

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the Commodity Futures Trading Commission Swap Data Recordkeeping and Reporting Requirements (17 CFR Parts 45, 46 and 49) Notice of Proposed Rulemaking

May 2020

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the Commodity Futures Trading Commission (“CFTC” or “Commission”) on the Proposed Rule for Certain Swap Data Repository and Data Reporting Requirements. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

First, GLEIF applauds the Commission’s efforts to update of the swap reporting rules for increasing data quality and streamlining reporting requirements. GLEIF provided its comments relative to the Certain Swap Data Repository and Data Reporting Requirements (17 CFR Parts 23, 43, 45, and 49) notice of proposed rulemaking at the beginning of 2020 and had suggested the Commission consider requiring that only LEIs that are maintained, meaning duly renewed, would satisfy the reporting obligation.

With this release, GLEIF is very pleased to see that the Commission is proposing new 45.6(d)(2) to require each Swap Dealer (SD), major swap participants (MSPs), swap execution facilities (SEFs), designated contract markets (DCMs), derivatives clearing organizations (DCOs) and swap data repositories (SDRs) to maintain and renew their LEIs in accordance with the standards set by the Global LEI System. The Commission states that given activities of these parties have the most impact affecting the Commission’s ability to fulfill its regulatory mandates, the Commission would like to balance its interest in accurate LEI reference data and cost to LEI holders.

GLEIF understands cost concerns of the Commission and would like to provide an update on its work with financial institutions for reducing the cost and shifting the responsibility of obtaining and maintaining an LEI from registrants to financial institutions, to the benefit of both parties. Under the “Validation Agent” framework, GLEIF pilots the applicability of financial institutions issuing an LEI for each onboarded client through partnering with accredited LEI Issuing Organizations. With this framework, GLEIF would like to break the link between the “LEI registration and annual renewal fee” and “ensuring accuracy of reference data” thus minimizing the cost burden on registrants. Optimizing the quality, reliability and usability of LEI data empowers market participants to benefit from the wealth of information available with the LEI population and is at the core of GLEIF’s mission. GLEIF believes the new operating model involving financial institutions will result in a revenue model based on a macro indicator – for example the number of records processed – rather than the current model which is driven by individual interactions with the legal entities. GLEIF is currently engaging in several pilot projects with financial institutions to evaluate jointly the operational, legal, and technical adjustments required to make this model a success.

However, it will require one to two years to complete the pilot projects and broadly make this operating model change. In the interim, GLEIF suggests the Commission tolerate renewal costs in exchange of benefits such as increased transparency, improved regulatory understanding of risk distributions and extend its LEI renewal mandate for all counterparties in swap reporting. In today’s Global LEI System,

mandating renewal of the LEI reference data is the only way to ensure that the LEI reference data is accurate and up-to-date; so risk profiles are effectively monitored for an improved regulatory oversight. Already within the last five years, the LEI renewal fee reduced to approximately 60 USD on average from 150 USD; GLEIF thinks that renewal fee will not be a concern for registrants in upcoming years given financial institutions will play a more important role in ensuring broad LEI coverage across their portfolios and cover the registration and maintenance costs on behalf of registrants.

The Commission is proposing to add references to “third party registration”, which would mean submission of reference data for a legal entity or individual that is or may become a swap counterparty, made by an entity or organization other than the legal entity or individual identified by the submitted reference data. The Commission provides examples of third party registration such as submission of reference data by an SD or MSP for its swap counterparties, national numbering agency, national registration agency, or data service provider of reference data concerning legal entities or individuals with respect to which the agency or service provider maintains information. With respect to third party registration, GLEIF would like to highlight that the permission of the LEI registrant to perform an LEI registration on its behalf by a third party is considered to satisfy the requirements of self-registration **only if** the registrant has provided explicit permission for such a registration to be performed. As mentioned above, for example, under the Validation Agent framework, financial institutions can perform LEI registration on behalf of their clients. However, it is essential for financial institutions to receive their explicit permission for performing LEI registration and maintenance on behalf of their clients.

GLEIF agrees with the Commission to add the following three definitions to 45.1 (a): “Global Legal Entity Identifier System”, “legal entity identifier” or “LEI” and “Legal Entity Identifier Regulatory Oversight Committee”. The Commission could also consider adding (i) local operating unit and (ii) legal entity reference data definitions under this section for a holistic view, instead of under 45.6(a) as proposed. The addition of legal entity reference data aligns with the removal of “level one” and “level two” (see below for further detail). A suggested definition is as follows: *“the data as defined by the currently valid common data file formats in the Global LEI System describing business card and relationship information related to corresponding LEI Regulatory Oversight Committee policies”*.

