LSTA ADVANCING THE CORPORATE LOAN MARKET

By Electronic Submission

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Re: Proposed Rule: 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
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CFTC RIN number 3038-AF43

SEC File No. S7-2024-05
Docket No. CFPB-2024-0034

The LSTA[1] appreciates this opportunity to offer supplemental comments on the nine financial regulators' proposal ("Proposal") to implement the requirements of the first stage of the Financial Data Transparency Act ("Act").[2] The LSTA, together with multiple fellow trade associations, had written initially to request an extension of the comment period. The LSTA then wrote to indicate our intention to submit further comments while highlighting certain aspects of the corporate loan market relevant to the agencies' consideration of the Proposal. We write now to expound on two issues we previously raised – the choice of a unique financial instrument "common identifier" and the failure of the agencies to consider the economic consequences of that choice. While we believe that many of the arguments made herein are broadly applicable, this letter will focus exclusively on corporate loans.

The LSTA strongly urges the agencies to refrain from choosing a single common identifier for corporate loans as set forth in the Proposal. As discussed below, the FDTA does not require the agencies to choose an instrument identifier in the joint standards and it is not necessary to do so to achieve the objectives of the FDTA. If the agencies, however, proceed with making this choice part of the joint standards described in the Proposal, the LSTA respectfully reminds the agencies of the steps that would need to be taken under the Administrative Procedure Act (APA) before that is possible. First, the agencies must ensure that they have a thorough understanding of what the implementation of the standards requires in practice for affected entities. Second, in making their selection, the agencies must fully examine the feasibility and appropriateness of their selection for financial instruments, including corporate loans. None of these steps were taken with respect to the exclusive identifier selected in the Proposal. As such, the agencies risk acting arbitrarily and capriciously if they make this selection without collecting and analyzing the information relating to the corporate loan market necessary for a reasoned decision.

[1] LSTA, Inc. is a not-for-profit trade association that has been the leading advocate for the U.S. corporate lending market since 1995. The LSTA's mission is to promote a fair, orderly, efficient and growing corporate loan market while advancing and balancing the interests of all market participants. Our 600+ member institutions include commercial banks (ranging in size from GSIBs to community banks), investment banks, broker-dealers, asset managers, and institutional lenders, as well as law firms and market service providers. The LSTA undertakes a wide variety of activities in pursuit of its mission, including advocacy, thought leadership, data analytics, education, and the standardization of documents, practices and operations. The LSTA's offerings are designed for the voluntary use by our members and benefit from the LSTA's ability to build a consensus of diverse stakeholders. For more information, visit www.lsta.org.

[2] Financial Data Transparency Act Joint Data Standards, 89 Fed. Reg. 67,890 (proposed Aug. 22, 2024).

I. Background

The LSTA represents the U.S. corporate loan market, including thesyndicated loan market which is the subject of this letter. Syndicated loans are very large ($100 million to multibillion) and therefore several entities collectively provide the loan rather than a single lender offering the loan on a bilateral basis. There were $6.4 trillion[3] syndicated loan commitments outstanding in 2023 making syndicated loans a critical source of financing for corporate America. About half of those commitments are made to investment-grade companies. These loans are typically revolving facilities, which may remain undrawn, and typically originated and held by banks. The other nearly half of the commitments are made to sub-investment grade companies,[4] the majority of which are private companies with $100 million or more of annual EBITDA. Loans to these companies, known in the market as "leveraged loans," are arranged by a lead financial institution, often a bank, or a group of financial institutions, which assembles the syndicate of lenders on the borrowers' behalf. Most of these loans are large term loans held by institutional lenders. For many borrowers the leveraged loan market offers the most affordable, flexible, and necessary source of capital, and many others simply rely on the leveraged loan market because the company's profile is not supported by the broader capital markets.

