

“Who Is Who?” and “Who Owns Whom?” - Are You Ready for LEIs?

“Who is who?” and “who owns whom?” These are the two key questions answered by the information to be gathered on a worldwide basis through the Global Legal Entity Identifier (LEI) System with respect to legal entities participating in global financial transactions.

Currently, US-based legal entities participating in swap market transactions in the US, trading derivatives with EU entities on EU-regulated markets and, from January 3, 2018, trading with certain EU investment firms, must be prepared to provide this information (outlined below) and for it to be publicly available. While in active use in derivatives markets, authorities are extending or seeking to extend the Global LEI System to other sectors such as banking, securities issuances, investment holdings for insurance and funds, credit reporting, and consumer finance. This article provides an outline of the LEI regimes in the EU and the US as currently applicable to US-based entities.

LEGAL ENTITY IDENTIFIER

What is it?

The Legal Entity Identifier is a reference code for eligible legal entities. More specifically, it is a 20-digit alpha-numeric code designed to uniquely identify legally distinct entities that participate in financial transactions in global financial markets. Each assigned LEI stays with the entity for the term of its existence. They are valid for one year and must be renewed annually. There is no sharing; each legal entity must obtain its own LEI (i.e. subsidiaries and sub-funds cannot rely on their parent or fund LEIs). The LEI code is linked to reference data for each entity.

Who is who?

The reference data for each entity currently includes what is referred to as “Level 1 data”. It provides the answer to the question, “who is who?” and includes the official name of the legal entity, registered address and address of its headquarters, country of formation, the codes for the representation of names of countries and their subdivisions, and the date of the first LEI assignment, last update, and expiry (if applicable).

Who owns whom?

“Level 2 data” which has been required to be collected since May 9, 2017, provides the answer to the question, “who owns whom?” Level 2 data enables the identification of the direct and ultimate parents of a legal entity and vice versa. Subject to limited exceptions, legal entities that are issued an LEI must report their “direct accounting consolidating parent” and their “ultimate accounting consolidating parent.”

Exceptions to Level 2 data reporting are (i) the entity has no parent entity, (ii) the child legal entity opts out of reporting for exceptional reasons, and (iii) parent entities do not have LEIs.

PURPOSE

The system that has become known as the Global LEI System was first proposed in 2010 as a global identification system for legal entities in response to the 2008 financial crisis to ensure that every counterparty to a financial transaction has a unique code enabling such transactions to be monitored on a global cross-border basis. In

November 2011, the G20 called for the establishment of the Global LEI System. The system is intended to permit immediate and accurate identification of all parties to financial transactions by connecting to an entity's key reference information as outlined above, enabling clear and unique identification of legal entities participating in financial transactions. According to the Financial Stability Board (FSB), it underpins "multiple financial stability objectives" such as improved risk management in firms, better assessment of micro and macro prudential risks, and promotion of market integrity while containing market abuse and fraud. In addition it supports high quality and accuracy of financial data overall.

"LEGAL ENTITY"

For LEI purposes, the term "legal entity" is broadly defined and includes but is not limited to unique parties that are legally or financially responsible for the performance of financial transactions or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way, for example, by trust, partnership, or contractual. The definition excludes natural persons, but includes individuals acting in a business capacity as well as governmental organizations and supranationals.

GLOBAL REACH

The Regulatory Oversight Committee (ROC), a group of over 70 public authorities and 19 observers from more than 50 countries, is tasked with coordinating and overseeing a worldwide framework for the Global LEI System. This article focusses on the impact of the system on US entities as affected by legislative efforts in the EU and the US. To date, the LEI system is in the process of being implemented in the EU such that if an entity is engaged in financial transactions, there is a strong likelihood such entity will be required to have an LEI (see below). Financial regulators in the US, Canada, Australia, Singapore, and many other countries

have adopted or are in the process of adopting reporting rules requiring (or in certain cases, recommending) entities obtain and use LEIs. A high level summary of the EU and US regimes to date as they may affect US entities is set forth below.

EUROPEAN UNION

The requirements (or recommendations in certain cases) to use LEIs are found in relevant European Union financial services legislation including, among others, European Markets Infrastructure Regulations (EMIR), Markets in Financial Instruments Regulations (MiFIR), Markets Abuse Regulations, Capital Requirements Regulations, and Solvency II Directive. Regulations currently relevant to US players are EMIR and MiFIR as further described below.

