

## **Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Securities and Markets Authority (ESMA) on the Consultation Paper Draft technical standards on the notifications for cross-border marketing and cross-border management of Alternative Investment Funds (AIFs) and Undertakings for Collective Investment in Transferable Securities (UCITS)**

September 2022

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Securities and Markets Authority (ESMA) on the Consultation Paper Draft technical standards on the notifications for cross-border marketing and cross-border management of Alternative Investment Funds (AIFs) and Undertakings for Collective Investment in Transferable Securities (UCITS). GLEIF will focus its comments on how a full Legal Entity Identifier (LEI) requirement (not on an if available basis) in the RTS and ITS and associated common templates could facilitate cross-border management of UCITS and AIFs in a consistent manner, reduce potential discrepancies that can stem from non-standardized identification of these entities and enhance the exchange of information between National Competent Authorities (NCAs).

First, GLEIF would like to respond to Q1. *“Do you agree with the content of the provisions of the first chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by a management company? If not, please justify your position and make proposals of amendments.”*

GLEIF suggests that under Chapter I, Article 2, “Information to be communicated under Article 18(1) and (2) of Directive 2009/65/EC”, management entities should be requested to provide the LEI of the management company in addition to the name and address of the management company. At the moment, Article 2 does not have any reference to the LEI.

In March 2022, GLEIF implemented the [Policy on Fund Relationships and Guidelines for the registration of Investment Funds in the Global LEI System](#) required by the [Regulatory Oversight Committee \(ROC\)](#). Mr. Fabrizio Planta, Head of Markets and Data Reporting Department at the European Securities and Markets Authority represents ESMA in ROC and serves as a Vice-Chair in the ROC Executive Committee.

Given that host member states will need to identify the management entity, mandating the LEI for these management companies will allow NCAs to better evaluate the investment propositions and risks.

GLEIF would like to respond to Q2. *“Do you agree with the content of the provisions of the second chapter of the draft RTS as regards the information to be notified in relation to the provisions of activities in a host Member State by an AIFM? If not, please justify your position and make proposals of amendments.”*

First, GLEIF welcomes the inclusion of the LEI as part of Chapter II, Article 5 “Information to be notified in notifications under Article 33(2) of Directive 2011/61/EC”. However, GLEIF suggests that “if applicable” condition for the LEI requirement would reduce the effectiveness of standardization efforts in information notification for AIFs. Given that AIFMD is under review, GLEIF expects that the final AIFMD will make the LEI mandatory in funds’ and fund managers’ reporting exercises.

In a [letter](#) sent by Head of the European Systemic Risk Board Secretariat Francesco Mazzaferro to ESMA, the ESRB highlighted that around half of the funds reporting under the 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.

Therefore, GLEIF invites ESMA to take into consideration these parallel developments and requests for a more consistent and strong LEI requirement for AIFs and AIFMs. Specifically, GLEIF suggests ESMA removes “if applicable” from Article 5 and adds the LEI as one of the required information under Article 6 “Information to be notified for the purposes of the notifications under Article 33(3) of Directive 2011/61/EU”.

GLEIF would like to respond to Q3. *“Do you agree with the template notification letter set out in Annex I of the draft ITS? If not, please specify the items for which you foresee a different approach and make an alternative proposal.”*

Under Annex I, “Model notification letter for the cross-border marketing of UCITS under Article 93(1) of Directive 2009/65/EC”, for the identification of the management company or internally managed UCITS, the LEI is requested on an if available basis.

GLEIF suggests that given these model notification letters prepared by ESMA aim to standardize information exchange and reduce discrepancies across the Union, bringing a full LEI requirement would be an essential step for achieving this objective.

Bringing the LEI mandate for UCITS, 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”.*

Therefore, GLEIF suggests the phrase “if available” should be removed from the LEI requirement to identify management companies or internally managed UCITS.

GLEIF would like to respond to Q6. *“Do you agree with the template notification letter set out in Annex II of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.”*

Under Annex II, “Model notification letter to be submitted by a UCITS management company to the competent authorities of the UCITS home Member State under Article 20(1) of Directive 2009/65/EC”, management company LEI is requested on an if available basis.

GLEIF would like to reiterate that a full mandate for the LEI can facilitate information exchange on the cross-border management of UCITS.

GLEIF would like to respond to Q7. *Do you agree with the template notification letter set out in Annex III of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.*

In Annex III, “Model notification letter for the marketing of AIFs under Article 31(2) of Directive 2011/61/EU and Article 31(1) of Regulation (EU) No 2015/760”, under Part 1 Information on the AIFM or internally managed AIF, there is a reference to the AIFM/internally managed AIF LEI on an if available basis for identification of these entities.

Under Part 2, “Information on the AIFs to be marketed in the home Member State of the AIFM”, the legal form of the AIF, the LEI of the AIF LEI (if applicable) and AIFM of the master AIF/or compartment (if different) are requested.

GLEIF suggests that similar to Annex I and II, an “if available” LEI requirement would hinder the standardization efforts that ESMA aims to achieve with these notification letters. A full LEI requirement would allow NCAs to collect and process legal entity information in a standardized, easy, quick and machine-readable manner. Since the LEI reference data contains information on the legal form of the entity, “legal form of the AIF” or master-feeder structures can easily be verified via the publicly accessible Global LEI Repository.

GLEIF would like to provide its comments for Q10. *“Do you agree with the template notification letter set out in Annex IV of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.”*

Similar to the LEI requirement based on “if available” basis in Annex I, II and III, Annex IV “Model notification letter for the cross-border marketing of AIFs under Article 32(2) of Directive 2011/61/EU

and Article 31(2) of Regulation (EU) No 2015/760” has a loose LEI requirement for the AIFM/internally managed AIF.

GLEIF suggests that a full LEI requirement would bring further precision, enable risk exposure analysis and reduce regulatory fragmentation in the European Union, as suggested by the ESRB. Moreover, from March 2022, information on investment fund master-feeder structures is being collected and published in the Global LEI Repository.

GLEIF would like to give examples from three EU Member States, namely France, Luxembourg and Ireland, on how the master-feeder relationship looks like within the LEI reference data:

1- ACI VINTAGE I (France)

<https://search.gleif.org/#/record/969500YRXOEMPE7U4Z80>

2- Henderson Park Real Estate Fund II USD Pool SCSp (Luxembourg)

<https://search.gleif.org/#/record/259400JOKIANDC771J04>

3- AlbaCore Partners III Feeder Fund (Ireland)

<https://search.gleif.org/#/record/254900W5B54MDU238V04>

As these examples demonstrate, the LEI reference data includes highly standardized legal entity name, legal form, entity creation date, legal and headquarters address, fund manager, master fund, and umbrella fund relationships that NCAs and ESMA could leverage by requiring the LEI in the notification letters and later analyses.

Lastly, GLEIF would like to comment on Q13. *“Do you agree with the template notification letter set out in Annex V of the draft ITS? If not, please specify the items for which you foresee a different approach and make alternative proposals.”*

The Annex V “Model notification letter to be submitted by an AIFM to the competent authority of its home Member State to manage AIFs established in other Member States under Article 33(2) of Directive 2011/61/EU” requests the AIFM LEI on an if available basis, similar to Annex I, II, III and IV.

GLEIF would like to reiterate that from March 2022, master-feeder, umbrella structure and fund management entity relationships have been added to the Global LEI Repository to facilitate a standardized collection of investment fund relationship information at the global level. Therefore, GLEIF invites ESMA to take advantage of this existing capability within the Global LEI System and take a forward step for standardization of reporting entities with the LEI within the scope of AIFMD and UCITS Directive.