Leveraged loans are private instruments and as such exist in an ecosystem that is distinct from securities. As noted above, these loans are led by an arranger, or a group of arrangers, who builds the syndicate of lenders. Once the credit agreement is signed and the loan facilities (e.g. term loan facilities and revolving credit facilities) are originated, the lead "left" arranger or another entity entirely is appointed by the lenders as administrative agent ("agent"). The agent acts as an intermediary between the syndicate of lenders and the borrower and performs administrative tasks such as collecting interest and principal payments from the borrower and remitting to applicable lenders as well as communicating to the syndicate of lenders borrowing requests from the borrower. The agent also maintains, on a non-fiduciary basis, the lender register, which serves as conclusive evidence (subject to manifest error) of each lender's interest in the loan. This architecture has existed for decades, but as leveraged lending volume – and secondary loan trading – grew, market participants realized that loan identifiers were needed. In response, about 20 years ago, loan market participants, the LSTA and the Committee on Uniform Security Identification Procedures ("CUSIP") Global Services ("CGS") worked together to develop a CUSIP application and dissemination process suitable for loans.[5] Since then, CUSIPs have become deeply embedded in the syndicated loan market. While they are not the exclusive identifier, CUSIPs are used broadly in loan systems (books and records, loan servicing, trade settlement) and routinely used in regulatory reporting.

[3] 2023 Shared National Credit (SNC) Program Report, p. 3.
[4] Ibid. p. 5
[5] FactSet Research Systems, Inc. is the manager of CGS, the operator of CUSIP. The LSTA has entered into an agreement with FactSet whereby CGS issues unique identifiers for syndicated loans to LSTA members for a fee. An LSTA representative sits on the advisory board of trustees that oversees CUSIP.

The broad uptake of CUSIP numbers by loan market participants is largely attributable to CUSIP's customized application process for loans. Given the private nature of loans, the agent is best positioned to provide reliable information about the credit agreement and loan facilities. Because of this, the CUSIP process that the market designed permits only the agent to apply for CUSIPs on the relevant credit agreement and loan facilities that it administers. This agent-led process is also necessary because loan facilities can be – and often are – amended, restructured or refinanced. In these events, the agent is best placed to determine when the transaction constitutes a new loan facility necessitating a new CUSIP number or whether the underlying data for the existing CUSIP number simply needs to be modified in connection with an existing facility. Furthermore, CUSIP provides optionality with respect to publishing of the CUSIP number for loans. For loans, CUSIPs may be published, meaning that it is available to those who purchase the Syndicated Loan Service ("Service")[6], or restricted. A restricted CUSIP, one not published to the Service, is nevertheless issued to agents who make them available to lenders of record and their third-party providers, namely custodians, trustees, fund administrators, settlement platforms, etc., to enable a more orderly exchange of information and funds in an automated environment. In this respect a published or restricted CUSIP operates similarly within the loan market. CUSIP is the only provider of instrument identifiers that we are aware of that uses original source information and permits the identifier to be restricted. Loan market participants are regulated by varying regimes, each of which has its own reporting requirements. Upon consultation with our members, we understand that CUSIP is commonly used for these purposes. For banks that are supervised by one of the prudential regulators, CUSIP is generally included on every loan for which one is available in that entity's SNC Program reporting.[7] For asset managers that include loan identifiers in their regulatory reporting (e.g., Forms 10K and 10Q), CUSIP is again often used. We have communicated with the loan agency system providers – Finastra, Automated Financial Systems, Inc. and Fidelity Information Systems Commercial Loan Servicing – and none of them currently provide a field for FIGI. In most, if not all, cases, data from the loan systems is transmitted directly to the database that services regulatory reporting. Therefore, if the Proposal were to be adopted, an additional field would need to be added to all loan systems – not simply the regulatory reporting database. We understand that this would be a challenging, manual process subject to the risk of human error. Moreover, as discussed in detail in Section II.B.2, without a definitive mapping of FIGI to CUSIP it is hard to conceive how this process would even be conducted.

[6] CGS's Syndicated Loan Service provides CUSIPs and ISINs and descriptive information for thousands of syndicated loans and their underlying facilities.

