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Response of the Global Legal Entity Identifier Foundation to the Financial Crimes Enforcement Network and Securities Exchange Commission's Joint Proposed Rules for Customer Identification Programs for Registered Investment Advisers and Exempt Reporting Advisers

July 2024

The Global Legal Entity Identifier Foundation (GLEIF) is pleased to provide comments to the Financial Crimes Enforcement Network (FinCEN), Department of Treasury (Treasury) and the Securities and Exchange Commission's (SEC) joint notice of proposed rulemaking on customer identification programs (CIP) for registered investment advisers (RIAs) and exempt reporting advisers (ERAs).

Consultations and proposed rules are opportunities to re-consider existing identifier schemes with longer term vision for a broader, standardized, and consistent use of global standards and open sharing across US and global regulations.

First, some background information on the LEI and GLEIF.

The LEI is a 20-digit, alpha-numeric code based on the ISO 17442 standard developed by the International Organization for Standardization (ISO). The code connects to key reference information that enables clear and unique identification of legal entities participating in financial transactions including their ownership structure. The LEI and its associated reference data are accessible to all as open, public data. The LEI is the only global standard for legal entity identification.

Established by the Financial Stability Board in June 2014 under the mission of improving financial stability and transparency due to the aftermath of the financial crisis, GLEIF is tasked to support the implementation and use of the LEI. Even though the primary and initial usage and adoption of the LEI predominantly was in financial markets and financial instruments, the LEI is use case agnostic and therefore has been embraced by different industry sectors and regulators since its introduction by the Regulatory Oversight Committee (ROC), in which the Treasury and SEC are active members, as is the ROC Secretariat, the Office of Financial Research (OFR), and the Financial Stability Board in 2012. The LEI currently exists in 49 various U.S. laws and regulations and globally the LEI is included more than 280 regulations and 60 policy recommendations.

GLEIF would like to comment on Section IV.G: Should the final rule require advisers to use the LEI as the identifier for such customers?

GLEIF supports the inclusion of the LEI in the final rule to identify organizations that are customers of RIAs and ERAs. Advisers can save time, gain greater transparency, and work in a more streamlined fashion by adopting an LEI for each client organization. LEIs create value by reducing transactional and operational friction in the identification of transaction counterparties and making important information about the background and lineage of a legal entity more accessible and traceable.

The LEI offers businesses a one-stop approach to identifying legal entities, which has the potential to take the complexity out of business transactions. Via the Global LEI Index, GLEIF makes available the largest online source that provides open, standardized and high quality legal entity reference data. No other global and open entity identification system has committed to a comparable strict regime of regular data verification.

The SEC already includes the LEI in various other forms. Most notably, as it relates to this proposed rule, the LEI is a field on Form ADV filed by RIAs and ERAs. The SEC already has made several amendments to include the LEI in other proposed rules, specifically Forms N-CEN, N-MFP, N-PORT and more recently in the final rule announcements Forms PF, 13-F and N-PX.

On December 23rd, 2022, Financial Data Transparency Act (FDTA) became law, with its inclusion as a title within the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. The FDTA directs eight financial regulators, including the Treasury and SEC, to adopt standardized data reporting practices for information collected from regulated entities, and mandates the adoption of an open, non-proprietary legal entity identifier to allow for easy and consistent matching of filings from the same entity across different financial regulators. The adoption of open data standards through the FDTA will improve transparency and accountability for federal agencies and the public, and can also accelerate policy innovation. GLEIF asserts that the LEI is the only legal entity identifier that fully meets the requirements specified in the FDTA. Currently, the FDTA is in a two-year implementation phase which will culminate with a joint-rulemaking from regulators outlined in the in the statute. The release of the joint proposed rules is expected soon.

GLEIF would also like to respond to the following comment in the joint proposed rules: “Finally, because legal names and associated LEIs are publicly available, bad actors could use such information to impersonate legitimate entities in their submissions to an investment adviser’s CIP and reduce the reliability of the LEI as an identification tool”. The joint proposed rules do not change current CIP requirements that specify how a financial institution must verify the identity of the individual representing the entity. The addition of the LEI enhances the verification of the entity which that individual represents, complementing the current procedures for the validation of the identity of the individual.

The LEI in Know Your Customer (KYC) and CIP:

GLEIF is working directly with financial institutions (FIs) with its Validation Agent operating model (VA) to issue LEIs for their clients, in cooperation with LEI Issuer organizations officially accredited by GLEIF, by leveraging their business as usual client identification procedures in Know Your Customer (KYC) and client onboarding processes. This model, triggering LEI growth beyond regulatory mandates, in particular in payments, would help to make the financial ecosystem more transparent and accessible for all parties. FIs, including 5 Globally Systematically Financial Institutions (G-SIBs), have already begun utilizing the LEI within client onboarding, KYC and customer due diligence processes without administrative of financial burden for the registrant.

Entity identification and verification is an essential component of the client KYC onboarding and remediation process. It is at the heart of international anti-money laundering (AML) sanctions, regulations and related monitoring and therefore the success of GLEIF's VA model will result in increased assignment of LEIs for entities covered by KYC processes.

Globally, there have been a series of recent recommendations relating to CIP from prominent authorities supporting the LEI:

The Financial Action Task Force (FATF), where Treasury is the head of the U.S. delegation and the SEC is a member, is considering revisions to Recommendation 16 (R.16) in response to changes in payment business models and messaging standards. As part of this initiative, FATF launched a Public Consultation on 26 February to gather input from all interested stakeholders. The consultation proposes that a legal identifier be mandated for legal persons in messages accompanying cross-border payments, with the LEI referenced as one of these identifiers.

In parallel, the Wolfsberg Group – an association of 12 global banks which aims to develop frameworks and guidance for the management of financial crime risks – has published its updated Payment Transparency Standards, which begin to identify how various capabilities within the ISO 20022 structure can be utilized to enhance payment transparency. The updated standards state that to the fullest extent permitted by the payment market infrastructure, the payment service provider (PSP) of the payer (referred to within ISO 20022 as the 'debtor agent') should use the LEI or other equivalent reference codes to enhance the accuracy of identification information on relevant parties.