

BDA Bond Dealers of America

INVESTMENT ADVISER
ASSOCIATION



November 10, 2010

VIA ELECTRONIC MAIL

The Honorable Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F St., NE
Washington, DC 20549

Re: Request for Commission action re CUSIP identifiers

Dear Chairman Schapiro,

The Bond Dealers of America (BDA)¹ the Investment Adviser Association (IAA)² and Government Finance Officers Association of the United States and Canada (GFOA)³ are writing

¹ The BDA is the Washington, DC based organization that represents securities dealers and banks primarily active in the U.S. fixed income markets. The BDA (formerly Regional Bond Dealers Association or RBDA) is the only organization representing the unique interests of these dealers. In addition to federal advocacy, the BDA hosts a series of meetings and conferences specific to domestic fixed income. For more information, please visit our web site: www.bdamerica.org.

² The IAA is a not-for profit association that represents the interests of SEC-registered investment adviser firms. Founded in 1937, the IAA's membership consists of approximately 500 firms that collectively manage in excess of \$9 trillion for a wide variety of individual and institutional investors, including pension plans, trusts, investment companies, endowments, foundations, and corporations. For more information, please visit our web site: www.investmentadviser.org.

³ GFOA is a professional association of government finance offices in Chicago IL with approximately 17,500 members. GFOA is a not-for profit association whose purpose is to enhance and promote the professional management of governments. For more information, visit www.gfoa.org.

to highlight our concerns with respect to the collection of use fees for CUSIP standard identifiers.⁴

CUSIP identifiers and Licensing Fee Practices

CUSIP identifiers are assigned to new securities issues by the CUSIP Service Bureau (CSB), which is operated by Standard & Poor's (S&P).⁵ For years, market participants (including bond dealers and investment advisers) have used CUSIP identifiers as standard practice without requirement that they should pay anything for the use of such numbers supplied on confirmations, account statements, electronic data sources, and the like. In the last few years, however, S&P has begun contacting investment advisers, bond dealers, and representatives of many financial institutions seeking to collect significant licensing fees for the use of CUSIP identifiers regardless of the source or use of such numbers. S&P evidently takes the position that even using CUSIP identifiers in a firm's internal database serves as a basis for a request for licensing fees. Licensing fees appear to range from approximately \$10,000 per year for an institutional user to hundreds of thousands of dollars per year for unlimited global licenses.

Until recently, market participants used CUSIP identifiers without fear of financial penalty. In fact, numerous SEC regulations require the use of CUSIP identifiers for various purposes.⁶ Where the use of a CUSIP identifier is mandated in regulations of the SEC, self-regulatory organizations, or clearing and settlement utilities, it is inappropriate for S&P to require payments (particularly given the history of widespread use in the marketplace) and it creates an unlevel playing field for potential competitors or service providers.

The SEC has many sources of jurisdiction over CUSIP identifiers through SEC rules and their use by various SEC-regulated market participants, including underwriters, broker-dealers, investment advisers, investors, asset managers, and bond counsel. CUSIP identifiers help ensure accurate details of a securities transaction at the time of a trade. Since 1979, MSRB rules have required CUSIP identifiers to be included by a broker, dealer, or municipal securities dealer in written trade confirmations provided to investors. CUSIP identifiers:

- Are routinely included in the final official statement used in connection with the offering and sale of municipal bonds.

⁴ The BDA first brought these matters to your attention in a June 10, 2009 letter (copy attached). In the June letter, the BDA (RBDA at the time) described ongoing efforts by the CUSIP Service Bureau to levy a toll on the majority of securities transactions, statements, disclosures, and electronic searches that occur daily in the United States.

⁵ S&P is the CSB contract administrator for the American Bankers Association (ABA), the owner of the CUSIP identifiers. S&P Rating Services is registered with the SEC as a Nationally Recognized Statistical Rating Organization; see SEC Rel. No. 34-56513 (Sept. 24, 2007), available at <http://www.sec.gov/rules/other/2007/34-56513.pdf>.

⁶ See for example, SEC rule for Investment Adviser Codes of Ethics, Rule 204A-1; Schedule 13D; Schedule 13F; and SEC definitional rule 17Ad-19a5.

- Provide the means of more precisely finding information filed with MSRB's EMMA system by an issuer, underwriter, investor, or other market participants in connection with a continuing disclosure obligation or to incorporate by reference in a municipal disclosure document.
- Are required to be included on the information returns for tax-exempt government obligations prepared by bond counsel and to be filed with the Internal Revenue Service (Form 8038-G) by municipal issuers.
- Are required on forms and letters of representation needed to register securities in book entry form at The Depository Trust Company.

