

Response of the Global Legal Entity Identifier Foundation (GLEIF) to the Australian Securities and Investments Commission (ASIC) Consultation Paper for Proposed Changes to Simplify the ASIC Derivative Transaction Rules (Reporting): First Consultation March 2021

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the Australian Securities and Investments Commission (ASIC) Consultation Paper for Proposed Changes to Simplify the ASIC Derivative Transaction Rules (Reporting): First Consultation. GLEIF will focus its comments on the use of the Legal Entity Identifier (LEI) in the consultation.

First, GLEIF would like to respond to *“E2 We propose to include in the ASIC Rules the data elements related to counterparties and beneficiaries set out in Table 8. E2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. E2Q3 In relation to ‘reporting entity’, do you consider that this should be reported in all circumstances or only reported where it is a different entity to ‘counterparty 1 (reporting counterparty)?”*

GLEIF supports the ASIC’s approach to use the Critical Data Elements (CDE) in the ASIC Derivative Transaction Rules, thereby reducing cost and complexity for industry, improve data quality for the Australian regulators, bring transparency to the derivatives transactions and improve inter-jurisdictional data exchange.

The proposal of the ASIC to remove multiple ‘name’ elements and extraneous elements whose information content is fully or substantially provided by another element will simplify the reporting template for firms.

GLEIF welcomes ASIC’s proposal to require the LEI as the only accepted identifier for Counterparty 1 (reporting counterparty), Counterparty 2, Beneficiary 1 and Execution Agent of Counterparty 1 in Table 8. GLEIF suggests ASIC make it clear that the LEI is the only accepted identifier also for Reporting entity and Broker ID. The current representation in Table 8 creates an unambiguous interpretation for these two entities (Reporting entity and Broker ID). According to the Table 8, reporting entity could have both ASIC identifier and the LEI. Similarly, for the Broker ID, GLEIF invites ASIC to make the LEI requirement clear, instead of *“a unique code (i.e. LEI)”*. Mandating the LEI for both the Reporting entity and Broker ID data fields is also consistent with the European Securities Market Authority’s (ESMA) European Market Infrastructure Regulation (EMIR) Validation rules.

GLEIF thinks that the reporting entity’s LEI should be reported in all circumstances. In the validation rules to be published with the second consultation in April 2021, ASIC could consider creating logic in the reporting template such as *“is the reporting entity counterparty 1”*, then if *“yes”* the reporting entity’s LEI would not be requested in a separate field. If *“no”*, then the reporting entity shall report its LEI.

GLEIF would like to respond to *“E3 We propose to include in the ASIC Rules the data elements for ‘direction’ that make the same elections as proposed by ESMA—that is, the data elements ‘Direction 1’, ‘Direction 2 —Leg 1’ and ‘Direction 2—Leg 2’: see Table 10. E3Q1 Do you agree with this proposal? In*

your response, please give detailed reasons for your answer. E3Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 10? In your response, please give detailed reasons for your answer.”

In the CDE Guidance, ‘direction’ refers to the ‘side’ taken by each party to the transaction—i.e., buyer/seller, payer/receiver. GLEIF suggests that the ASIC make it clear in the reporting template that the LEI is the only accepted identifier for “buyer identifier”, “seller identifier”, “payer identifier – Leg1”, “payer identifier Leg 2”, “receiver identifier Leg 1” and “receiver identifier Leg 2”.

GLEIF would like to respond to “E19 We propose to include in the ASIC Rules the non-CDE data elements set out in Table 27. E19Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. E19Q2 Do you consider that you will have particular interpretation or implementation issues with the data elements set out in Table 27? In your response, please give detailed reasons for your answer.”

In the Table 27, the ASIC suggests requiring the “{ASIC} Identifier of the entity submitting the data to the derivative trade repository” for the “Report Submitting Entity ID”. For harmonization of data reporting template and simplification of data aggregation by ASIC, GLEIF suggests that the LEI is required for the “Report Submitting Entity ID” field, instead of “ASIC identifier” of the entity.

GLEIF would like to respond to “E21 We propose to develop and prescribe technical specifications to the ASIC Rules as a writing that is applied under the ASIC Rules as in force or existing from time to time. E21Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. E21Q2 Do you suggest that we should model the form of a technical specification on one or more existing technical specification related to transaction reporting? In your response, please give detailed reasons for your answer.”

GLEIF agrees with ASIC’s proposal to develop and prescribe technical specifications to the ASIC Rules as a writing that is applied under the ASIC Rules. GLEIF thinks that ASIC could consider ESMA’s EMIR Validation Rules as model for its technical specifications related to transaction reporting. When reporting, counterparties should take into account the validation rules applied by Trade Repositories to ensure that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards.

A prescriptive and precise definition of data elements required to be reported for all values would help to create an unambiguous, standardized and consistent data reporting regime in Australia.

