

## Briefing note

### ***ESMA statement to support the smooth introduction of the LEI requirements*** (20 December 2017)

The European Securities and Markets Authority (ESMA) has published a [statement](#) on LEI implementation under MiFID II/R, intended to support the smooth introduction of the LEI legal requirements.<sup>1</sup> In essence, ESMA has granted a **six month** period from 3 January 2018 whereby investment firms can continue to provide services that trigger the requirement for LEIs to be included in transaction reports **even where clients do not have LEIs**, on the condition that these clients **submit appropriate documentation** to allow the investment firm to apply for an LEI on the client's behalf.

#### **Background**

In the lead up to MiFID II/R's entry into force, to ESMA and national competent authorities (NCAs) received a number of indications that not all investment firms will succeed in obtaining LEI codes from all their clients that are legal persons ahead of 3 January 2018. Similarly, ESMA and NCAs were aware of the concerns raised by some trading venues that additional time might be required to reach out to non-EU issuers whose financial instruments are traded on European trading venues in order to inform them about the applicable MiFIR and Market Abuse Regulation (MAR) requirements and obtain their LEI codes.

#### **LEIs for clients that are legal persons**

- ESMA's original 'validation test' for LEIs (prior to the 20 December statement) was: ***If there is a missing LEI or the LEI issue date post-dates the trade date, the transaction report is rejected.***
- Under the new regime, ESMA provides for a **temporary period of six months** whereby investment firms may provide a service triggering the obligation to submit a transaction report to the client, from which it did not previously obtain an LEI code, under the condition **that before providing such service the investment firm obtains the necessary documentation from this client to apply for an LEI code on his behalf.** The investment firm will need to apply **immediately** for the issuance of the LEI on behalf of the client. Once the relevant LEI has been obtained, the investment firm should submit its transaction report [as outlined in Article 26 of MiFIR].

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<sup>1</sup> A Legal Entity Identifier (LEI) is a 20-character, alpha-numeric code, to uniquely identify legally distinct entities that engage in financial transactions. Once a legal entity obtains an LEI code, the code stays with the legal entity for its existence. MiFID II requires that once MiFID II/MiFIR enters into force (3 January 2018), market participants will not be able to trade with in-scope investment firms if they do not have an LEI (MiFID II/MiFIR require investment firms to obtain an LEI from their clients prior to providing a service that would result in a transaction reporting obligation). Trading venues are also obliged to identify each issuer of a financial instrument traded on their systems with an LEI code when making daily data submission to the Financial Instruments Reference data System (FIRDS).

- This will also require NCAs temporarily to amend a validation rule in their transaction reporting systems to allow for the acceptance of transaction reports where the LEI issuance date is after the transaction execution date. Investment firms are invited to contact directly their NCA for the specific details regarding these amendments.
- To streamline the issuance of LEIs, the Global legal entity identifier foundation (GLEIF) has introduced the concept of the **Registration Agent**. A [Registration Agent](#) helps legal entities to access the network of LEI issuing organizations responsible for performing LEI issuance and related services.
- ESMA and NCAs reiterate that investment firms are expected to ensure full compliance with the MiFIR requirement for the identification of clients that are legal persons using LEIs, given the relevance and importance of these data for regulatory supervision purposes.

### **LEIs for issuers**

- ESMA previously stated that starting from 3 January 2018, trading venues are expected to use the LEI codes pertaining to a given issuer when submitting reference data on financial instruments issued by **EU issuers** to support market abuse monitoring and market transparency (through FIRDS). The correct LEI of an EU issuer is also required to determine the appropriate NCA for reporting purposes. **Failure to submit an LEI of the EU issuer will be considered a breach of reporting requirements** by the trading venue.
- ESMA equally expects trading venues to ensure that all non-EU issuers are identified through their respective LEI codes. However, understanding the additional difficulties in this case and to facilitate the introduction of the new reporting requirements, **trading venues will be allowed on a temporary basis of six months to report their own LEI codes instead of LEI codes of the non-EU issuers** while reaching out to the non-EU issuers.
- ESMA and NCAs will closely monitor the accuracy and completeness of the submitted reference data and pay particular attention to the frequency and the number of trading venues' own LEIs used instead of non-EU issuers' LEIs.

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