[7] The SNC Program assesses risk in the largest and most complex credit facilities shared by regulated financial institutions (banks) and nonbanks. The SNC Program is governed by an interagency agreement among the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency.

II. LSTA's Comments

A. The Agencies Should Not Select an Exclusive Financial Instrument Identifier in the Joint Standards.

1. The Act does not require the agencies to select an exclusive identifier for financial instruments.

In the current Proposal, the agencies are required to "establish" joint data standards – which shall include "common identifiers" – for the "collections of information reported to each covered agency by financial entities." The only common identifier required by the Act is a legal entity identifier. Choosing other common identifiers is left to the agencies' discretion. The agencies do not provide a rationale for selecting a common financial instrument identifier at this stage. As we discuss in detail below, the agencies' *choice* to select FIGI as a common identifier at this stage can only be properly examined in this context.

Furthermore, there are distinct advantages to taking a principles-based approach when appropriate. The Administrative Conference of the U.S.'s Committee on Regulation recommended that agencies design "new regulations in a way that will make later retrospective review easier and more effective". [8] In a rulemaking relating to the electronic submission of certain materials, the Securities and Exchange Commission ("Commission") recently acknowledged that a principles-based approach can "accommodate unknown future developments" although the Commission declined to adopt that approach in its final rulemaking.[9] In their dissenting statement, Commissioners Hester Peirce and Mark Uyeda highlighted the connection between a principles-based approach and facilitating retrospective review in the context of the Act. The Commissioners stated: "a principles-based approach would be consistent with the requirements of the [Act]." [10] The Commissioners further observed that the Act "does not mandate that agencies adopt any particular language as part of their joint data standards. Instead, the FDTA amends the Financial Stability Act to establish four properties that—to the extent practicable—should be reflected in those joint data standards."[11] The Act likewise does not mandate the selection of a common identifier for financial instruments. Applying the Commissioners' logic to the issue at hand, in the absence of

[8] Admin. Conf. of the U.S., Recommendation 2014-5, *Retrospective Review of Agency Rules*, 79 Fed. Reg. 75,114 (Dec. 17, 2014).
[9] Electronic Submission of Certain Materials Under the Securities Exchange Act of 1934; Amendments Regarding the FOCUS Report, Release No. 33-11342 (Dec. 16, 2024) at 169, available at https://www.sec.gov/files/rules/final/2024/33-11342.pdf
[10] Commissioners Hester M. Peirce and Mark T. Uyeda, Dissenting Statement on Electronic Submission of Certain Materials under the Securities Exchange Act of 1934 and Amendments Regarding the FOCUS Report, Dec. 16, 2024 available at https://www.sec.gov/newsroom/speeches-statements/peirce-uyeda-statement-focus-report-121624.
[11] Ibid. at n. 8.

the Act requiring the agencies to establish a common instrument identifier, the agencies ought to consider the benefits of a principles-based approach to a rulemaking like this one.

2. The selection of an exclusive identifier inappropriately affects competition between sponsors of available identifiers to the detriment of market participants.

The comment letters filed to date demonstrate that this rulemaking will have an effect on competition between the sponsor of CUSIP and sponsor of FIGI. The agencies' proposal asserts that CUSIP does not satisfy the Act but FIGI does. Again, the comment letters submitted to the agencies amply demonstrate that this factual question is at best subject to dispute. But the point here is that the agencies are proposing to choose one to the detriment of the other without assessing the economic impact on competition of doing so.[12]

Furthermore, this effect on competition is directly contrary to a series of decisions recently made by the SEC. The SEC has engaged in a series of rulemakings – many after the passage of the Act – that evaluated whether to require financial entities to report a unique security identifier.[13] The SEC took a variety of approaches, but never chose FIGI over CUSIP. Indeed, the Securities Exchange Act of 1934 requires the use of CUSIP for some reports.[14] But there is no mention of this recent, consistent policy choice in the Proposal, nor any justification or analysis of the effect of reversing this decision.

