EFAMA's REPLY TO LEI ROC's SECOND CONSULTATION DOCUMENT ON FUND RELATIONSHIPS IN THE GLOBAL LEI SYSTEM

Question 1: Do you have comments on the revised definitions of a "Fund Management Entity", "Umbrella Structure" and "Master-Feeder" relationship?

EFAMA agrees with the proposed definition and description, especially as it adequately differentiates funds and their ´managers from delegated investment managers and investment advisors to a fund.

Consequently, we also consider that, in case of delegation of management, the LEI identifying the management company should remain the one of the company identified in the prospectus and which is legally responsible for the constitution and operation of the fund.

We take the opportunity to open the discussion also on the issue of "unsegregated sub-funds". We support the idea to exclude unsegregated sub-funds from the scope of LEI identification effort as explained on p. 11 et seq. as it is consistent with the position taken under the definition of FME.

Identification problems relating to reporting of unsegregated sub-funds (segmented funds, delegated investment management mandates) in EMIR and Dodd-Frank Act (DFA) transaction reports as reported in previous FSB consultations have been addressed in practice by now. Any change in this approach would create uncertainty and reduces clarity in a current rather efficient fund identification process.

In some jurisdictions, it is possible to establish compartments (sub-funds) which have segregated liabilities unless otherwise provided for in the management regulations or instruments of incorporation.

In practice though, most funds have compartments/ sub-funds which are segregated but it cannot be excluded that this is not always the case. Indeed, it may happen that a fund has only one compartment might not appear as segregated but should still qualify as an umbrella fund and it would even be more important to link the compartment to the umbrella fund (which would then be responsible jointly for all compartments that could be issued at a later stage). Therefore, we would have suggested to change the definition of umbrella structure to include the following "and which in principal have segregated liability between sub-funds/compartments unless a deviation from the segregation element has been contractually provided for." The consultation states that un-segregated sub-funds are not considered because they are not eligible to obtain a LEI - see page 11).

Question 2: Should the Umbrella Structure relationship cover not only series funds (including turnkey funds) and insurance separate accounts, (to the extent that the sub-structures are eligible for an LEI), but also include funds that are established under a common declaration of trust?

We do not have comment or reply to this question, as it does not apply directly to EU funds.

rue Montoyer 47, B-1000 Bruxelles
☎ +32 2 513 39 69 • Fax +32 2 513 26 43 • e-mail : info@efama.org • www.efama.org • VAT Nr BE 0446.651.445

However, in principle all forms of (sub-) funds should be LEI eligible.

We agree in full with the FSB ROC statement that in "the Global LEI System, the term "legal entity" is not restricted to incorporated entities and may **include trusts**, partnerships or individuals acting in a business capacity" (cf. p.9.)

Generally speaking, we remain favourable to the identification with the LEI of both the lower level entity be it a sub-fund of an Umbrella Fund or a feeder fund of a Master-Feeder Fund where this meets the essence of an entity (i.e. being ring-fenced from the liabilities of the other lower level entities) as well as the top-level fund.

Question 3: What are your views on the requirement to report related entities with an LEI, when entities report a relationship with a Fund Management Entity, an Umbrella Structure, or a Master-Feeder relationship?

The starting point should be that LEI should only be required if the related entity is itself subject to a regulatory requirement to obtain a LEI. This will mostly be the case for umbrella funds, UCITS Management Companies and AIFMs which are required to have LEIs for various reporting reasons.

We support the requirement to report all fund related entities with their LEI as we want encouraging the use and wider application of LEI across all jurisdictions and on all market participants which considered LEI eligible entities under applicable home state regulation. In this way pick up of LEIs also by entities which today are not legally required to obtain a LEI is encouraged, for example delegated investment advisors.

We consider that the LEI facilitates the harmonisation and automation of reporting, risk and portfolio management hence helping cost reduction and increasing data quality and security.

Therefore, we support the use of LEI for

- Delegated Third Parties, including Asset managers, Investment Managers and Investment Advisors
- Umbrella funds; and
- Master fund and Feeder(s) funds. (edit: we also need to put indirect pressure on such funds to get an LEI) Therefore, we consider that in the case of situations where a fund related party is not legally required to obtain an LEI, this should not limit the ability of the LEI fund entity to fulfil its legal obligations, for example the missing LEI on a fund related entity should not impediment regulatory reporting and not create reporting mismatches due to a sole lack of a LEI on a related fund entity. LEIs on all fund related entities should only be mandatory in local (regulatory reporting) regulation after the use of LEI is mandated worldwide.