SEC-regulated securities market participants use CUSIP identifiers in an integrated way to help ensure the accurate identity of securities invested, traded, and processed by broker-dealers, underwriters, investment advisers, investors, and bond counsel. CUSIP identifiers provide an important piece of databases created and used for regulatory reporting and informational purposes. A rapidly increasing and non-transparent fee for the use and redistribution of CUSIP identifiers negatively impacts market transparency and liquidity.

The CSB's recent tactics regarding CUSIP fees exert a chilling effect on market transparency and the free flow of information for investing, trading, accounting, risk management, and regulatory reporting. The CSB continues to obfuscate from public view fees paid by market participants and the terms of the licensing agreements. The CSB appears to first inquire into use of CUSIP identifiers, determines an annual amount to request for the use of those numbers, and then requests payment of the amount from dealers, investment advisers, and investors individually. Thus, fees are evidently imposed on market participants by the CSB on a case-by-case basis. The CSB pursues these fees with no accountability to, or oversight by, regulators.

CSB charges CUSIP fees ranging as high as hundreds of thousands of dollars per year for entities with multiple locations or that provide investor information to their customers and clients via the web. CSB contends that such large, annually recurring license fees are necessary to cover its costs of issuing and distributing CUSIP information. However, these contentions are factually inaccurate in that (1) the issuance of a CUSIP identifier is actually a simple administrative activity, requiring basic information technology; and (2) distribution of CUSIP identifiers is a normal, daily activity of leading information vendors such as Bloomberg, Reuters, and Interactive Data Corporation, requiring no effort and imposing no burden on the CSB. The costs of administering the clerical activities of assigning identifiers to new issues is covered by the significant fees paid by securities issuers and others at the time new identifiers are created.

We believe the SEC needs to exercise its jurisdiction over this important aspect of the US securities markets and accordingly, we urge the Commission to examine these issues and to take appropriate steps with respect to activities and practices of the CSB and S&P to impose and collect licensing fees from dealers, investment advisers, and other market participants.

International Developments

S&P and the CSB have been taking similar actions in Europe. In January 2009, the European Commission opened formal proceedings against S&P regarding S&P's and CSB's practices with respect to licensing fees for CUSIPs. In November 2009, the European Commission issued a formal Statement of Objections to S&P outlining the European Commission's preliminary view that S&P is abusing its dominant position regarding CUSIPs by requiring financial institutions and information service providers to pay unfair licensing fees for the use of securities identifiers in the firms' own databases. The European Commission found that other securities identification providers either do not charge fees at all or, if they do, they do so only on the basis of distribution costs as opposed to usage.

The European Commission, in its Statement of Objections to S&P, found that S&P does not incur any costs for the distribution of its security identifiers to financial institutions. The European Commission has made a preliminary finding that S&P's practices are abusive, and may prohibit the CSB from collecting unreasonable licensing fees in Europe. A copy of the European Commission Statement of Objections is attached. We understand that the European Commission has its final decision on hold, but is expected to issue the opinion sometime over the next several months.

Conclusion

We respectfully request the Commission to follow the example of the European Commission in examining this situation. We believe the SEC should study the use of these CUSIP identifiers and their financial and logistic impact on dealers, investment advisers, investors, and the securities markets in the United States with a view to possible rulemaking initiatives to reduce burdens on the securities markets and their participants. We urge the Commission to consider whether it may limit or prohibit the CSB and S&P from requiring licensing fees from market participants, particularly in situations where the use of a CUSIP identifier is mandated in the regulations of the SEC or self-regulatory organizations, or clearing and settlement utilities, or where such payments are inappropriate given the historic development and widespread usage of CUSIP identifiers. In addition, the SEC should consider eliminating any unnecessary mandatory use of CUSIP identifiers in its own regulations, financial reporting, or other uses that might be required by the SEC or entities it oversees such as self regulatory organizations, exchanges, or clearing and settlement utilities. Finally, the Commission may wish to examine whether reasonable and appropriate alternative mechanisms exist in lieu of requiring CUSIP identifiers.

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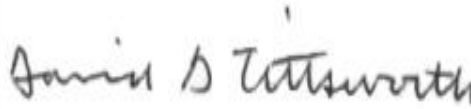
Thank you for considering these important issues and please contact us if we may provide additional information or assistance.

Sincerely,



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Enclosures: BDA (as RBDA) Letter to Mary Schapiro, Chairman SEC, June 10, 2009
EU Statement of Objections *vis* CUSIP and S&P; Notice January 12, 2009 and
Preliminary charges November 16, 2009

Cc: The Honorable Kathleen L. Casey, Commissioner
The Honorable Elisse B. Walter, Commissioner
The Honorable Luis A. Aguilar, Commissioner
The Honorable Troy A. Paredes, Commissioner
Mr. Robert Cook, Director, Division of Trading and Markets
Mr. Andrew J. Donohue, Director, Division of Investment Management