new technologies for near real-time reference data dissemination to all customers, exploring data standardization in the digital asset, private equity, and commercial real estate space.

The certainty, reliability, and interoperability benefits of the CUSIP system in our view far outweigh the costs associated with obtaining CUSIP Data.

Summary

The universal acceptance of the CUSIP system due to its fungibility and efficacy is well established. This is not the case for FIGI. The reliance on FIGI as the default identifier for securities on Schedule 10B, would introduce unnecessary ambiguity and confusion for the reasons set forth above while also adding an unknown burden to regulators and, more importantly, security-based swap market participants stemming from identifier inconsistency. We respectfully submit that any final standard should limit acceptable securities identifiers to fungible identifiers.

Respectfully

/s/ Tab Timothy Stewart

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