Question 4: Do you have comments on the proposed optional approach for collecting fund relationships? On the exceptions to the optional approach? On the measures to mitigate the limitations of such an approach?

We are supportive of LEI but we would however recommend some improvements in the definitions.

Indeed, we suggest replacing "optional" with "conditional". Should the fund relationship data exist, it should be on the suggested FSB ROC or GLEIF list (cf. p. 19) and used and if not, it should not be required but the lack of relationship information could be challenged with the GLEIF. For example, a case at point are self-managed funds (UCITS and AIFs) in Europe. The law requires that the fund itself is authorised also as Fund Management company (AIFM),

We support the proposal to have self-managed entities declare themselves as management companies of the fund but see that it brings only a partial answer to the question raised. The flag showing that all relationships have been reported is a far-reaching initiative, but it implies a clear view of the extent of relationships that should or could be disclosed. Here again an explicit definition of scope is necessary. Therefore, we would welcome the existence of "flags", but we would only use alphanumerical identifiers and not text to identify users.

We also believe that market pressure will create further momentum towards spreading the inclusion of related entities in a fund's LEI characteristics.

A non-exhaustive list of cases where disclosure of fund relationships between the fund and the FMC is mandatory is only a tool for the GLEIF. Therefore, working towards a clear obligation to disclose fund relationships implies a clear definition of its scope.

Question 5: Do you have comments on the proposed level of verification of fund relationships? Are there appropriate sources for verifications in your jurisdiction? Should the LOU verify the statement by an entity that the entity is a fund? If so, how?

We consider that the requirement to use LEIs in multiple EU legislation (MiFID II; EMIR; SFTR, AIFMD, UCITS) already provides the level of information required.

We also believe that, under EU law dedicated to funds, the identification of a fund is a relatively easy exercise since both AIFMD and UCITS Directive and their regulatory framework provide for a detailed mapping of all types of funds and their relationships.

National Competent Authorities in the EU oversee funds and usually maintain registers of AIF and UCITS. Therefore, we think that NCAs are a far more efficient source for information than a national company or business register. Many funds, e.g. of the contractual type (Sondervermögen, FCP) are not usually registered in a company or business register.

In addition, in their verification process, LOUs liaise with NCAs. We are not aware of cases where an NCA in the EU would not be able to ascertain the existence of a fund, its FMC or other related fund party.

We believe that the two indicators ('fully corroborated' and 'entity supplied only') help users to understand the quality of the data.

Regarding the specific question of verification of the nature of the fund by a LOU, we consider that if it is requested, it should be at LOU's own costs and not mandated. Indeed, obtaining and maintaining LEI is not a cheap process.

It requires in the case of asset management companies the issuance of many LEIs (60,000 EU investment funds at end 2017, just over 32,000 of these funds were UCITS) that will need to be maintained every year at a repetitive cost.

Therefore, we would oppose to the suggestion that LOUs check the declaration of a fund that it is a fund in all cases, as we fear that any further step may impact the LEI issuance and renewal fees for funds. For example, if the existence of the Fund Management Company has already been verified by the relevant LOU, the subsequent registration of LEI of new funds managed and registered by the same FMC could be accepted at face value. Furthermore, LEI renewal on regulated funds could be facilitated by checking the listing of all funds against the relevant NCA register. As the basic information, e.g. the legal address of all LEI carrying funds administered by the same NCA, is often identical cost saving measures could include checking only once the base set of information applicable to all or most funds of said FMC.

Question 6: Are there any specific consideration that could impact data elements such as, the level of verification; the sources of information; the dates of the relationships?

The success of LEI stems from its quality as a golden source for key information. To the extent that LEIs are assigned to regulated and supervised investment funds the focus of establishing and verifying the data should be on the initial LEI registration of the fund and the respective FMC to get high-quality information into the GLEIF database. Continuous verification is thereafter less an issue because regulated fund information is quite stable. There is however a need to monitor special situations, e.g. fund mergers and dissolution of funds, where possible using the local NCA register,

In that perspective and to remain efficient, some flexibility and possible changes must be guaranteed. We think that certain changes must be made on a timely basis (e.g. in case of change of management company or change of name of funds) We also wish to stress that the information must be updated as soon as it changes but not on a real-time basis, as it is not manageable practically in some case.

