

## Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Commission Public Consultation on the Review of the Alternative Investment Fund Managers Directive (AIFMD)

January 2021

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Commission Public Consultation on the Review of the Alternative Investment Fund Managers Directive (AIFMD). GLEIF will focus its comments on how the Legal Entity Identifier (LEI) mandate for AIFs and AIFMs can help to reduce financial stability risks and contribute to the investor protection by making fund information easily accessible, interlinked and cross-referenced for investors.

First, GLEIF would like to respond to the *Question 36. “Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?”*.

According to the AIFMD, AIFMs must make available to prospective investors a description of each managed/marketed AIF’s investment strategy, types of assets invested in, applicable investment restrictions, use and restrictions on the use of leverage, delegation arrangements, valuation procedures and pricing methodology, liquidity risk management and redemption policy, all fees, charges and expenses, any preferential treatment for certain investors and the latest annual report.

Although this level of disclosure helps investors to make educated decisions, as highlighted as one of the obstacles in front of the Capitals Market Union and Digital Single Market, investors still have difficulties tying all of these components together via a unique global identifier. This is particularly relevant for retail investors. Although GLEIF appreciates Commission’s efforts to create the European Single Access Point (ESAP), where the information for AIFs and UCITS will be added in the by 2025 and create a single platform with easy access for investors, still harmonization of data elements to be disclosed plays an important role.

Professional investors are deemed to be sophisticated enough to evaluate the merits of an investment proposition and to bear the assumed risks. However, they still need correct and relevant information in order to conduct due diligence and to monitor the performance of the investments made. A number of studies carried out before the adoption of the AIFMD indicated dissatisfaction among institutional investors with the lack of transparency from hedge fund managers. Some observed that the professional investors also request additional information or in different formats. Different formats of information and language barriers prevent interoperability and usability of data.

Given due diligence before any investment starts with identification of the entity/fund that is considered to be invested, GLEIF suggests that mandating the LEI for AIFs and AIFMs could (i) facilitate the due diligence process of investors; (ii) facilitate investors to interlink and cross-reference data in a machine readable fashion and help them to better evaluate the investment proposition and risks; (iii) remove investors’ need to request identification documents in different formats thereby accelerating the investment decision making process.

Second, GLEIF would like to respond to Question 63. *“Should the identification of an AIF with a LEI identifier be mandatory?”* and Question 63.1 *“Please explain your answer to question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement.”*

GLEIF agrees that the identification of an AIF with a LEI identifier should be mandatory.

As noted in a [letter](#) sent to European Commission Executive Vice-President Dombrovskis, currently there is a gap in identifying and reporting AIFs and AIFMs. Additionally, European Securities and Markets Authority (ESMA) reiterates the Commission fitness check's findings on reporting on the need to close the data gap on mandatory reporting of the LEI. The provisions of the AIFMD, do not, at least directly, impose an obligation upon AIFMs and their AIFs to acquire a LEI. Therefore, reporting is foreseen only where available in the ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, which raises enforcement issues. This results in the availability of LEI in the ESMA Register for only 16% of the AIF managers.

In another [letter](#) sent by Head of the European Systemic Risk Board Secretariat Francesco Mazzaferro to ESMA, the ESRB highlighted that around half of funds reporting under AIF Managers Directive (AIFMD) do not report or possess an LEI, and this missing LEI requirement for AIFs and UCITS limits risk exposure analysis and causes regulatory fragmentation in the European Union. ESRB mentioned that this is particularly crucial for the analysis of interconnectedness, the understanding of complex group structures or when linking AIFMD data with other data sources. For example, when trying to combine data collected through AIFMD and EMIR to explore exposures of investment funds on derivatives markets, the ESRB analysis shows that approximately 25% of funds which report trading derivatives under AIFMD do not report LEIs. ESMA also highlighted the importance of LEI reporting in response to the previous consultation on the fitness check on supervisory reporting.

