

## **DEPARTMENT OF THE TREASURY**

### **Office of Financial Research**

#### **Statement on Legal Entity Identification for Financial Contracts**

**AGENCY:** Office of Financial Research, Treasury.

**ACTION:** Statement of policy with request for comment.

**SUMMARY:** The Dodd-Frank Wall Street Reform and Consumer Protection Act (the “DFA”), Pub. L. No. 111-203, establishes the Office of Financial Research (the “Office”) and provides it with the authority to collect data to support the Financial Stability Oversight Council (the “Council”) and to set standards for reporting such data. To support the Council in identifying connections among market participants and monitoring systemic risk, the Office intends to standardize how parties to financial contracts are identified in the data it collects on behalf of the Council. The Office is issuing a statement of policy regarding its preference to adopt through rulemaking a universal standard for identifying parties to financial contracts that is established and implemented by private industry and other relevant stakeholders through a consensus process. The statement of policy provides guidance on how the Office will evaluate whether a standard is adequate for adoption, including its attributes and method of implementation. The Office seeks comment on this statement of policy, including but not limited to the desired characteristics for a Legal Entity Identifier (“LEI”) and the institutional arrangements for issuing and maintaining identifiers and associated reference data.

**DATES:** Comments must be received by [INSERT DATE THAT IS 60 days after  
FEDERAL REGISTER PUBLICATION]

**ADDRESSES:** Interested persons are invited to submit comments regarding this Statement according to the instructions for “Electronic Submission of Comments” below. All submissions must refer to the document title. The Office encourages the early submission of comments.

**Electronic Submission of Comments.** Interested persons must submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt, and enables the Office to make them available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

To receive consideration as public comments, comments must be submitted through the method specified above. All submissions must refer to the title of the Statement.

**Public Inspection of Public Comments.** All properly submitted comments will be available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**Additional Instructions.** In general, comments received, including attachments and other supporting materials, are part of the public record and are made available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this Statement contact the Office of Domestic Finance, Treasury, at (202) 622-1766. All responses to this Statement should be submitted via [www.regulations.gov](http://www.regulations.gov) to ensure consideration.

## **SUPPLEMENTARY INFORMATION:**

### **I. BACKGROUND**

#### **A. The Office of Financial Research**

Section 152 of the DFA established the Office within the Department of the Treasury. Among other things, section 153(a) of the DFA authorizes the Office to collect data to support the Council's duties, to provide such data to the Council and member agencies, and to standardize the types and formats of such data. Section 153(a) also provides that the Office should assist member agencies in determining the types and formats of data authorized by the DFA to be collected by member agencies. Section 154(b)(2)(A) requires the Office to prepare and publish a financial company reference database, a financial instrument reference database, and formats and standards for data reported to the Office. Section 151(6)(B) provides that those data include information that identifies counterparties.

#### **B. The Need for a Universal Standard for Identifying Parties to Financial Contracts**

Precise and accurate identification of legal entities engaged in financial transactions is important to private markets and government regulation. In the private sector, data identifying counterparties support communication between systems, facilitate transaction processing, and allow for accurate aggregation of positions vis-à-vis individual or classes of counterparties, which is necessary for effective risk management and calculation of margin. Sales, compliance, and due diligence functions also rely on unique identification of counterparties. In the public sphere, correctly identifying parties to financial contracts is critical to assessing the connections among financial firms and to monitoring systemic risk.

There is currently no universal system for identifying the legal entities that participate in financial markets. In the absence of such a system, private firms and regulators have created a variety of identifiers. This creates inefficiencies for firms and presents obstacles to regulators and policymakers.

At private firms, because there is no industry-wide legal entity identification standard, tracking counterparties and calculating exposures across multiple data systems is complicated, expensive, and can result in costly errors. For example, maintaining internal identifier databases and reconciling entity identification with counterparties is expensive for both large firms and small firms. Complete automation of back-office activities remains elusive, in part because of the lack of a universal identifier for legal entities. In the worst case scenario, transactions are broken or fail to settle because counterparties have not been properly identified.

