

Financial Regulatory Agencies Propose Rule Mandated by the Financial Data Transparency Act

September 5, 2024

On August 22, 2024, a proposed rule (the “Proposed Joint Rule”) mandated by the Financial Data Transparency Act of 2022 (the “FDTA”) and adopted by nine federal financial regulators, including the U.S. Securities and Exchange Commission (the “SEC” and, together with the other eight regulators, the “Covered Agencies”), was published in the Federal Register.¹ The FDTA seeks to standardize the presentation of data reported to the Covered Agencies in two phases: (i) a joint rulemaking among the Covered Agencies to establish joint data standard characteristics (referred to herein as a “joint standard” or the “joint standards”) across the Covered Agencies, and (ii) rules promulgated by each individual Covered Agency to adopt standards for certain collections of information that are regularly filed with or submitted to the applicable Covered Agency that incorporate and ensure compatibility with the joint standards established in the Proposed Joint Rule when finalized (the “Joint Rule”). The Joint Rule will inform the separate SEC rulemaking (the “SEC Rule”) that will apply to financial information disclosures submitted by municipal securities issuers and obligated persons (referred to herein as “Issuers”) to the Municipal Securities Rulemaking Board’s (“MSRB”) Electronic Municipal Market Access (“EMMA”) system.

Background

The FDTA was signed into law by President Biden on December 23, 2022. The FDTA is intended to modernize and standardize financial information disclosed to investors, including financial information disclosures made by Issuers. The FDTA does not provide any new substantive disclosure requirements; instead, it prescribes the way financial information is presented in disclosure filings required under existing law. In order to improve the accessibility, transparency and comparability of such information, the FDTA requires the Covered Agencies to establish “data standards” for financial disclosures made to the public. The FDTA defines data standards as rules by which data is described and recorded.

Pursuant to this requirement of the FDTA, the SEC must adopt a rule to establish data standards for financial information submitted to the MSRB’s EMMA system by Issuers and other market participants. The MSRB will also need to amend its rules to accommodate the new format in which Issuers and other market participants submit information to EMMA. The FDTA’s impact is not limited to a particular type of financial data such as financial statements and could be extended to other types of disclosures made to EMMA, such as portions of official statement or reportable event notices. The FDTA permits the SEC to scale its data standards to reduce burdens on smaller regulated entities, and the SEC is required to seek to minimize disruptive changes to persons affected by its rules.

The data standards adopted by the SEC for municipal financial disclosure must incorporate and be compatible with (to the extent feasible) the data standards jointly issued by the other Covered Agencies. Issuer financial disclosures will be required, among other things, to be fully searchable and machine-readable, to be open and nonproprietary, and to include common identifiers. Since 2009, the SEC has required all companies that file financial data with the SEC to use a structured data format called eXtensible Business Reporting Language (XBRL). XBRL is considered the most likely reporting standard to be adopted by the SEC, although other standards could be designated.

Proposed Joint Rule

The areas covered by the Covered Agencies in the Proposed Joint Rule include:

- **Collections of Information:** The joint standards established by the Proposed Joint Rule would apply to certain collections of information reported to each Covered Agency. The Covered Agencies have proposed the incorporation of the Paperwork Reduction Act of 1995 definition of “collection of information” for purposes of the Proposed Joint Rule as this definition is widely understood by the Covered Agencies and public stakeholders. The SEC is permitted to further interpret the scope of the FDTA’s applicability to its own collections of information in the SEC Rule.
- **Legal Entity Identifier:** The FDTA requires the joint standards to include “a common nonproprietary legal entity identifier that is available under an open license for all entities required to report to” the Covered Agencies. The Covered Agencies propose to establish the International Organization for Standardization (ISO) 17442-1:2020, Financial Services—Legal Entity Identifier (LEI) as the legal entity identifier joint standard. While the Proposed Joint Rule proposes the LEI as the standard, the Covered Agencies defer to the individual Covered Agencies as to whether any particular entity, such as an Issuer, would be required to obtain an LEI.
- **Other Common Identifiers:** In addition to the LEI, the Covered Agencies propose to establish common identifiers in the joint standards. Notably, for an identifier of financial instruments, which includes municipal securities, the Covered Agencies propose to establish the Financial Instrument Global Identifier (FIGI). As proposed, FIGI would replace CUSIP as the current identifier assigned to municipal securities.
- **Data Transmission and Schema and Taxonomy Format Standards:** The Covered Agencies do not propose a specific joint standard for data transmission and schema and taxonomy formats. Instead, the Covered Agencies propose to establish that the data transmission or schema and taxonomy formats used by each Covered Agency have, to the extent practicable, the four properties listed below:
 - Render data fully searchable and machine-readable;
 - Enable high quality data through schemas, with accompanying metadata documented in machine-readable taxonomy or ontology models, which clearly define the semantic meaning of the data, as defined by the underlying regulatory information collection requirements, as appropriate;
 - Ensure that a data element or data asset that exists to satisfy an underlying regulatory information collection requirement be consistently identified as such in associated machine-readable metadata; and
 - Be nonproprietary or available under an open license.

The Proposed Joint Rule provides examples of data transmission formats that would likely meet the FDTA’s requirements, including eXtensible Markup Language (XML) and Java Script Object Notation (JSON) as well as in limited circumstances HyperText Markup Language (HTML) and Portable Document Format (PDF). With respect to schema and taxonomy formats, the Joint Proposed Rule provides that XML Schema Definition (XSD), eXtensible Business Reporting Language (XBRL) Taxonomy and JSON Schema are currently available schema and taxonomy formats that have the four properties noted above.

The Covered Agencies propose deferring to each individual Covered Agency to determine in their individual rulemakings which data transmission and schema and taxonomy format standard to adopt.

The Proposed Joint Rule does not address topics that will be important to Issuers and other municipal market participants, such as which entities, and what types of financial information will be covered by the SEC Rule.

Estimated Timeline

October 21, 2024	End of comment period for the Proposed Joint Rule
By December 2024	Covered Agencies are required to release final rules that establish the data standards.
Mid to late 2026	The SEC is expected to publish its proposed data standards for public comment.
By December 2026	The data standards established in the final rules by the Covered Agencies must become effective.
By December 2026	The SEC is required to establish data standards for the submission of financial information on EMMA by Issuers.
2027 and after	The FDTA does not mandate an effective date for the data standard rules established by the SEC for municipal financial disclosure on EMMA, but the compliance date for the SEC Rule is expected to be in early 2027.

The scale of the effort and expense required for Issuers to comply with the SEC Rule is not currently known. However, Issuer staff time will likely be required to analyze the new SEC Rule, to create new compliance policies and procedures and to train staff. Additionally, funds may need to be budgeted to update Issuer software or other technology or purchase new equipment. In some cases, compliance with the SEC Rule may require the engagement of a third party with expertise in structured data.

Issuers and other market participants who submit information to EMMA should consult their advisors, counsel and professional associations: (1) to develop effective strategies for commenting on the proposed rules released by the Covered Agencies, and (2) when the SEC Rule has been finalized, to establish best practices to comply with the SEC Rule.

For More Information

If you would like further information concerning the matters discussed in this article, please contact the Chapman attorney with whom you regularly work.

¹ <https://www.federalregister.gov/documents/2024/08/22/2024-18415/financial-data-transparency-act-joint-data-standards>

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