Our members have expressed real concern about how vulnerable they would be to the sponsor of any common identifier that has been chosen as the exclusive identifier by the agencies.

[12] The Secretary of the Treasury is subject to Executive Order 12866, which requires preparation of an assessment of costs for "significant" rules.

[13] See, for example, *Form N-PORT and Form N-CEN Reporting; Guidance on Open-End Fund Liquidity Risk Management Programs*, Release No. IC-35308, 89 FR 73764, 73799 (Sept. 11, 2024) (retained CUSIP, no FIGI); *Form PF; Reporting Requirements for All Filers and Large Hedge Fund Advisers,* Release No. IA-6546, 89 FR 17984,18109 (Mar. 12, 2024) (mandatory CUSIP; filers may add optional FIGI); *Short Position and Short Activity Reporting by Institutional Investment Managers*, Release No. 34-98738, 88 FR 75100, 75172 (Nov. 1, 2023) (mandatory CUSIP; FIGI "if it has been assigned:); *Reporting of Securities Loans*, Release No. 34-98737, 88 FR 75644, 75669 (Nov. 3, 2023) (may use CUSIP, FIGI or other identifier); *Enhanced Reporting of Proxy Votes by Registered Management Investment Companies; Reporting of Executive Compensation Votes by Institutional Investment Managers,* Release No. 33-11131, 87 FR 78770, 78782 (Dec. 22, 2022) (mandatory CUSIP; filers may add optional FIGI); *Electronic Submission of Applications for Orders Under the Advisers Act and the Investment Company Act, Confidential Treatment Requests for Filings on Form 13F, and Form ADV-NR; Amendments to Form 13F*, Release No. 34-95148, 87 FR 38943, 38950-51 (June 30, 2022) (mandatory CUSIP; filers may add optional FIGI).

[14] See Exchange Act §§ 13(f)(1)(A), (E)(i) & 13(f)(2).

3. The selection of an exclusive financial instrument identifier in the joint standards ties the hands of the agencies in their own subsequent rulemakings.

Once the joint data standards have been adopted, individual agencies "shall incorporate" the joint data standards in "all [relevant] collections of information," and "ensure compatibility (to the extent feasible)" with the standards, subject to individual determinations that the standards are "applicable." Agencies may limit the application of joint standards only to "scale data reporting requirements" for smaller entities and "to minimize disruptive changes." But make no mistake: The current rulemaking sets the course – and eliminates possible alternatives – for data reporting by entire industries.

While some commenters have asserted that an economic analysis is not required at this stage of implementing the Act, the foundation for this argument seems to be a hyper-technical, and misleading, interpretation. The argument seems to be that selecting data standards in the current rulemaking does not alter the agencies' rules for collecting information from financial entities and therefore has no economic impact. In one respect, this may be true: Each agency will be responsible for changing the relevant legal requirements for the data they collect in a later stage of the Act's implementation. What is deficient about this argument is that the agencies are now proposing to select one standard and reject another, which at the very least would put a finger on the scale for subsequent rulemakings and, for all practical purposes, would prejudge the appropriate standards to apply. With the current rulemaking, the agencies are making a choice that has economic consequences and that requires economic analysis to ensure the objectives of the Act are best satisfied.

B. The Agencies Risk Acting Arbitrarily and Capriciously if They Select FIGI As the Exclusive Common Financial Instrument Identifier in the Proposal.

1. The agencies have not provided a reasonable explanation for selecting an exclusive financial instrument identifier in the Proposal.

It appears with the Proposal that the agencies are laboring under a misapprehension, namely, that the joint data standards that they propose to adopt would have a minimal impact on market participants. Unfortunately, this is far from the case. The agencies have not demonstrated that adoption of the joint standards with respect to "certain collections of information" can be isolated from market participants' other systems. With that being the case, the agencies must provide a reasoned explanation for selecting an exclusive common identifier for financial instruments when the data and supporting systems of today's financial markets do not operate with an exclusive identifier. What is the reason that agencies need to make this choice? Market participants are left to wonder.