Under 45.6. the Commission is proposing to revise the introductory text to require each SEF, DCM, DCO, SDR, entity reporting pursuant to 45.9, and each counterparty to any swap that is eligible to receive an LEI to “obtain” as well as be identified in all recordkeeping and swap data reporting by a single LEI. The Commission explains that adding “obtain” explicitly is for removing any ambiguity as to whether the requirement to identify each counterparty with an LEI in current 45.6 also includes a requirement for the counterparty to obtain an LEI. GLEIF agrees that explicit and clear requirements enable market participants to fulfill their regulatory requirements.

Under 45.6.(a), the Commission is proposing to amend the definition of “self-registration” for LEIs in several aspects. First, the Commission is proposing to remove any specific reference to “level one” or “level two” reference data and the accompanying specifier “as applicable”. GLEIF agrees that any specific reference to “level one” or “level two” reference data can be removed as the LEI reference data today is complete only if the legal entity provides both their basic business card information (“level one”) and relationship information (“level two”).

Regarding the Commission’s proposal to add a reference to “individuals” to reflect the fact that swap counterparties may be individuals who need to obtain LEIs, GLEIF agrees that “individuals acting in business capacity” are eligible to obtain LEIs, provided they conduct an independent business activity as evidenced by registration in an official authority, with only one LEI issued for the same individual and adequate verifications that data protection, privacy or other obstacles do not prevent the publication of the current LEI data file according to the [LEI Regulatory Oversight Committee’s statement](#) on this matter.

The Commission is proposing to clarify in section 45.6(f)(1) that if a swap counterparty is not eligible to receive an LEI, such counterparty should be identified in with an alternate identifier pursuant to 45.13(a). GLEIF understands that the Commission is proposing this clarification for counterparties that are not eligible for receiving an LEI, such as natural persons. However, GLEIF suggests the Commission consider reformulate the statement; so it would be clear that an alternative identifier can only be accepted for natural persons who are not eligible for an LEI.

It is stated in the Notice of Proposed Rulemaking that the CFTC needs the ability to link swap counterparties to their parent entities to aggregate swap data to be able to monitor risk. The Commission requests specific comment on whether commenters believe this data could be reported as part of swap data reporting. The Commission also requests comments on whether reporting counterparties should report parent and ultimate parent information for each swap trade or in a regularly updated reference file maintained by SDRs.

GLEIF thinks that LEI reference data including both direct and ultimate parent information submitted by reporting counterparties as part of swap data reporting should be sufficient to satisfy Commission’s risk aggregation purpose. The Commission could add more precision to its expectations of the associated legal entity reference data by specifically citing legal opt out reporting exceptions which would not be accepted for reporting counterparties. By mandating all reporting counterparties to renew their LEI reference data, the Commission can ensure more timely, accurate and up-to-date legal entity reference data, which also includes updates to direct and ultimate parent relationship information. The Commission might also consider directly connecting to the new [GLEIF API Public Beta](#), which gives access to the full LEI Data search engine functionality, including filters, full-text and single-field searches of legal entity and ownership data; instead of requesting reporting entities to report their parent information.

Under 45.5 (a), the Commission is proposing to require that each swap be identified with a Unique Transaction Identifier (UTI) in all recordkeeping and all swap data reporting, and to require that the UTI will be comprised of the LEI of the generating entity and a unique alphanumeric code, replacing the existing Unique Swap Identifier (USI) assigned by the Commission. GLEIF supports Commission’s efforts for harmonization with international data standards. Consistent and standardized use of international data standards reduces complexity for reporting entities in cross border reporting and facilitates global swap data aggregation.

Lastly, GLEIF would like to provide its comments on “Appendix 1 to Part 45 – Swap Data Elements”. GLEIF suggests that the LEI should be added in “definition for data elements” fields for data elements “central counterparty”, “clearing member”, “counterparty 1 – reporting counterparty”, “counterparty 2”, “buyer identifier”, “seller identifier”, “payer identifier”, “receiver identifier” and “submitter identifier”.



As the Chairman Heath P. Tarbert rightly cited Sir Isaac Newton *“Truth is ever to be found in simplicity, and not in the multiplicity and confusion of things”*. GLEIF appreciates the Commission’s standardization and harmonization efforts in order to bring more clarity and transparency to derivative markets and reiterates the importance of the LEI as a foundational building block in this effort.