The Commission Staff Working Document [“Assessing the application and the scope of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers”](#) highlights that there also were suggestions from some National Competent Authorities (NCA) to make the use of the LEI for AIF or AIFMs mandatory.

GLEIF appreciates all this support from regulators and NCAs for extending the LEI mandate for AIFs and AIFMs. GLEIF agrees with the Commission that a mandatory LEI requirement for AIF or AIFMs would help data usage and comparability in the Union and permit better matching and merging of the AIFMR data with the data reported under European Market Infrastructure Regulation (EMIR), Securities Financing Transactions Regulation (SFTR) or other Union legislation and leading to better data analysis.

Bringing the LEI mandate for AIFs and AIFMs would also be a significant step towards responding to the European Systemic Risk Board's [Recommendation](#) of 24 September 2020 on identifying legal entities (ESRB/2020/12):

*“The Commission is **recommended to propose that Union legislation incorporates a common Union legal framework** governing the identification of legal entities established in the Union that are involved in financial transactions by way of a legal entity identifier (LEI)...” and until then*  
*“...the relevant authorities require or, where applicable, continue to require, all legal entities involved in financial transactions under their supervisory remit to have an LEI; 2. **the authorities, when drafting, imposing, or amending financial reporting obligations include or, where applicable, continue to include, in such obligations an obligation to identify by way of an LEI:** (a) the legal entity subject to the reporting*

*obligation; and (b) any other legal entity about which information must be reported and which has an LEI”.*

Considering the objectives of the Capitals Market Union to make European firms and funds attractive to investors, with the LEI, the Commission can avoid fragmented, inconsistent entity identification formats, language barriers and establish a homogenous identification obligation for AIFs and AIFMs vis-à-vis investors.

Today, the LEI is already required in EU regulatory reporting regime for entities subject to the EMIR, MIFID II, MAR, CRR, SFTR, Solvency II, AIFMD, CRAR, CSDR, Transparency Directive, Securitization Regulation, and Prospectus Regulation.

For a number of entities who do not have an LEI despite above-listed regulatory frameworks within the European Union, GLEIF would like to provide an update on the costs and its work with financial institutions for reducing the cost of the LEI and shifting the responsibility of obtaining and maintaining an LEI from registrants to financial institutions, to the benefit of both parties. Today, the lowest cost of obtaining an LEI is 40 Euros. Under the [Validation Agent framework](#), GLEIF pilots an operating model where financial institutions issue an LEI for each onboarded client through partnering with accredited LEI Issuing Organizations.

The Validation Agent Framework empowers both sell-side and buy-side financial institutions to leverage their KYC, AML and other regulated business-as-usual onboarding processes, to obtain a LEI for their customers during initial onboarding or a standard client refresh update. In other words, financial institutions acting as Validation Agents can liaise with the LEI Issuer on its client’s behalf to ‘validate’ key identity data, such as the legal name and business registry information, confirming that these checks and processes have already been performed. GLEIF recently [announced](#) that J.P. Morgan, one of the largest global banks, has become the first Validation Agent in the Global LEI System.

GLEIF would like to respond to Question 64. *“Should the identification of an AIFM with a LEI identifier be mandatory?”* Question 64.1 *“Please explain your answer to question 64, presenting benefits and disadvantages as well as costs associated with introducing such a requirement”.*

The AIFMD imposes supervisory reporting obligations on the AIFMs as opposed to their managed AIFs. GLEIF thinks that the identification of an AIFM with a LEI should be mandatory, as for the AIFs. Please see GLEIF’s response to Question 63 for benefits and costs associated with the introduction of the LEI requirement.

The legal reporting obligations for registered and authorized AIFMs cover the main instruments in which their managed AIFs are trading, the principle exposures and the most important investment concentrations of the AIFs. A full scope AIFM must report the principal markets in which the respective AIFs trade as well as risk profiles of individual AIFs, including market risk, counterparty risk and other risk aspects of the AIFs. Identification of both AIFs and AIFMs with the LEI can help AIFMs to report their exposures to AIFs in a consistent and standardized manner. In return, National Competent Authorities collecting these reports can aggregate and consume data in a more effective way and enhance their system risk monitoring.