2. The agencies have so far disregarded CUSIP as the exclusive financial instrument identifier for corporate loans.

In consulting with its members, the LSTA has learned that members' regulatory reporting, particularly that of supervised banks, is fed by the same loan systems that are used to conduct loan market transactions. We have communicated with the loan agency system providers – Finastra, Automated Financial Systems, Inc. and Fidelity Information Systems Commercial Loan Servicing – and none of them currently provide a field for FIGI. This fact alone speaks to the market's surprise at the proposed selection of FIGI as the exclusive identifier for corporate loans. This means that a new field for FIGI would need to be added throughout these systems. In theory, adding a field may be a simple coding task. In practice, however, this is not the case. Market participants need to be certain that the field has been added throughout loan agency systems. Moreover, that field must be populated once it is created. This is an area that particularly introduces great risk and undue burden. The field would need to be populated manually – meaning a human being would need to enter the correct FIGI in the new field for every loan facility. This extremely resource-intensive process is ripe for human error. Moreover, we and our members are not aware of a definitive mapping of FIGI to CUSIP (or to LoanX, another loan identifier used today). Without a tested mapping, it is unknown whether there is an appropriate 1:1 relationship between FIGI and existing loan facilities.

The Proposal concludes that "FIGI also can be used for asset classes that do not normally have a global identifier, including loans."[15] The LSTA respectfully disagrees with the agencies. There are important unanswered questions about whether FIGI can be used as a global identifier for corporate loans. The LSTA recognizes that many commenters, including ourselves, have highlighted the importance of fungibility for an instrument identifier. The LSTA also acknowledges that other comments, like Bloomberg L.P. and Object Management Group, maintain that FIGIs are fungible. The fact that there is a significant question over this critical attribute for the selected identifier should raise alarm bells. As we examine the appropriateness of FIGI as an exclusive identifier for corporate loans, there are additional considerations at play. First, as we have noted previously, loans are private instruments and are therefore not intended to have a published identifier. CUSIP, in collaboration with loan market participants, have accommodated this loan attribute. FIGI does not provide for restricted FIGIs. Indeed, the ability to have "restricted" identifiers seems impossible with FIGI as it is currently constructed given that the FIGIs and important information related to the loan will be available on OpenFIGI. Second, we have identified several examples where the information available on OpenFIGI does not satisfy the needs of loan market participants. We offer these examples below:

[15] Supra note 2 at 67897.

Figure 1 is a screenshot of Section 2.5 of the Allocation Rules for the Financial Instrument Global Identifier (FIGI) Standard.[16]