- Derivatives Trading - From **November 1, 2017**, EMIR 648/2012 requires reporting of all derivatives to EU trade depositories and all such trade reports must identify participating entities by their LEIs. EU trade depositories are required to reject trade reports that fail to include LEIs (irrespective of whether they pertain to EU or non-EU market participants).
- Clients of Investment Firms - From **January 3, 2018**, all EU entities and any *non-EU entity that trades with an EU entity* will be required under the Markets in Financial Instruments Directive under MiFIR (MiFID II) to have an LEI in order to participate in transactions in financial instruments. In summary, MiFID II and MiFIR will require any entity using an investment firm for a service that will result in a transaction reporting obligation under MiFIR 600/2014 to obtain an LEI which it must provide to such investment firm prior to receiving any service. The MiFIR and MiFID II guidelines apply to investment firms (and trading venues) in respect of shares, depository receipts, exchange-traded funds, certificates and other similar financial instruments which are admitted on EU regulated markets. This

requirement essentially includes investment firms that execute transactions in financial instruments, all clients of such investment firms, including sub-funds, intermediaries, wealth clients, and investments managers, even if: they are *not an EU entity, not EU-operating or EU-domiciled or directly subject to EU regulations*, they are the non-reporting counterparty, or had no previous obligation to obtain one. From January 3, 2018, an investment firm will not be able to provide a service that would result in a transaction reporting obligation where the relevant client is eligible for an LEI but does not have one. According to the guidelines, if your organization is trading with an EU client on an EU regulated market, as a counterparty, your organization will need to have an LEI.

UNITED STATES

In the United States, the Commodity Futures Trading Commission (CFTC) and the Securities and Exchange Commission (SEC) require LEIs for swap dealers and major swap participants registered with CFTC as well as their counterparties around the world. Beyond swap market participants, LEIs are generally not mandatory in the US. A snapshot of implementation in the US is set forth below.

The following regulatory bodies *require* LEIs be included:

- *CFTC* – in swap transactions data reporting under the Swap Data Record Keeping and Reporting Rule; on Form 102 - Identification of “Special Accounts” for futures commission merchants, clearing members, and advisers.
- *SEC* – in swap transactions under the Reporting and Disclosure Dissemination of Security-Based Swap Information (Regulation SBSR).
- *Federal Reserve System* – in certain reports on foreign banking organizations.

- *National Association of Insurance Commissioners* – in the reporting of certain insurance investments.
- *Municipal Securities Rulemaking Board* – on Form A-12 - Registration as municipal securities dealer.
- *Consumer Financial Protection Bureau* – from January 1, 2018, in reporting and disclosure requirements by mortgage industry participants under the Home Mortgage Disclosure Act.

The following regulatory bodies recommend LEIs be included:

- *CFTC* – on Form PF reporting by investment advisers, commodity pool operators and commodity trading advisors.
- *SEC* – on Form ADV for investment advisers and exempt reporting advisers; on Form PF reporting by investment advisers, commodity pool operators and commodity trading advisors; on Form N-MFP – Monthly Schedule of Portfolio Holdings of Money Market Funds.

HOW TO OBTAIN AN LEI?

LEIs are issued to eligible legal entities by providers known as Local Operating Units (LOUs) upon request of the eligible entity or its authorized representative. LOUs are a critical part of the Global LEI System in that they provide registration, renewal, and related services to LEI applicants and holders. LOUs must be accredited by the Global Legal Identifier Foundation (GLEIF) which is responsible for monitoring the data quality of LEIs and operating the LEI database. A list of accredited LOUs is available on the [GLEIF website](#). US based LOUs include [Bloomberg Finance L.P. \(Bloomberg\)](#) and [GMEI Utility](#). Legal entities are not restricted to using the services of an LOU in their jurisdiction; they may use the services of any LOU in any jurisdiction. However, it should be noted that some LOUs restrict their services to a specific country or jurisdiction while others operate globally.

HOW TO CHECK IF AN ENTITY HAS AN LEI AND ACCESS ITS REFERENCE DATA

A free search on the centralized [database](#) of LEIs on GLEIF's website provides access to every issued LEI and corresponding reference data worldwide and its currency (i.e. its ability to be validly used in regulatory reporting).

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