

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Securities and Markets
Supervision Unit

17 November 2017

Unit Tel: (+356) 21441155
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Attn: All market participants subject to MiFID II/ MiFIR

Dear Sir/Madam,

Re: No LEI, No Trade
– *requirement to obtain a Legal Entity Identifier ('LEI') under MiFID II*

Introduction

Following the mandatory requirement to obtain an LEI under MiFID II, the MFSA strongly urges market participants, who have not yet applied for an LEI, to obtain an LEI well ahead of the 3 January 2018.

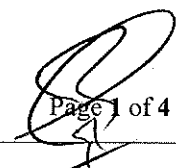
An LEI code is a unique 20 digit code which enables every legal entity that is party to a financial transaction to be identified in any jurisdiction. The LEI code for each entity that is party to a transaction in a financial instrument, will be required to be included within the transaction report which has to be sent to the relevant competent authority under MiFID II.

Information on how to obtain an LEI can be found in the MFSA circular issued on 9 August 2016, which can be accessed through the following link:- <https://www.mfsa.com.mt/pages/announcements.aspx?id=13>. Kindly note that a legal entity is not limited to using an LEI issuer/ Local Operating Unit ('LOU') in its own country. In view of the fact that there is currently no Maltese LOU, a Maltese legal entity can contact and use the registration services of any LOU that offers cross border services and is accredited and qualified to validate LEI registrations within its jurisdiction.

LEI Requirements

Commission Delegated Regulation (EU) 2017/590¹ ('RTS 22') regulates the obligation to report transactions in financial instruments, whether executed on a trading venue or otherwise, to competent authorities.

¹ <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0590&rid=6>

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Article 5 of RTS 22 requires investment firms to have an LEI, which LEIs must be registered and renewed annually.

In terms of Article 13 of RTS 22 an investment firm shall not provide a service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the legal entity identifier code, prior to obtaining the LEI code from that client. Therefore, as of 3 January 2018, investment firms shall ensure that all clients intending to enter into financial instruments transactions and which are eligible for obtaining an LEI, have obtained such code prior to entering into such transactions.

Furthermore, MiFID II requires trading venues to verify that all participants, including the clients of executing firms, have LEI codes. This verification includes a check of the LEI registration status. Trading Venues should perform the checks that are prescribed under Article 5 and 13(3) of RTS 22.

Further information on transaction reporting can be found in the circular² issued by the MFSA on 3 November 2017.

Extract from Annex I of RTS 22 – LEI fields

As explained in the MFSA's circular dated 3 November 2017, there are various instances where market participants are required to enter their LEI code when filling in the MiFIR transaction report.

The Authority is hereby providing a summarised list of fields contained in Table 2 of Annex I of RTS 22, that require the use of an LEI code.

N ^o	Field	Description
4	Executing entity identification code	Code used to identify the firm (typically an investment firm) executing the transaction.
6	Submitting entity identification code	Code of the entity submitting the transaction report (could be the trading venue, ARM or the executing firm).
7	Buyer identification code	Code of the acquirer of the financial instrument except when the acquirer is a natural person. In the case of natural persons, the identifier specified in Article 6 of RTS 22 should be used.

² <https://www.mfsa.com.mt/pages/announcements.aspx?id=14>

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12	Buyer decision maker code	Code of the decision maker in case the decision maker is a legal entity (e.g. investment firm) acting under discretionary mandate. If the individual made the investment decision, the field should not be populated.
16	Seller identification code	Code of the disposer of the financial instrument except when the disposer is a natural person. In the case of natural persons, the identifier specified in Article 6 of RTS 22 should be used.
21	Seller decision maker code	Same as 'buyer decision maker code'.
26	Transmitting firm code for buyer	Code of the firm transmitting the order for the buyer for execution.
27	Transmitting firm code for seller	Code of the firm transmitting the order for the seller for execution.

Each legal entity or structure falling within the descriptions listed above are required to obtain an LEI code. Such entities will need to be identified with an LEI even if they had no previous legal obligation to obtain one and regardless of where they are operating or legally based.

As clarified by ESMA in its Briefing³ of 9 October 2017: “the term ‘legal entity’ includes, but is not limited to, unique parties that are legally or financially responsible for the performance of financial transactions, or have the legal right in their jurisdiction to enter independently into legal contracts, regardless of whether they are incorporated or constituted in some other way e.g. trust, partnership, contractual. It excludes natural persons, but includes individuals acting in a business capacity. It also includes governmental organisations and supranationals.”

Therefore, the term ‘legal entities’ includes, *inter alia*, companies, trusts, funds (each sub-fund shall have an LEI), sole traders, unincorporated bodies and investment managers (or other entity taking an investment decision)⁴.

Further information on the use of identification codes can be found in the Guidelines issued by ESMA on 10 October 2016 entitled *Guidelines on transaction reporting, order record keeping and clock synchronisation under MiFID II*.⁵

³ https://www.esma.europa.eu/sites/default/files/library/esma70-145-238_lei_briefing_note.pdf

⁴ Please note that this is not an exhaustive list. This list merely provides examples of what can be considered as legal entities or structures for the purposes of the requirement to obtain an LEI code under MiFID II/MiFIR.

⁵ https://www.esma.europa.eu/sites/default/files/library/2016-1451_final_report_on_guidelines_mifid_ii_transaction_reporting.pdf

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Conclusion

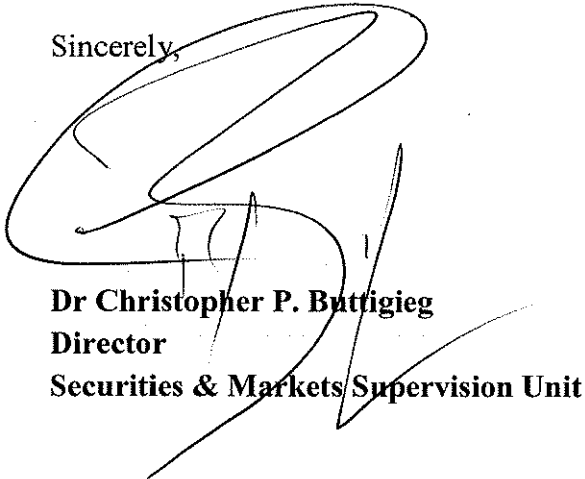
With less than two months for the MiFID II go-live on 3 January 2018, the MFSA expects legal entities which are required to obtain an LEI to have already applied for their LEI codes.

The MFSA would like to clarify that in light of MiFID II, LEI codes are mandatory. Failure to obtain an LEI will prevent market participants from being able to comply with the transaction reporting requirements under MiFIR, which requirements are applicable from 3 January 2018. Consequently legal entities will not be able to trade in financial instruments unless they have obtained an LEI code.

Contacts

Should you have any queries on the above, please do not hesitate to contact Nathan Fenech, Analyst, Securities and Markets Supervision Unit (NFenech@mfsa.com.mt), or Dr Anneliese Grixti, Analyst, Securities and Markets Supervision Unit (AGrixti@mfsa.com.mt) for any further clarifications.

Sincerely,



Dr Christopher P. Buttfigieg
Director
Securities & Markets Supervision Unit