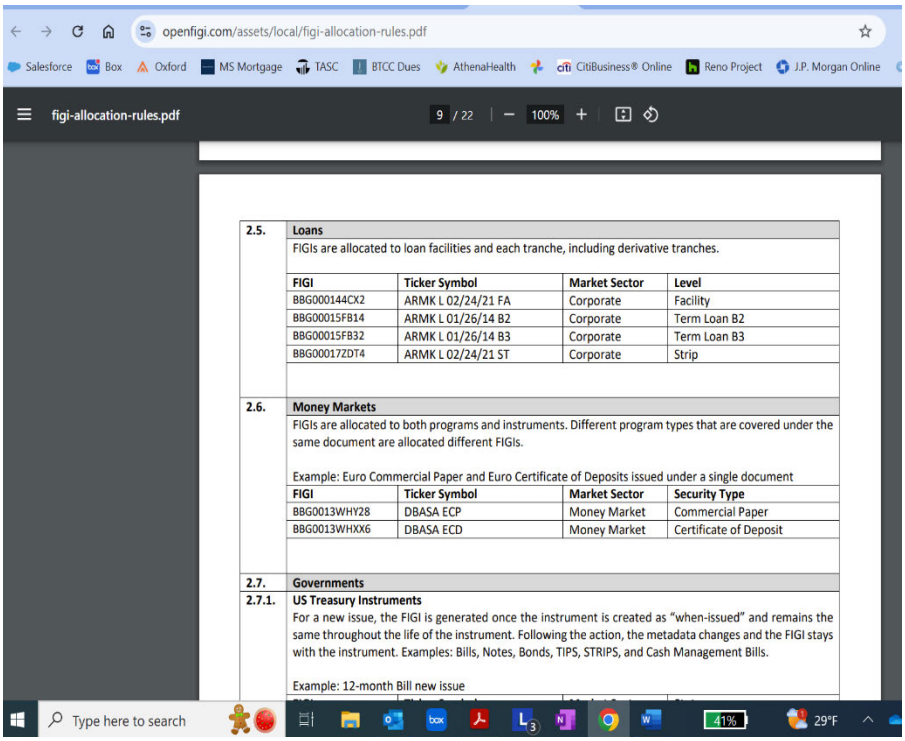

Figure 1

In this section an Aramark Services loan bearing FIGI BBG00017ZDT4 is identified. The specific "level" for this loan is "Strip". "Strip" is not an instrument in the loan market and does not have a natural equivalent with respect to CUSIP or LoanX identifiers. If FIGI provides "levels" which are not supported by other identifiers a 1:1 mapping is challenging.

Figure 2 is an OpenFIGI screenshot for a GE Healthcare Technologies, Inc.revolving credit facility.

[16] Version 29.9 dated July 2022 available at https://www.openfigi.com/assets/local/figi-allocation-rules.pdf.

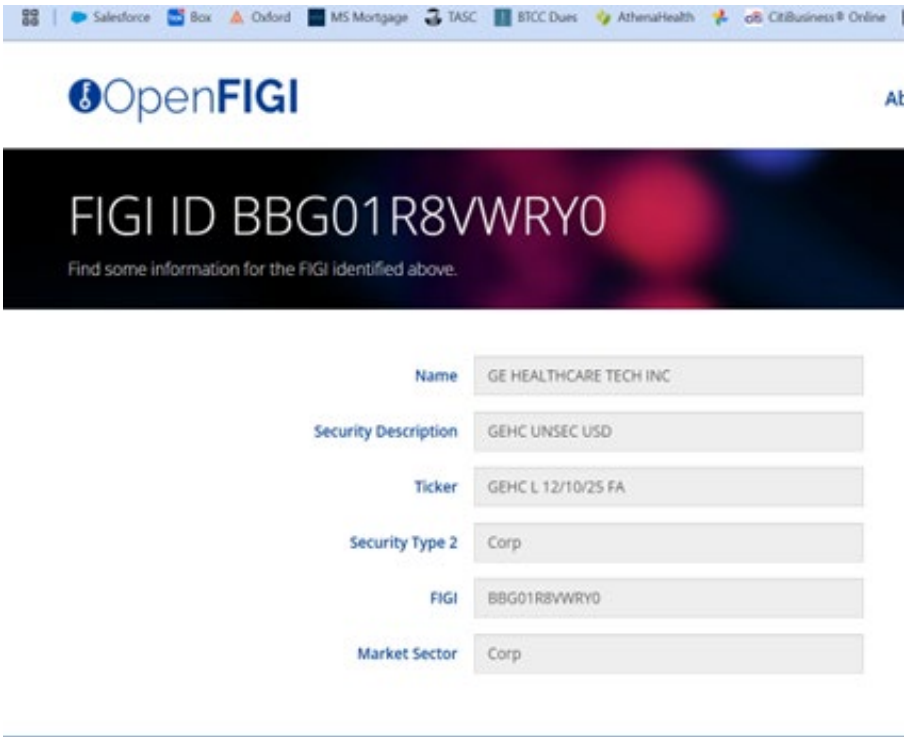

Figure 2

OpenFIGI provides seven data elements which do not include all the data elements that loan market participants regularly use for loans. These include the date(s) of the original credit agreement and any amendments, the amount of the credit agreement and loan facilities at the time of origination, the administrative agent, and the maturity date as its own field.

Figure 3 is an OpenFIGI screenshot of a Buyerlink Inc. syndicated term loan facility.

