

SWEDISH SECURITIES DEALERS ASSOCIATION

To Financial Stability Board, FSB fsb@fsb.org

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Response to FSB Thematic peer review on implementation of the LEI

SSDA represents the common interest of banks and investment-services-firms active on the securities market. The mission of SSDA is a sound, strong and efficient securities market in Sweden. SSDA promotes member's view regarding regulatory, market and infrastructure-related issues. It also provides a neutral forum for discussing and exchanging views on matters which are of common interest to its members.

SSDA have a close cooperation with other trade associations in Sweden, in the Nordic area and in the UK. SSDA is also active on European arena via EBF (European Banking Federation) and EFSA (European Forum of Securities Associations) and globally through ICSA (International Committee of Securities Associations).

The Swedish Securities Dealers Association (SSDA) welcomes the opportunity to respond to the Consultation paper from FSB.

The LEI was introduced through the introduction of EMIR in 2014. In 2018 we got MiFIDII/MiFIR that, for companies, also requires the use of the LEI. The SSDA fully support the establishment of the LEI ensuring the identifying of the financial or non-financial counterparties on the global arena. However, the experiences point to several challenges, but also opportunities to further improve and streamline the use of the LEI.

Comments:

Looking at the domestic non-financial counterparties the establishment of the LEI have been and will continue to be quite expensive. Even a small company for instance importing or exporting goods that wants to hedge the selling or buying of the foreign currency is required to have a LEI. However, the company is probably price sensitive and makes the calculation, what will be the costs to get and maintain the LEI for several years? In many cases the clients have considered refraining from hedging the position which, of course, was not the intention with the LEI.

We are not pleased that individuals who run a one-man business/sole proprietorship (Sw: enskild firma) usually with a minor turnover are sometimes subject to the requirement of LEI (EMIR/MiFIDII/MiFIR).

We still see that customers and the market need more knowledge and information about when the LEI requirement applies. Much time is spent on helping customers acquiring a LEI.

The demand for LEIs is not the same if you make a transaction according to EMIR or MiFIDII/MiFIR. The different demands make it unnecessary unclear for the client what rules apply. We need a harmonization of the different LEI requirements of EMIR vs. MiFID II.

It's simple to get a LEI. Sometimes too easy. It has happened that companies have several LEIs which creates significant difficulties when reporting the transactions. The existence of several LEIs for one entity is of course not acceptable.

At least in Sweden there is a well-functioning system providing every company with a unique identification number. The number is as well used by the tax authorities. These numbers are without any additional charges. It would have been a cheaper, more client friendly and in fact safer and reliable solution if these kinds of numbers could have been used as well as the LEI. As it now appears, national requirements, including higher security requirements and quality, are obstacles to more general implementation of LEI at national level. Therefore, as it appears, LEI will be parallel to the national organization number. Harmonization would be very desirable keeping the high level of quality and low costs that applies for the national identification number.

The yearly renewal of LEI (Lapsed LEI) is not only time consuming, costly and creates unnecessary administration, it also affects reporting negatively. The process for investment firms of handling lapsed LEIs of clients (when client has delegated the reporting to the bank) is extremely cumbersome given the fact that LEI lapses from one day to the next i.e. client can postpone renewal-action until the day before lapse which leaves a minimum of time for financial institutions to react in cases where LEI is not renewed and lapses. Members also experience a time lag from the day a LEI is renewed until this is registered in the GLEIF database - which causes the lapsed LEI procedures to kick through; implementing trading restriction for clients who had renewed their LEI.

Further to this, there is a lack of guidelines from ESMA as to how to treat a lapsed LEI in multiple reporting scenarios e.g. where a client holds an open derivative position and where a lapsed LEI breaks the reporting? What are the ultimate consequences for the investment firm of having active trading clients with lapsed LEIs? What is expected from investment firms regarding notifying clients of lapsed LEIs?

If a counterparty does not follow the process for submitting the TR Q 40 form (Reporting according to EMIR), the reporting party will have their reported trades rejected (EMIR).

The process to update the identifier to a LEI when it has previously been reported with an identifier other than a LEI is cumbersome and costly. We believe that the most efficient way of handling this would be to reinstate the IM (Identification Modification) message allowing market participant themselves to update the identifiers to a LEI.

The Trade Repositories do not process the TR Q 40 forms received by them within acceptable time. (EMIR)

Members have experienced challenges with some non-EU counterparties not willing to provide a LEI - referring to that they neither must follow MIFIDII/MiFIR nor EMIR.

There are even challenges with some 3rd country governmental counterparties, who refuse to allow regulatory transaction reporting in the event members were to trade with them. They appear to view it as information regarding their market activities to which other governmental authorities should not have knowledge about.

Future challenges: Reporting on behalf of clients In EMIR Refit and in future SFTR, the financial counterparty will (most likely) be responsible for reporting on behalf of non-financial counterparties. Subsequent this will mean that the financial counterparties cannot uphold its obligation to report on behalf of the non-financial counterparties if these do not maintain their LEI. Hence further clarification from ESMA on this topic is needed.

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