As highlighted by the Financial Stability Board, the markets for leveraged loans and collateralized loan obligations have grown significantly in the US and to a lesser extent in the EU in recent years. The role of

non-bank financial institutions in the leveraged loan and collateralized loan obligations markets has increased. The information on indirect linkages between banks and non-banks is missing making it difficult to appraise systemic implications of the existing interconnectedness. As highlighted by the European Systemic Risk Board's [Recommendation](#) of 24 September 2020 on identifying legal entities (ESRB/2020/12) the clear identification of contractual parties in a network of global financial contracts processed electronically at a very high speed permits authorities to make use of existing technologies to analyze interconnectedness, identify potential chains of contagion, and track market abuse for financial stability purposes. The LEI has also become critical for connecting existing datasets of granular information on entities from multiple sources.

Therefore, GLEIF suggests that the LEI mandate should cover both the AIFs and AIFMs under the revised AIFMD.

GLEIF would like to respond to *“Question 65. Should the use of an LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF’s portfolio be mandatory for the Annex IV reporting of AIFMR?”* and *“Question 65.1 Please explain your answer to question 65, presenting benefits and disadvantages as well as costs associated with introducing such a requirement. Please explain what other data field(s) should be added to the supervisory reporting template, providing information on the benefits, disadvantages and costs of implementation.”*

GLEIF suggests that the LEI should be added in the Annex IV reporting template of the AIFMR as follows:

- Add the LEI under “Detailed list of all AIFs which the AIFM manages to be provided on request for the end of each quarter” and remove fund identification code;
- Add the LEI under “AIF-specific information to be provided” for identifying “(2) Fund Manager”, “(3) Fund identification code”, “(6) Identification of prime broker(s) of the AIF” and remove any references to where available;
- Add the LEI under “10 principal exposures of the AIF at the reporting date (most valuable in absolute terms)” and “5 most important portfolio concentrations” for identifying “Counterparty”;
- Add the LEI under “Principal markets in which AIF trades”;
- Add the “AIF LEI”, “Fund Manager LEI” and “Broker LEI” under “AIF-specific information to be provided to competent authorities” for identifying “AIF”.

A consistent LEI requirement would help harmonization of EU regulatory reporting regimes and to remove existing data gaps.

GLEIF would like to respond to Question 69. *“Does the AIFMR template effectively capture links between financial institutions?”* and Question 69.1 *“If not, what additional reporting should be required to better capture inter-linkages between AIFMs and other financial intermediaries? Please provide your suggestion(s) providing information on the costs, benefits and disadvantages of each additional reporting.”*

The current AIFMR reporting template do not use the LEI; therefore it does not provide an effective means to capture and cross reference data between financial institutions. As highlighted by GLEIF in its responses to 63, 64 and 65, the LEI, a global, digital, machine-readable standard has become critical for connecting existing datasets of granular information on entities from multiple sources and present significant benefits both for investors and supervisory authorities.

Addition of the LEI into the AIFMR reporting template can effectively display the interconnectedness among different entities and help supervisory authorities to monitor systemic risks. As highlighted by the ESRB's [Recommendation to the Commission](#), first, if the entity subject to the reporting obligation were required to hold an LEI to identify itself, this would allow authorities to uniquely identify entities across different reporting frameworks. Second, the LEI should be used in a more systematic and comprehensive way to identify other entities for which the reporting entity is also required to report information. Such entities include – but are not limited to – issuers of financial instruments, counterparties to financial transactions, and related entities.

GLEIF would like to respond to the Question 71. *“What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability?”*

As highlighted in detail in GLEIF's response to Question 65, GLEIF suggests that the template is updated to include the “LEIs of all counterparties to provide detail on exposures”.

A consistent and standardized LEI requirement for AIFs, AIFMs, brokers and counterparties would help to improve information sharing among the relevant supervisors.