



*Via Electronic Submission*

Marcia E. Asquith  
Executive Vice President, Board and External Relations  
1735 K Street, NW  
Washington DC 20006-1500

Re: Regulatory Notice 21-32, FINRA Policy Relating to the Assignment of OTC Symbols to Unlisted Equity Securities

Dear Ms. Asquith:

On behalf of CUSIP Global Services (“CGS”), which is operated on behalf of the American Bankers Association (“ABA”) by S&P Global Market Intelligence, we hereby submit our comments to FINRA’s proposed change to its policy relating to the assignment of OTC symbols to unlisted equity securities published on September 14, 2021.

### **Background**

In 1964, as a response to the securities settlement “paper crunch,” the NY Clearing House Association approached the ABA to develop a more efficient system for the trading, clearing, and settlement of securities. Thus, was the Committee on Uniform Security Identification Procedures – CUSIP – born, with the first directory being published in 1968. In the ensuing decades, in parallel with widespread adoption 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 a cross-industry senior group of experts, the CUSIP Board of Trustees, this led to an ever-expanding universe of asset classes supported by CUSIP identifiers: 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.

## Executive Summary

As the operators of the CUSIP system since 1968, we applaud FINRA's long-standing policy of requiring a security to have a valid CUSIP identifier to support trade reporting obligations, as the information provided by CGS helps streamline efficiencies throughout the global financial system. From the assignment of identifiers for new issues to their use in trading, settlement, asset servicing and risk management, the market relies on trusted CUSIP identifiers and the knowledge and experience of the CGS team to provide a solid foundation to run their businesses smoothly and reliably.

Our experienced Operations team rigorously reviews the offering document(s) to extract the data elements necessary to guarantee uniqueness. This team regularly interacts with and supports the FINRA Market Operations team, as well as other industry participants, as FINRA validates the OTC symbol requests using the CUSIP identifier.

CGS stands in agreement with FINRA in exploring ways to reduce the cumbersome and time-consuming burden that befalls FINRA and firms alike when reporting trades via "Form T". The CUSIP system has demonstrated over the years its extendibility to cover virtually any instrument if sufficient documentation exists to authenticate the offering. In fact, of the several types of unlisted equity securities that FINRA notes, provided below, CGS assigns a CUSIP identifier for each type listed:

- previously restricted equity securities after the statutory holding period has expired (once freely tradable, the security is an OTC equity security and trades must be reported accordingly);
- Rule 144A restricted equity securities;
- non-listed direct participation programs (DPPs) and real estate investment trusts (REITs);
- equity securities issued under Section 1145 of the Bankruptcy Code by companies emerging from bankruptcy; and
- more recently, digital asset securities.

In the case of digital asset securities, which, according to data provided by FINRA, is a main driver in the increase of trades reported via Form T filings, please note that CUSIPs have been assigned to certain Tokenized Asset Offerings (TAOs).

We support FINRA's proposed policy change to permit the assignment of OTC symbols to equity securities and Rule 144A restricted equity securities that do not have a valid CUSIP identifier; however, CGS would like FINRA to consider the following when asking for best efforts to obtain a CUSIP identifier:

- Does CGS assign CUSIP numbers for the instrument type being submitted?
- If so, is there sufficient documentation to guarantee uniqueness and validate the request?
- Has CGS been contacted to assign a CUSIP identifier or did the Issuer decline to request a CUSIP? If so, why?

- Was the request rejected by CGS? If so, why?

CGS supports FINRA's proposal to obtain sufficient documentation in connection with any OTC symbol request - digital asset security or otherwise. FINRA's requirement in this regard is consistent with CGS policy.

### **Request for Comment**

Please find below CGS's response to specific Request for Comment questions posed by FINRA.

