

## Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Securities and Markets Authority (ESMA) on the technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT

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The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Securities and Markets Authority (ESMA) on the technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

First, under sub-section *“4.1.1 Provisions of details of OTC derivative contracts by NFC to FC”*, GLEIF would like to respond the *“Question 2: Do you agree with the proposals set out in this section? If not, please clarify your concerns and propose alternative solutions.”*

GLEIF understands that, with the EMIR Refit, financial counterparties (FC) shall be solely responsible, and legally liable for reporting of OTC derivatives contracts on behalf of both counterparties. However, it is the responsibility of the non-financial counterparties (NFC-) to ensure that their LEI is correct (thus also valid and duly renewed), so that the FC can perform the reporting of OTC derivative transactions on their behalf.

That being said, in the Consultation Paper (p.15), it is also stated that *“...For that purpose, NFC- should renew their LEI when necessary to enable ongoing reporting. In case the LEI is not valid anymore, the FC will not be responsible for the incorrectness of the LEI”*. GLEIF suggests ESMA consider removing *“when necessary”* from this statement as ESMA underlines clearly that FCs will only be responsible for the correctness of the LEI of the NFC- only if the LEI of the NFC- is current and duly renewed. This further clarification is important for ensuring overall data quality and reducing duplicate efforts for correcting the erroneous data fields of a previously submitted report later on. Therefore, ESMA could consider revising the statement as *“...For that purpose, NFC- should renew their LEI according to the renewal and maintenance policies of the Global Legal Entity Identifier System to enable ongoing reporting.”*

GLEIF applauds ESMA’s clarification and precise indications about the validity of the LEI code in the Consultation Paper, under the sub-section 4.2.4. *Use of Legal Entity Identifiers*, and would like to provide comments for the *“Question 28: Do you foresee any issues in relation to inclusion in the new reporting standard that the LEI of the reporting counterparty should be duly renewed and maintained according to the terms of any of the endorsed LOUs (Local Operating Units) of the Global Legal Entity Identifier System?”* and *“Question 29: Do you foresee any challenges related to the availability of LEIs for any of the entities included in the Article 3 of the draft ITS on reporting?”*.

GLEIF fully agrees with the ESMA’s suggestion to add in the draft Regulatory Technical Standards (RTS) and Implementation Technical Standards (ITS) on reporting that when reporting a transaction with action type “New” the LEI of the “Reporting Counterparty ID” should be duly renewed and maintained according to the Global Legal Entity Identifier System standards. 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. As of Q1 of 2020, the renewal rate of LEIs in the European Union was 65.9%, compared to the 67.3% of the previous quarter. Therefore, any clarification and enforcement by ESMA for the renewal requirement would enhance data quality in reporting thereby enabling ESMA to conduct its market analyses and also reduce transaction rejection rates.

Regarding Question 29, GLEIF does not see any challenges related to the availability of LEIs for entities listed in Article 3 of the Annex V. GLEIF appreciates ESMA's clarification that a counterparty to a derivative transaction shall ensure that the reference data related to its ISO 17742 LEI code is renewed in accordance with the terms of any of the accredited Local Operating Units of the Global LEI System.

*GLEIF also would like to comment for the "Question 47: In relation to the format of the "client code", do you foresee any difficulties with reporting using the structure and format of the code as recommended in the CDE guidance? If you do, please specify the challenges."*

As clearly stated in the Consultation Paper, under the current ITS and RTS on reporting, the reporting party of the contract, the beneficiary of the contract and the other counterparty of the contract must be identified with the LEI, unless the other counterparty is a private individual, in which case a client code must be used in a consistent manner to identify that individual. In the Consultation Paper, ESMA proposes to implement the Critical Data Elements (CDE) guidance by requiring reporting of a client code in the format of "LEI of Reporting Counterparty + Internal Identifier of Individuals". The second option proposed by ESMA for identifying individuals is to replace the Client Code with the National Client Identifier as required in MIFIR transaction reporting. ESMA highlights that given the EMIR data is open to many authorities, not only NCAs, use of personal data can create data privacy issues for the second option.

According to the [LEI Regulatory Oversight Committee \(LEI ROC\)](#), 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. For individuals who are not falling into the "individuals acting in business capacity" category and thereby not eligible for an LEI, GLEIF thinks that ESMA's first alternative, combining the LEI of the reporting entity and internal identifier of individuals, can be used instead of the "client code" for individuals. Adoption of this alternative would link the individual with the reporting counterparty in transaction reporting. This alternative could also avoid any possible data privacy issues that can arise by using the National Client Identifier.

Under sub-section "4.4.2.2. Update of the identifier", ESMA suggests that specific guidelines on update of the LEI related to mergers, acquisitions or other corporate structuring events should be included in the Technical Standards. Welcoming ESMA's suggestion to provide clear guidelines in the Technical Standards on this matter, GLEIF would like to provide comments on the "Question 55: Do you see any other challenges related to LEI updates due to mergers and acquisitions, other corporate restructuring events or where the identifier of the counterparty has to be updated from BIC (or other code) to LEI because the entity has obtained the LEI?".

GLEIF does not see any challenges or obstacles related to LEI updates due to merger and acquisitions, other corporate structure events or where the counterparty identifier needs to be changed from BIC (or

other code) to an LEI. With the LEI ROC's policy on [the Legal Entity Events \(formerly referred to as "Corporate Actions"\) and Data History in the Global LEI System](#), the legal entity events specified in this policy will be tracked in an even more detailed manner. As of May 2020, GLEIF is at the stage of consulting the LOUs for the implementation of this policy. In line with these changes, new data elements will be introduced in the LEI Data Record to support the collection of data for all Legal Entity Events specified in this policy. For example, "Effective Date of the Change", meaning when Legal Entity Events become legally effective according to the Validation Authority, will be introduced in the LEI Record Set. The LEI Record Set also will be enhanced to include a new data element, Entity Creation Date. The capability to track the speed of updates to records will be implemented as a data quality measure.

Relative to the "4.4.14 Reporting of derivatives on crypto-assets", GLEIF would also like to comment on the *Question 97: Would you see the need to add further reporting details or amend the ones envisaged in the table of fields (see Annex V) in order to enable more accurate, comprehensive and efficient reporting of derivatives on crypto-assets?*

GLEIF agrees with findings in the [ESMA's Advice on Initial Coin Offerings \(ICOs\)](#) that certain crypto-assets may qualify as financial instruments and the risks remain unaddressed if these crypto-assets fall outside of the regulated space. In this report, ESMA 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. Given this business environment, GLEIF thinks it is reasonable that parties to derivatives on crypto-assets are covered by the regulatory framework. Given such parties issuing ICOs are subject to EMIR reporting obligations, identification of these 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. Additionally, recently, the LEI is adopted as an optional field in inter-VASP (Virtual Asset Service Provider) Messaging Standard IVMS101. The interVASP messaging standard is intended for use in the exchange of required data between VASPs.