

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Securities and Markets Authority (ESMA) on the MiFIR review report on the obligations to report transactions and reference data

November 2020

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Securities and Markets Authority (ESMA) on the MiFIR review report on the obligations to report transactions and reference data. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

First, GLEIF would like to respond to *Question 20: Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.*

GLEIF welcomes ESMA's proposal to explicitly refer to the LEI in the Level 1 text, under Article 26(6) of Markets in Financial Instruments and Amending Regulation (MiFIR), concerning the identification of parties.

An explicit LEI requirement for all parties on whose behalf the investment firm has executed the transaction would bring further clarity on the transaction reporting requirements. Therefore, GLEIF supports ESMA's proposal and further clarification in Article 26(6) as "*In reporting the designation to identify the parties as required under paragraphs 3 and 4, investment firms shall use a **ISO 17442 legal entity identifier code** established to identify parties that are **eligible for the LEI regardless of their legal status and the way in which they are financed** and a **national identifier** established to identify parties that are natural persons **and are not eligible for the LEI**. **Clients shall be categorized according to Article 24 of Directive 2014/65/EU.***"

GLEIF would also like to provide its comments for *Question 32: Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.*

GLEIF appreciates ESMA's efforts to align the MiFID and EMIR Refit reporting frameworks and associated data collection.

GLEIF agrees with ESMA's proposal to make a clear reference to the LEI and other global standards such as the International Securities Identification Numbers (ISINs) and Classification of Financial Instruments (CFI) under Article 26(9).

As also shared with ESMA by GLEIF in [its response](#) to the Consultation on technical standards on reporting, data quality, data access and registration of Trade Repositories under EMIR REFIT, mandating the renewal of the LEI reference data for all parties required in transaction reporting 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.

Lastly, GLEIF would like to share its comments for *Question 33: Do you foresee any challenges with the outlined approach? If yes, please explain and provide alternative proposals.*

GLEIF entirely agrees with ESMA that the LEI of the issuer allows for a unique and persistent identification of issuers of financial instruments. Without this identification, National Competent Authorities cannot identify the legal issuers of financial instruments and determine which authority is responsible for overseeing that particular financial instrument.

As rightly pointed out by the ESMA, while the obligation for EU investment firms to identify their clients with the LEI is enshrined in the MiFIR Level 1 framework, this is not the case for the LEI of issuers. Therefore, GLEIF welcomes ESMA's proposal to amend the third paragraph of Article 27(1) of MiFIR and suggests a very minor edit to read *"...In reporting the designation to identify the issuer, trading venues and SIs shall use a **ISO 17442** legal entity identifier **code** established to identify issuers that are legal entities. Issuers of financial instruments shall provide their legal entity identifier to the trading venues or Systematic Internalisers where their instruments are traded or admitted to trading."*

Additionally, GLEIF would like to extend its support to ESMA is for considering the necessary legislative changes required to accommodate the inclusion of the LEI of the fund manager in the reporting requirements as specified in Regulatory Technical Standards 23.

GLEIF would like to emphasize that with the Regulatory Oversight Committee's (ROC) policy on [Fund Relationships and Guidelines for the registration of Investment Funds in the Global LEI System](#), the ROC adopted the term "Fund Management Entity" rather than using "Fund Manager" because the objective is to identify the relationships between two entities: (i) the fund and (ii) the legal entity which is legally responsible for the constitution and operation of a fund. The objective here is not to identify the relationship of a fund with the natural person that performs investment management tasks and is sometimes described as "fund manager" or "portfolio manager". In the Global LEI System, based on the scope specified in the ISO 17442 standard, the term "legal entity" is broad enough to cover the eligibility of Fund Management Entities to obtain an LEI. The "Fund Management Entity" is defined as *"A legal entity is considered as the main management entity of a fund when it is legally responsible for the constitution and operation of the fund. Such responsibility will include the day-to-day management of a fund's investments and management of a fund's risks, or the appointment of others for that purpose. In the latter case, the entity to which these functions may have been delegated is not considered to be a Fund Management Entity."*

GLEIF proposes that ESMA could consider a similar meaning of the "fund manager" and the inclusion of the LEI requirement for fund managers in its proposed legislative changes. GLEIF is at ESMA's disposal for providing more information on the ROC policy, if requested.