#### **In addition to those listed above, are there other types of OTC equity securities that may not have a CUSIP identifier to which FINRA should consider applying the proposed policy?**

As mentioned above CGS can extend the CUSIP system to assign valid CUSIPs to virtually any instrument (equity, debt, listed or unlisted, public, private or alternatives) if there is sufficient documentation to uniquely identify and categorize the financial instrument.

#### **Do commenters believe that trades in OTC equity securities that do not have a valid CUSIP identifier should be publicly disseminated?**

CGS holds no opinion with respect to the public dissemination of OTC equity securities; however, we take this opportunity to note the capability within the CUSIP system to flag instruments as Public or Non-Public (confidential) for a determined period. If the Issuer indicates the record should be confidential at the time of request CGS will restrict the flow of the CUSIP identifier and related descriptive data to the marketplace. The CUSIP record is only provided back to the requester for non-public requests. The presence of a CUSIP should not dictate whether a trade should be publicly disseminated.

#### **Is there any concern that quoting or disseminating trades in OTC equity securities that do not have a valid CUSIP identifier could be harmful or confusing to market participants? If so, what steps could FINRA take to address or mitigate these concerns?**

While equities trade on the ticker symbol, instruments without a valid CUSIP could struggle with back office trade matching and reconciliation, as well as regulatory reporting (e.g. 13F filings) . FINRA can mitigate this risk is by asking market participants to submit to CGS the same documentation being submitted to FINRA when requesting the creation of an OTC symbol.

**Should OTC equity securities that do not have a valid CUSIP identifier be denoted with, e.g., an additional character appended to the OTC symbol, to enable market participants to readily identify and distinguish them from other securities? Would this help mitigate concerns about potential harm or confusion?**

There could be some benefit with this approach as CGS applies a similar data model to distinguish certain instrument type characteristics from other securities and could assist in mitigating potential confusion. Examples of asset classes that CGS applies this philosophy to include options and private placements for the insurance industry.

**Firms generally would be expected to provide an opinion of counsel in connection with a request for an OTC symbol for a digital asset security. Are there additional factors or documents that FINRA should consider when reviewing symbol requests for digital assets?**

When it comes to documentation, we would encourage FINRA to focus on the nature of the asset and not whether it is digital or tokenized. A security, for example, should have a valid offering document whether the instrument is tokenized or more traditional (i.e. book entry). The wrapper of tokenization only affects how an instrument is traded (and how trades are recorded) – it does not change the nature of the instrument itself.

**Are there any alternatives to the proposed policy that FINRA should consider?**

As mentioned above, FINRA and OTC symbol requesters should consider working with CGS to submit to CGS the same documentation being submitted to FINRA when requesting the creation of an OTC symbol whereby a CUSIP can be assigned and disseminated to both FINRA and the marketplace for cross referencing purposes to increase interoperability, among other benefits.

**Why would an issuer not want to obtain a CUSIP identifier for its security?**

We submit there are no valid reasons for an issuer not to obtain a CUSIP. The presence of a CUSIP is no indication of a security's status (public or private, listed, or unlisted) and the one-time registration fee charged to an issuer is on a cost-recovery basis.

**In connection with a request by the issuer or its duly authorized representative to process a corporate action, FINRA generally would expect the issuer to obtain a CUSIP identifier for its security. Do commenters agree with this position? Are corporate actions frequently effected for such securities?**

We agree that a CUSIP helps effect corporate actions, among other post-trade processes. Indeed, it would be more prudent for all issuers of OTC equities to secure a CUSIP as a routine part of the registration process, rather than wait for a corporate action need to arise.

## Summary

CGS supports FINRA's objective of exploring ways to make the market operate more efficiently and strongly believe that CGS can play an important role in helping FINRA, and market participants, enhance the reporting process for future benefit. CGS has the same requirement for an offering document as FINRA and there is no reason for OTC issuers to eschew obtaining a CUSIP as part of their overall registration process.

Respectfully,

Handwritten signature of Roger J. Fahy in black ink.

Vice President, COO - CUSIP Global Services

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On behalf of CGS