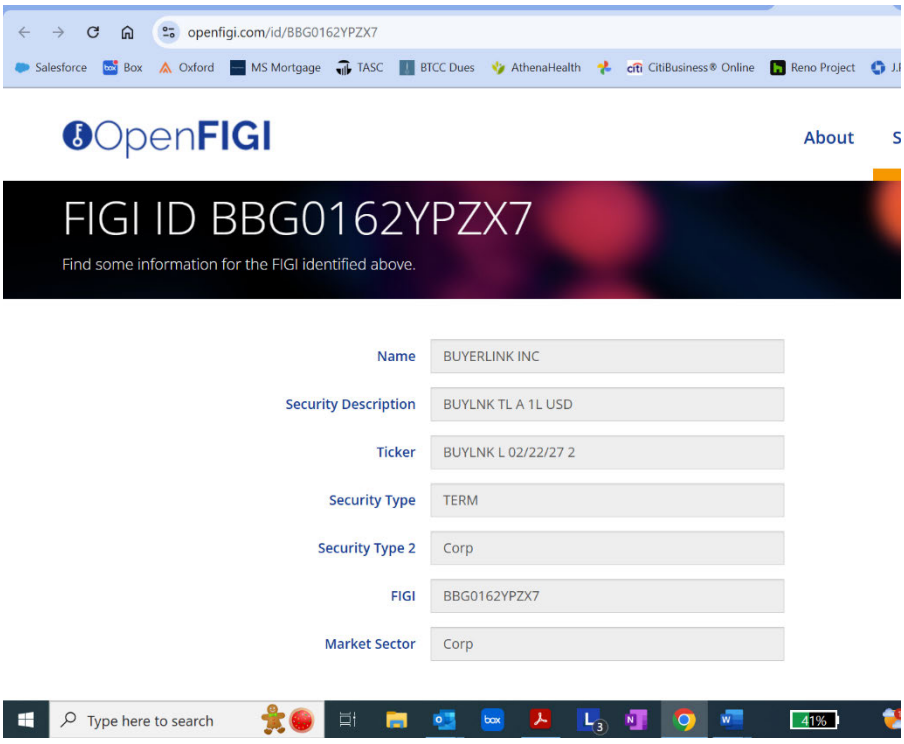

Figure 3

The ticker field includes the date "02/22/27" which represents the maturity date of the facility. If you look at the information associated with the relevant CUSIP (CUSIP No. 12427GAC8), the maturity date of the facility is September 30, 2026. We have confirmed with the administrative agent that the maturity date of this facility is September 30, 2026.

Figure 4 is an OpenFIGI screenshot of a Home Depot Inc. syndicated revolving loan facility.

Figure 4

The data points provided here are in part insufficient and in part inaccurate. For instance, a loan market participant would be unable to determine that this is not a 364-day revolver, which is relevant to its regulatory capital treatment at supervised banking entities. Looking at this information one would assume that the maturity date for the loan facility is May, 6, 2025 (although, as set forth above, there is no separate field for maturity date). In fact, the maturity date for this loan facility is May 7, 2027 (which is correctly identified in the Service for CUSIP No. 43708MAX4).

These examples demonstrate the risk of inaccurate data that exists if all corporate loans are exclusively identified by FIGI. Finally, corporate loans are routinely amended as discussed in Section I. Because agents are not the exclusive entity that applies for a FIGI, in many cases the FIGI will fail to identify that the loan facility has been amended. The regular amendment activity for corporate loans is one of the reasons why the CUSIP application process, designed in consultation with the market, can only be initiated by the agent.

We respectfully urge the agencies to consider the potential risk posed to the agencies and the critical reporting they receive from their supervised entities if inaccuracies are introduced by the use of an exclusive identifier for corporate loans. Unlike CUSIP - which has been fully operationalized for years - FIGI has never been tested as the exclusive identifier for corporate loans in the marketplace. If the proposed move to FIGI as the exclusive identifier for corporate loans were to be adopted, the agencies will have introduced market risk, operational risk and regulatory risk across the corporate loan asset class.