Question 7: (on Annex 1, section 1) Could there be cases where the legal jurisdiction would be different from the jurisdiction of the registration authority (e.g., a trust organised under UK law but registered in another country). If so, is the correct approach to record as "Legal jurisdiction" the UK, knowing that the jurisdiction of registration could be identified through the BusinessRegisterEntityID, given the proposal made in this document?

We agree that the legal jurisdiction of the fund should prevail.

For example, a Luxemburg authorised and registered fund does not become a German fund simply because its FME as allowed for under the UCITS directive is a German authorized and registered FME.

In this case, the Luxembourg fund retains it legal Luxembourg address. The LOU may not register the FME's German address as the Luxembourg fund's legal address. This is relevant in practice because a wrong fund address in a cross-border situation may lead to breakup of regulatory reporting.

Question 8: (on Annex 1, section 2) In addition to the mandatory reporting of the Umbrella Structure relationship with the LEI of the umbrella structure, it is proposed that LEI ROC Policy clarify that:

- **the name of the sub-structure should always include the name of the umbrella structure, possibly recommending to the GLEIF that it should be done in a more systematic, structured and transparent manner; where the relationship with the umbrella structure is recorded in the GLEIS, there should be a data format or process ensuring that the name of the sub-structure is updated without delay when the name of the umbrella structure changes**
- **to be able to verify the consistent implementation of the naming convention, the Entity Legal Form (ELF) code list should cover sub-structures. The GLEIF should monitor that the correct name structure "umbrella structure name" + "sub-structure name" is used for ELF codes that correspond to sub-structures that require such a naming convention. Views are sought on whether, for the same ELF code, there could be cases where the naming convention is needed and cases where it is not needed and whether some flag would be needed (e. g, in the "entity category" data element).**
- **when issuing or maintaining the LEI of the sub-structure of an umbrella structure, the LOU should verify that the umbrella structure has a current LEI and the relationship with the umbrella structure is recorded in the LEI system, to make sure that the legal existence and name of the umbrella structure have been verified against the official registration.**
- **the reference data of the sub-fund have to be registered and validated specifically and separately from the umbrella fund, using a registration or validation authority that mentions the data of the sub-fund.**

Do respondent to the consultation see issues for market participants and LOUs to implement the proposals above?

From our perspective, the sole stable and relevant way to ensure legal certainty is to use LEI as the only mandatory matching field. Indeed, only a unique alphanumerical identifier can avoid spelling mistakes or differences in abbreviations of long names of (sub) funds or related fund management companies.

More specifically:

- on item 1: We agree.
- on item 2: We disagree with the idea to have different denominations for the same structure or sub structure and suggest a uniform and stable naming convention in the ELF convention.
- on item 3: We agree but urge not t to increase the cost of producing and maintaining LEIs beyond what is necessary. See our answer to question 5.
- on item 4: We agree.

Question 9: (On Annex 1, section 3) Questions for consultation are whether:

- **The Registration Authority should always be the business registry, when the entity is registered there. The Registration Authority (business registry) is not applicable for non-**

incorporated funds. In these cases the data field should be filled in with "not applicable" instead of the ID of the supervisory authority (see LEI Common Data File format V.2.1).

- **The Validation Authority for a fund should always be the supervisory authority.**

- **The data of a fund should only be declared "fully corroborated" if**

(1) the validation authority is the one specialised in funds, and all the data is found in that source or

(2) if criteria (1) is not met, the LOUs should verify that the prospectus (or similar documents) has been approved by supervisory authority and has been published before.

- **Otherwise in cases where no official registry is available, and other documents not meeting the conditions above need to be used, the validation status should be "entity supplied only". This may happen if an legal entity needs an LEI in its application, before the prospectus is approved. In conformity with the Master Agreement (Appendix 5) which specifies that the contracts that LOUs have with entity should include the "obligation of the Legal Entity to promptly submit any changes regarding any aspect having an actual or potential influence on the LEI and/or LE-RD", and the GLEIS Governance Principles (FSB Recommendation 18) according to which LOUs have the responsibility "to encourage necessary updating", the LOU should verify, after the customary delay, whether the fund was authorised and registered, so that the reference data can be checked against the official source, and the ValidationAuthorityID and ValidationAuthorityEntityID can be added.**
- **Investment fund's data should only be validated against data published by the home country Registration and/or Validation Authority.**

We agree with the four criteria mentioned in the question. In case of regulated and supervised funds it is always more appropriate to indicate the ID of the fund used by the supervisory authority of the fund. This applies especially in case of unincorporated funds that are globally larger in number than corporate type funds. We believe that it does not add too much effort to maintain contacts with both business registration and supervisory authorities. As rightly pointed out, the most relevant consideration is the information and possible validation provided by the supervisory/ national competent authority of the fund.

