

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the European Securities and Markets Authority (ESMA) second Consultation Paper for MiCA Implementation

December 2023

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the European Securities and Markets Authority (ESMA) on the second Consultation paper for MiCA implementation. GLEIF will focus its comments on the use of the legal entity identifier (LEI) to facilitate the verification and identification of counterparties involved in crypto asset transfers.

Firstly, GLEIF would like to provide comments to Question 48: *What transaction information can be retrieved in cases where a CASP execute the order on a third country platform/entity?*

As an interoperable, readily-available standard, the ISO 17742 Legal Entity Identifier (LEI) is a data element which can be retrieved by Crypto Asset Service Providers (CASPs) engaging in cross border transfers, providing a consistent and secure means to verify the identity of the counterparties involved in said transfer.

The global nature of the LEI means that it is available to all third country platforms or counterparties that are legal entities, providing suitable coverage.

Additionally, the verifiable LEI (vLEI) could be leveraged in such transactions as a means of establishing decentralised identification and verification of legal entities and the persons who represent them officially or functionally. By combining three concepts – the organization’s identity represented by the LEI, a person’s identity represented by their legal name, and the role that the person plays for the legal entity, vLEI credentials can be issued and become part of organizational wallets. Then vLEIs could be used to identify and verify digitally legal entities and persons acting on their behalf for transfers executed by CASPs.

It is important to also acknowledge the interlinks with the recast of the Transfer of Funds Regulation, which stipulates the additional data elements to be disclosed by entities seeking to process a crypto asset transfer, of which the LEI is a supplementary element. This would apply to transfers between entities operating in the Union, as well as between a EU based entity and an entity based in a third country.

Secondly, GLEIF would like to provide comments to Question 67: *Do you agree with ESMA’s conclusion that an issuer, an offeror or a person seeking admission to trading of crypto-assets should always be eligible for an LEI? If not, please provide a description of the specific cases*

The Global Legal Entity Identifier (GLEIF) welcomes ESMA’s conclusion that entities seeking admission to partake in the trading of crypto-assets should be eligible for an LEI, in line with the principle already in place for issuers, offerors, or persons seeking admission to trade under the MiFID/R framework.

The ISO 17742 LEI provides an efficient and secure means of verifying the identity of entities seeking to trade financial instruments, such as crypto assets. The introduction of the LEI would therefore further help enhance regulatory oversight by providing an efficient means for supervisors to exchange information on market actors.

GLEIF also welcomes the clarification raised by ESMA that the LEI shared with national authorities as part of the application process should be renewed accordingly with the local operating unit (LOU). Indeed, such step is crucial to ensure the underlying information associated with the LEI is up-to-date, ensuring more accurate due diligence checks.

Furthermore, GLEIF takes note of the additional clarifications provided by ESMA concerning which specific types of entities would be eligible for an LEI, and the references made to the regulatory oversight committee (ROC) online portal.

As a next step, it is important that future communications pertaining to the novel passport regime clarifies which entities should be eligible for an LEI, as well as the necessity to update the business information with the LOU on a regular basis.