3. The agencies failed to analyze the economic impact of selecting FIGI as the exclusive financial instrument identifier in the Proposal.

The Proposal does not include a discussion of the economic impact of the Proposal. It is surprising that the SEC – of all agencies – has taken this approach, given it has publicly stated that "[h]igh-quality economic analysis is an essential part of SEC rulemaking."[17] Moreover, the courts have repeatedly reminded the SEC to apprise itself of the potential economic impact of proposed rules and consider reasonable alternatives.[18] Even agencies without the SEC's history are bound by general principles, including that they must articulate a rational connection between the facts found and choices made.[19] Here, the agencies failed to give more than a perfunctory consideration of a reasonable alternative and made no effort to assess the economic implications of proposing a particular common identifier.

To give some feel for the impact of "establishing" a common identifier for information collections from financial entities, we can look to the estimates prepared by the agencies for their various collections of information, the number of respondents to those collections, and the total annual burden[20] of responding to those collections – in the number of hours and the total dollar costs to respond.[21] Admittedly, not all of these collections will necessarily be affected by FDTA implementation, but they demonstrate the overall burden of submitting information to the agencies and some indication that even seemingly minor changes could have a dramatic, industry-wide economic effect:

[17] Memorandum from Division of Risk, Strategy, and Financial Innovation and the Office of the General Counsel to Staff of the Rulewriting Divisions and Offices, "Current Guidance on Economic Analysis in SEC Rulemakings" dated Mar. 16, 2012, available at https://www.sec.gov/divisions/riskfin/rsfi_guidance_econ_analy_secrulemaking.pdf.
[18] *Business Roundtable v. SEC*, 647 F.3d 1144, 1149-51 (D.C. Cir. 2011); *Am. Equity Inv. Life Ins. Co. v. SEC*, 613 F.3d 166, 177-79 (D.C. Cir. 2010); *Chamber of Commerce v. SEC*, 412 F.3d 133, 144-45 (D.C. Cir. 2005). Among the statutory authority cited by the SEC for the proposed standards are 15 U.S.C. § 77g and 15 U.S.C. § 78n, which trigger the obligation to consider whether the action "will promote efficiency, competition, and capital formation," in 15 U.S.C. §§ 77b(b) and 78c(f), respectively. See also 15 U.S.C. § 78x(a)(2).
[19] *Motor Vehicle Mfrs Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 46 (1983).
[20] For these purposes, "burden" is defined as "the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information" and includes "reviewing instructions; acquiring, installing, and utilizing technology and systems; *adjusting the existing ways to comply with any previously applicable instructions and requirements*; searching data sources; completing and reviewing the collection of information; and transmitting, or otherwise disclosing the information." 5 C.F.R. § 1320.3(b) (emphasis added).
[21] Office of Management and Budget, Office of Information and Regulatory Affairs, Information Collection Review, available at https://www.reginfo.gov/public/do/PRAMain (data from site visited on October 29, 2024).

Agency	Active Collections of Information	Total Number of Respondents	Total Annual Burden Hours to Respond to the Information Collection	Total Annual Cost of Responding to the Collecting the Information
CFPB	41	2,003,015,578	29,445,678	$2,051,849,524
CFTC	55	5,063,608,113	7,741,805	$180,908,885
FDIC	95	45,541,365	9,175,015	$465,646
FRB	142	5,558,519	6,685,407	$527
NCUA	66	105,712,102	9,374,964	$2,517,118
SEC	375	57,754,305,994	372,148,491	$24,188,844,442
Treasury	817	6,849,863,544	8,002,188,275	$133,363,362,983

III. Conclusion

We are grateful for this opportunity to contribute to this rulemaking, and look forward to working with the agencies on sensible, reasoned implementation that does not disrupt settled industry practice. We stand ready to answer any questions or provide any additional information that would assist the agencies in their work.

Respectfully submitted,

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