

MFSA

MALTA FINANCIAL SERVICES AUTHORITY

CIRCULAR ON MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE ('MiFID II') AND MARKETS IN FINANCIAL INSTRUMENTS REGULATION ('MiFIR')

European Securities and Markets Authority ('ESMA') Statement Supporting the Smooth Implementation of Legal Entity Identifiers ('LEI') Requirements under MiFIR

1.0 Background

Reference is made to the Authority's [circular](#) issued on 17 November 2017 relating to the requirement to obtain an LEI.

According to Article 26(6) of MiFIR, *"In reporting the designation to identify the clients as required under paragraphs 3 and 4, investment firms shall use a legal entity identifier established to identify clients that are legal persons."* As explained in the abovementioned circular, in terms of Article 13 of Commission Delegated Regulation (EU) 2017/590, an investment firm shall not provide any service triggering the obligation to submit a transaction report for a transaction entered into on behalf of a client who is eligible for the LEI code, prior to obtaining the LEI code from that client.

Issuers who have financial instruments traded on trading venues are also required to have an LEI code and trading venues are therefore obliged to identify such issuers with their LEI code when making daily data submission¹ to the Financial Instruments Reference Data System ('FIRDS').

EU investment firms and EU trading venues are obliged to report the LEI codes of clients and issuers regardless of where such clients or issuers are based and regardless of whether they are subject to LEI requirements in their own jurisdiction.

2.0 Transitional period

In a [statement](#) issued by ESMA on 20 December 2017, it was highlighted that there were indications that not all investment firms were in a position to obtain LEI codes from all their clients that are legal persons ahead of 3 January 2018 and that at the same time, these firms might be approached by such clients after 3 January 2018 with the request to provide a service triggering the obligation to submit a transaction report.

¹Article 3(2) of MiFIR Delegated Regulation (EU) 2017/585 and Article 1 of MAR Delegated Regulation (EU) 2016/909

Similarly, there were also concerns raised by some trading venues that additional time might be required to reach out to non-EU issuers whose financial instruments are traded on European trading venues in order to inform them about the applicable MiFIR and Market Abuse Regulation ('MAR') requirements and obtain their LEI codes.

In this respect, ESMA will allow for a temporary period of six months to ensure the smooth introduction of the LEI requirements.

2.1 LEI for clients which are legal entities

For a temporary period investment firms would be in a position to provide a service triggering the obligation to submit a transaction report, to clients from which it did not previously obtain an LEI code. However, such a circumstance is only permissible under the condition that, before providing such a service, the investment firm obtains the necessary documentation from their clients to apply for an LEI code on their behalf. Subsequently the investment firm is required to immediately apply for the issuance of the LEI on behalf of its client. Once the relevant LEI has been obtained, the investment firm should submit that transaction report.

The Authority would like to clarify that if an investment firm has not obtained an LEI from its client and is not in a position to follow the above approach, the standard 'no LEI, no trade' rule applies as per Article 13(2) of the Commission Delegated Regulation (EU) 2017/590 which states that *"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 legal entity identifier code from that client."*

2.2 LEI for issuers

Trading venues are expected to ensure that all non-EU issuers are identified through their respective LEI codes. However, understanding the additional difficulties in this case and to facilitate the introduction of the new reporting requirements, trading venues will be allowed, on a temporary basis, to report their own LEI codes instead of LEI codes of the non-EU issuers while reaching out to the non-EU issuers.

The Authority would like to clarify that there will be no leeway with respect to the requirement for EU issuers to have an LEI and therefore there will be no transitional period for the requirement relating to LEIs for EU issuers. Given the importance of accurate identification of issuers, ESMA and NCAs expect trading venues to comply with the requirement to use the LEI code for the identification of issuers when submitting the reference data for financial instruments. In particular, starting from 3 January 2018 trading venues are expected to use the LEI codes pertaining to a given issuer when submitting reference data on financial instruments issued by EU issuers.

Please note that such practice will be accepted only on a temporary basis and the MFSA will closely monitor the timelines, accuracy and completeness of the submitted transaction reports and reference data. Irrespective to the above, ESMA has clearly indicated that this transitional solution will be for a period of not more than six months.

Contacts

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