The lack of a universal identification standard also poses problems for regulators and policymakers. For example, precise identification of financial firms is necessary to evaluate whether a firm poses a systemic risk, which involves the assessments of the relationships among firms operating across a range of markets. Indeed, the problems that firms face in aggregating exposure are magnified in measuring risk across the system. In addition, securities regulators must often identify parents and affiliates of broker-dealers manually and by name. Multiple and generally different identifiers for participants in securities trading make it difficult to create a consolidated order audit trail.

The financial crisis has focused both industry and regulators on this issue. The DFA created the Office, in part, to support the Council and its member agencies in addressing such data standardization issues. Sections 153 and 154 of the DFA require the Office to standardize the types and formats of data reported to and collected by the Office on behalf of the Council, and to

prepare and publish formats and standards for that data. Section 151(6)(B) provides that those data include information that identifies counterparties.

In addition, section 154(b)(2) of the DFA requires the Office to prepare and publish a financial company reference database. Reference data for a legal entity could include its name, country of incorporation or principal place of business, and legal relationship to other entities. Identification of the legal entity is a fundamental ingredient in creating a reference database of financial companies.

Finally, the DFA requires the CFTC and SEC to put in place requirements for reporting swaps and security-based swaps, respectively, to data repositories by July 15, 2011. Pub. L. 111-203, Sec. 727-728. These agencies are working to develop standards for this reporting, including requirements for these data repositories to have unique and consistent identifiers for counterparties and reference entities.<sup>1</sup> The Office is coordinating with the CFTC and the SEC in these data standardization efforts.

## **II. STATEMENT OF POLICY**

In support of the Council's duties to identify and assess risks and potential threats to the stability of the U.S. financial system, the Office, in consultation with the Chairperson of the Council, intends to establish requirements for reporting data on financial contracts to the Office that include a standardized way of identifying counterparties. In establishing such rules the Office would prefer to adopt a universal standard developed and implemented by the financial industry and other relevant stakeholders through a consensus process. In addition, the Office believes that participation of international standard setting bodies would be beneficial in developing a standard that can be used widely.

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<sup>1</sup> See: <http://www.cftc.gov/ucm/groups/public/@otherif/documents/ifdocs/federalregister112210.pdf>; and <http://sec.gov/rules/proposed/2010/34-63446.pdf>.

If a LEI is established to the satisfaction the Office by July 15, 2011, the Office, in consultation with the Chairperson of the Council, plans to issue a regulation mandating the use of such a standard for data reported to the Office.

In making this determination the Office will consider the following aspects of LEI systems:

- the characteristics of the LEI, including the process of developing and maintaining standards for the LEI;
- the institutional arrangements for issuing LEIs to specific legal entities; and
- the institutional arrangements for developing, maintaining, and publishing related reference data.

**A. Characteristics of the LEI, including the process of developing and maintaining standards for the LEI**

A LEI acceptable for use with data reported to the Office should:

- 1) be based on a standard developed and maintained via an international “voluntary consensus standards body,” as defined in Office of Management and Budget (“OMB”) Circular No. A-119 Revised, such as the International Organization for Standardization (“ISO”);
- 2) be unique for each legally distinct entity, where each legal entity is assigned only one LEI which cannot be reassigned;

- 3) persist over the life of an entity regardless of corporate actions or other business or structural changes;
- 4) include minimal information about the entity in the identifier itself;<sup>2</sup>
- 5) accommodate growth in the number of legal entities that need to be identified in the full range of reporting systems and to potential industry and regulatory innovations;
- 6) be available for all eligible markets participants, including but not limited to all financial intermediaries, all companies that issue stock or debt listed on an exchange, all companies that trade stock or debt, infrastructure providers, all entities subject to financial regulation, and firms affiliated with such entities;
- 7) not be contractually restricted in use;
- 8) where possible, be compatible with existing systems, work across various platforms, and not conflict with other numbering or identification schemes;
- 9) be readily accessible using secure and open standards;
- 10) be reliable and secure against corruption or misuse; and
- 11) be capable of becoming the single international standard for unique identification of legal entities in the financial sector.

## **B. Institutional arrangements for issuing LEIs**

A LEI acceptable for use with data reported to the Office should be issued by an entity with expertise in implementing standards for the financial sector.

