

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission Consultation Document on an EU Framework for Markets in Crypto-Assets

March 2020

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Commission Consultation Document on an EU Framework for Markets in Crypto-Assets. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the Consultation Document.

It is stated in the Consultation Document that there are important risks associated with crypto-assets relative to investor protection and market integrity. ESMA identified the most significant risks as fraud, cyber-attacks, money laundering and market manipulation. ESMA also confirmed that pseudo-anonymous nature of crypto-assets can be attractive for tax evaders.

Therefore, under Q11, GLEIF would like to highlight that, in cases where the issuer of the crypto-assets, the platform where they are distributed and/or transacted, and the provider of custody/safekeeping services are legal entities, these entities should all be easily identified facts shared between counterparties and the relevant regulatory authority in any crypto-asset transaction. GLEIF suggests to the Commission that this information should never be considered anonymous in a crypto-asset transaction and furthermore should be identified via a global standard, the Legal Entity Identifier (LEI), so as to ensure that a framework for prudential treatment of crypto-assets may develop. [The European Securities and Markets Authority \(ESMA\) Advice on Initial Coin Offerings and Crypto-Assets](#) highlights that there are concerns around fraudulent Initial Coin Offerings (ICOs), whereby crypto-assets either do not exist or issuer/developers disappear after the ICO. These could represent up to 80% of ICOs according to some sources. Identifying such parties with an LEI would enable clear identification of who one is doing business with and a means to investigate the entity given an issue arises with the ICO.

Under “1.1. Issuance of crypto-asset in general”, it is stated that the crypto-asset issuer or sponsor is the organization that has typically developed the technical specifications of a crypto-asset and set its features. In some cases, their identity is known, while in some cases, those promoters are unidentified. Furthermore, the issuance of crypto-assets is generally accompanied with a document, so-called “white papers”, describing crypto-asset and the ecosystem around it. The Commission states that those white papers are not standardized, and the quality, transparency and disclosure of risks vary greatly.

Against this background, GLEIF would like to respond to Q.20 “Do you consider that the issuer or sponsor of crypto-assets marketed to EU investors/consumers should be established or have a physical presence in the EU?” and Q.21 “Should an issuer or a sponsor of crypto-assets be required to provide information (e.g., through a white paper) when issuing crypto-assets?”.

GLEIF thinks that for being able to protect EU investors and customers against fraud, it is important that investors and consumers can identify and verify the issuer or sponsor of the crypto-asset when they are legal entities. GLEIF does not have an opinion on the location of crypto-asset issuers, however, a physical presence is necessary for being able to verify crypto-asset issuers operating across borders. Investors and consumers can easily verify the legal domicile, legal form, place of registration and current status of such an issuer via open Global LEI Index and can confirm that this issuer is legitimate and really

exists. Similar to MiFID II requirements, “no LEI, no trade”, the issuers without an LEI might be banned from marketing crypto-assets to EU investors and customers. The LEI requirement can ensure a required level of information to investors and customers, thereby enabling trust in the market.

GLEIF also thinks that an issuer or sponsor of crypto-assets should be required to provide minimum information when issuing crypto-assets. Required fields and information should be standardized similar to prospectuses under the Prospectus Regulation. The level 2 provisions of the Prospectus Regulation also define the specific information to be included in a prospectus, including the LEI and ISIN. As confirmed in the Consultation Establishing a similar requirement for the issuer of security tokens and the LEI of the issuer should be part of the information provided in so-called White Paper.

It is stated in the Consultation Paper that while the information on executed transactions are often openly accessible in distributed ledger based crypto-assets, there is currently no binding requirement at the EU level that would allow EU supervisors to directly identify the transacting counterparties.

In conjunction with this statement, GLEIF would like to respond to Q.39 *“Do you see the need for supervisors to be able to formally identify the parties to transactions in crypto-assets?”*

The development of a system to uniquely identify legal entities globally had its beginnings in the 2008 financial crisis. Regulators worldwide acknowledged their inability to identify parties to transactions across markets, products, and regions for regulatory reporting and supervision. This hindered the ability to evaluate systemic and emerging risk, to identify trends, and to take corrective steps on a timely manner. GLEIF admits that although the current weight of crypto-assets is tiny in financial industry, investing in crypto-assets has gained certain popularity in recent years. Therefore, GLEIF sees the need for supervisors to be able to formally identify the parties to transactions in crypto-assets and suggest the Commission consider the LEI as the critical building block for enabling legal entity identification in a crypto-asset transaction.

In Q.40. the Commission asks *“Provided that there are new legislative requirements to ensure the proper identification of transacting parties in crypto-assets, how can it be ensured that these requirements are not circumvented by trading on platforms/exchanges in third countries?”*.

Given crypto-assets operate cross-border, developing a prudential treatment would require global standards. The Legal Entity Identifier (LEI), a global standard (ISO 17442), could be leveraged by all regulators, as well as participants in a crypto-asset transaction, across jurisdictions for uniquely identifying entities involved in creation of crypto-assets. This message could be suggested to the LEI Regulatory Oversight Committee, a group of 71 public authorities with full membership and 19 observers from more than 50 countries established in January 2013 to coordinate and oversee the Global LEI System.

In particular, parties involved in crypto-asset transactions could easily exchange information in a protected and private manner; but leverage the LEI to access the publicly available LEI data pool in order to identify precisely who is involved in a particular transaction when a transacting party is a legal entity.. Additionally, regular, consistent and standardized use of the LEI would prevent regulatory arbitrage across different jurisdictions.

Lastly, GLEIF would like to respond to Q.44: *In your view, how should the AML/CFT risks arising from peer-to-peer transactions (i.e. transactions without intermediation of a service provider) be mitigated? In order to tackle the dangers linked to anonymity, new FATF standards require that “countries should ensure that originating Virtual Assets Service Providers (VASP) obtain and hold required and accurate originator information and required beneficiary information on virtual asset transfers, submit the above information to the beneficiary VASP or financial institution (if any) immediately and securely, and make it available on request to appropriate authorities. Countries should also ensure that beneficiary VASPs obtain and hold required originator information and required and accurate beneficiary information on virtual asset transfers and make it available on request to appropriate authorities.”*

GLEIF suggests that where the originator and beneficiary are legal persons, the LEI should be used mandatorily to identify these parties. The LEI is the only global standard for legal entity identification. It is a 20-character, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). It connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions. Each LEI contains information about an entity’s ownership structure and thus answers the questions of ‘who is who’ and ‘who owns whom’. Simply put, the publicly available LEI data pool can be regarded as a global directory, which greatly enhances transparency in the global marketplace.

The drivers of the LEI initiative, i.e. the Group of 20, the Financial Stability Board and many regulators around the world, have emphasized the need to make the LEI a broad public good. As such, the LEI and its associated reference data are accessible to all as open, public data. It is registered and regularly verified according to protocols and procedures established by the LEI Regulatory Oversight Committee.

In order for investors and prudential authorities to gain the greatest benefit from the LEI, it should be used to identify all legal persons involved in a crypto-asset transaction, including the VASPs and financial institutions involved.