GLEIF welcomes ASIC’s proposal to amend the ASIC Rules pertaining to the LEI:

- (a) require that entity identifiers must be valid and duly renewed LEIs (other than for entities that are natural persons not acting in a business capacity or otherwise not eligible for a LEI); and
- (b) require that transactions that have been reported with entity identifiers that are not valid and duly renewed LEIs have their transaction information updated to include a valid and duly renewed LEI.

GLEIF would like to respond to “F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer. F1Q2 Do you consider that you will have particular interpretation or

implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.”

First, GLEIF applauds ASIC’s proposal to require valid and duly renewed LEIs for all eligible legal entities. Accepting the LEI as the only identifier and removal of the ability for reporting entities to report using either an international business entity identifier issued by Avox Limited (AVID) or a SWIFT Business Identifier Code (BIC) will enable ASIC to improve processing of counterparty data, improve its data aggregation capabilities and its risk management.

The figures provided by the ASIC shows that 64% of the counterparties already report their LEI for new transactions as of October 2020 versus 46% counterparties with a LEI in April 2018. This shows an uptake of the LEI by counterparties over the years. It is likely the coverage rate is even higher. Using the GLEIF API, it is possible to complete fuzzy searches using legal entity name and jurisdiction location to determine if even more counterparties can be identified by an LEI but do not provide it in their reporting. GLEIF would be pleased to support ASIC in further investigation of this topic.

Both the quality and accuracy of LEI data will be maintained as reporting entities renew and keep current their LEI entity and relationship data. GLEIF expects that over time the LEI will be broadly used for multiple public and private purposes and for that reason only valid and renewed LEIs will ensure that the LEI becomes a broad public good as expected by the Financial Stability Board (FSB).

ASIC states in the consultation that in practice, a LEI is reported as the entity identifier for reporting entities, brokers, CCPs, clearing members and trading platforms as financial services providers. The LEI has been less commonly reported as the identifier of the non-reporting counterparties who are not financial services providers.

GLEIF would like to bring into ASIC’s attention the recent [Recommendation of the European System Risk Board](#) (ESRB) for identifying legal entities with the LEI. The ESRB Recommendation states that *“Financial contagion occurs because **financial and non-financial entities are linked through financial transactions, and by financial assets and liabilities. Channels for contagion are created by direct exposure through links between the financial and the non-financial sectors as well as by indirect exposure where entities form part of the same group. Contagion between financial and non-financial entities can spread in both directions and is more dramatically demonstrated during crises. Thus, a financial crisis can spread from the financial to the non-financial sector, as demonstrated by the failure of the investment bank Lehman Brothers in 2008; an economic crisis can spread from the non-financial to the financial sector, originating, for example, in the over-indebtedness of non-financial entities or in any severe crisis of supply or demand. The economic and financial effects of the crisis caused by the coronavirus (COVID-19) pandemic offer an example of the close interlinkages between the non-financial and financial sectors. Enabling the correct identification of non-financial entities is therefore equally as important as the correct identification of financial entities, to ensure financial stability”***.

Based on these direct links between the financial and non-financial sectors, the ESRB recommends to develop a legal framework regulating LEI use in the European Union to achieve coherent implementation across all sectors of the economy, both financial and non-financial sectors; thereby maximizing the benefits arising from the use of the LEI. Meanwhile, and until such a framework is adopted, EU authorities supervising them should, to the extent permitted by law, require entities to have a LEI.

Taking this opportunity, GLEIF would like to provide an update to ASIC regarding its work to reduce the cost of the LEI and shift the responsibility of obtaining and maintaining a LEI from registrants to financial institutions, to the benefit of both parties. Under the [Validation Agent framework](#), GLEIF pilots the applicability of financial institutions issuing an LEI for each onboarded client through partnering with accredited LEI Issuing Organizations for a reduced LEI fee.

The Validation Agent Framework empowers banks 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, thereby confirming that these checks and processes have already been performed. GLEIF [announced](#) in October 2020 that the J.P. Morgan, one of the largest global banks, has become the first Validation Agent in the Global LEI System.

GLEIF would be interested in working with financial institutions or intermediaries in Australia to test the applicability and usefulness of the Validation Agent model.

Lastly, GLEIF would like to respond to *"We propose to amend the ASIC Rules to ensure that transactions with Australian retail clients are reportable transactions and to clarify the scope of reporting for foreign subsidiaries of Australian entities. We propose to amend the ASIC Rules to:*

(a) ensure that transactions with Australian retail clients are reportable transactions with specific rules text to be proposed in the second round of consultation; and

(b) to clarify the scope of reporting for foreign subsidiaries of Australian entities with specific rules text to be proposed in the second round of consultation.

G2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer."

GLEIF understands that ASIC's scope of reporting entities is less comprehensive compared with the scope of entities under reporting obligation set out by the CFTC in the United States and ESMA in the European Union.

GLEIF suggests ASIC to include end users and trades even they are not entered into or booked in Australia. For data integrity and aggregation, GLEIF also recommends ASIC to reconsider its possible relief decision for the foreign subsidiaries of Australian reporting entities who are under the scope of reportable transactions. Foreign subsidiaries can obtain a LEI easily and at low cost, regardless of where they are located.