The entity should be organized and operated as a not-for-profit body and have a formally documented governance structure with balanced representation for relevant stakeholders. It

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<sup>2</sup> The identifier itself should not incorporate substantial information about the entity, such as name or principal place of business. Although such reference data may be useful, they are subject to change. Defining an identifier to include such information could threaten its persistence.

should be subject to supervision and regulation. The entity should also have a strong ethics policy, addressing in part potential conflicts of interest.

Issuance of LEIs must be timely and non-discriminatory. The process of issuing new LEIs must not materially hinder the normal course of an entity's business.

All of the entity's processes must be adequately governed and auditable. Access to the master identifier list and the issuance process for new identifiers must be made available at all times.

The security and reliability of all IT systems involved in identifier issuance and database maintenance and publication must meet or exceed industry standards for a real-time, high-availability market service.

Identifiers must be available to the public without fees for storage, access, cross-referencing, or redistribution. However, consistent with OMB Circular No. A-119 Revised, the cost of issuing identifiers and maintaining their reliability may be recovered through other fees, as long as they are reasonable and they are not imposed on end-users.

### **C. Institutional arrangements for developing, maintaining, and publishing LEI reference data**

A LEI acceptable for use with data reported to the Office should have a closely associated process for developing, maintaining and publishing related reference data for each LEI issued.

The scope of the reference data provided for each LEI issued should be sufficient to verify that users have correctly identified an entity and should include at a minimum the following information for each identifier:

- 1) name;
- 2) location;

- 3) electronic address; and
- 4) legal status.

The entity responsible for producing and publishing the LEI reference data should have expertise in this area. It must be operated on a not-for-profit basis and have a formally documented governance structure with balanced representation for relevant stakeholders. It should also be subject to supervision and regulation.

The entity must have a robust quality assurance process. Updates to the LEI reference data should be accomplished with minimal lag time and market participants and regulators should be able to challenge entries and request amendments. The quality assurance process should seek to ensure that duplicate identification numbers are not erroneously assigned. The quality assurance process should also include checks for existing entities including name searches, address searches, and combinations of text strings and other characteristics.

The entity's processes should be adequately governed and auditable. The security and reliability of all IT systems involved in developing, maintaining, and publishing LEI reference data should meet or exceed industry standards for a real-time, high availability market service. Reference data must be available to the public without fees for storage, access, cross-referencing, or redistribution. However, consistent with OMB Circular No. A-119 Revised, the cost of developing, maintaining, and publishing LEI reference data may be recovered through other fees, as long as they are reasonable and they are not imposed on those who use the reference data.

In addition, if a robust universal LEI is designated by the Office, under the principles outlined above for the purpose of reporting data to the Office, it is the expectation of the Office that such a LEI system, including the relevant reference data, would be the foundation for the

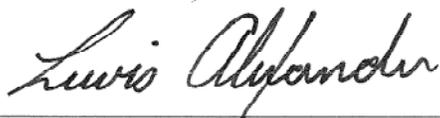
financial company reference database that the Office would publish under the DFA section 154(b)(2)(A)(i).

**D. Next steps**

In the event that a universal LEI is established to the satisfaction of the Office by July 15, 2011, the Office, in consultation with the Chairperson of the Council, plans to issue a regulation mandating the use of such a standard for data reported to the Office. Further, the Office will publish in the Federal Register, no later than 60 days prior to the earlier of the implementation dates established by the CFTC and SEC for their new reporting requirements,<sup>3</sup> the name of the identification system approved by the Office, the name and contact information of the entity through which counterparties can obtain LEIs provided through the approved identification system, and information concerning the procedure and requirements for obtaining such a LEI.

The Office invites comments on all aspects of this statement of policy, including but not limited to the desired characteristics for a LEI and the institutional arrangements for issuing and maintaining identifiers and associated reference data.

Date: November 23, 2010



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Counselor to the Secretary

**BILLING CODE [4810-25-P]**

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<sup>3</sup> See: <http://www.cftc.gov/stellent/groups/public/@otherif/documents/ifdocs/federalregister112210.pdf>; and <http://sec.gov/rules/proposed/2010/34-63446.pdf>.