We consider that only the data published or approved by the NCA is relevant for the registration of the LEI.

We believe it is important to continue to have two levels of validations "fully corroborated" (which can be achieved via these means) and "entity supplied". For timing reasons, it is important to be able to register funds or compartments/ sub-funds for LEIs before they are launched or fully registered. Counterparties require LEIs for onboarding funds. This onboarding process may run in parallel with the regulatory registration process. Further, there may be timing discrepancies between the effective date of fund changes and the date this information is publicly available. Finally, there may be data (such as pool names) which are not necessarily available in public documents. Self-certifications or certifications from the custodian are additional accepted validation sources.

Question 10: (On Annex 1 section 4 on Pools of assets) Questions for consultation:

- **whether these pools are acting as counterparties in financial transactions and have to apply for LEIs for reporting purposes.**

whether specific measures should be implemented to facilitate their identification, given their "legal names" may be very close to the fund group they belong to: for instance (i) a specific relationship, (ii) a naming convention (e.g. adding "pool" at the end of their Legal Name, as some already do, which however may contradict rules on legal names, and may be duplicative, as there should be other ways to distinguish different legal entities than changing the legal name, for instance distinct registration authority ID, distinct legal forms)

A regulated mutual fund can be set up under an umbrella fund structure. While the umbrella fund is a legal entity, the sub-funds are segregated (ring-fenced under national insolvency laws) compartments of that legal entity but not fully separate legal entities, with investors buying shares in each segregated sub-fund as a separate "Fund". We understand that there is widespread awareness regarding umbrella funds that are segregated into sub-funds and that these are accounted for and reported already under the EMIR technical standards and as part of the LEI framework (and that it will for example be possible for (ring-fenced) sub-funds to apply for LEIs).

In some jurisdictions like Luxembourg, management companies that conduct trading for and on behalf of their Luxembourg regulated mutual funds, including UCITS, are using trading and asset management techniques called "co-management" or "pooling" management (depending on their model).

Pools are acting as counterparties to transactions and they are recognised counterparties in derivative contracts as an example. Pools also use LEIs for transaction reporting under EMIR and MIFID.

We support the establishment of a clear naming convention (e.g. adding "pool" at the end of their Legal Name). Some FME (but not all as it is not a legal requirement) include the pool names in their prospectuses. Other validate the existence of the pools via certifications from the custodian banks. Pools appear on official documents such as bank accounts or legal agreements. It is important that this well-established practice is maintained. Any change thereto would be detrimental to the operation of funds using pooling structures. Pools can also sit in an umbrella structure and hence we recommend to also apply the linkage between umbrella structure and Fund Management Entity as outlined in the consultation to pools.

Where a regulated umbrella fund or a series of stand-alone funds are using a pooled trading structure, OTC derivatives or securities transactions conducted by the funds (and/or sub-funds) in the structure are generally executed, settled and reported at pool level. As regulated co-managed funds (including UCITS) enter into trades at pool level, there may be a need to report such trades not only at fund but also at pool level and to consider pools as beneficiaries of the transactions for reporting purposes.

In respect of trades conducted at pool level, we insist on the need to maintain the approach to provide

- the LEI at pool level, so that each pool is assigned an LEI; and
- trades at pool level keep using the pool LEI.

Currently, each CCP offer client accounts at pool level, Trade Repository maintains OTC derivative positions at pool level; and (5) the reporting requirements for OTC derivatives (including as to holdings and collateral) are applied at pool level.

Furthermore, margin collateral is calculated and posted, and reporting is be made at pool level, in each case in order to take into account the operational constraints linked to running a co-managed fund and pooled trading.

Dismantling existing pooled structures would be a complex, time-consuming and costly process for all funds involved and their promoters and service providers and, consequently, retail investors would be affected.

***

Brussels, 14 January 2019
[19-4004]