

August 30, 2016

To:
Legal Entity Identifier Regulatory
Oversight Committee (LEI ROC)
Submitted via leiroc@bis.org

and

Mr. Gerard Hartsink
Chair, Board of Directors
Global LEI Foundation (GLEIF)
Bäumleingasse 22
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Switzerland

Re: Including data on international/foreign branches in the Global LEI System

To the members of the LEI ROC and the GLEIF:

The International Swaps and Derivatives Association, Inc. (“ISDA”)¹ and the Global Financial Markets Association (“GFMA”)² (together, the “Associations”) welcomed the LEI ROC policy document “Including data on international/foreign branches in the Global LEI System” (“Policy Document”) dated 11 July 2016. The Associations and their members continue to be advocates of the work around incorporating an approach for identification of branches into the Global LEI System (GLEIS) and hope that the input from the joint association letter submitted on 16 November 2015 in response to the ROC’s consultation on the matter³ (the “Joint Association Letter”) proved useful in your policy considerations.

Upon reviewing the Policy Document and prior to release of the specific recommendations, we would like to take this opportunity to reinforce certain points raised in the Joint Association Letter, and to raise specific supplemental points regarding the uniform application of the GLEIS foreign branch standard. By providing these comments, we hope to clearly emphasize the importance of consistent global application of branch LEI standards by regulators and market participants across various jurisdictions

¹ Since 1985, ISDA has worked to make the global over-the-counter (OTC) derivatives markets safer and more efficient. Today, ISDA has over 850 member institutions from 67 countries. These members include a broad range of OTC derivatives market participants including corporations, investment managers, government and supranational entities, insurance companies, energy and commodities firms, and international and regional banks. In addition to market participants, members also include key components of the derivatives market infrastructure including exchanges, clearinghouses and repositories, as well as law firms, accounting firms and other service providers. Information about ISDA and its activities is available on the Association's web site: www.isda.org.

²The Global Financial Markets Association (GFMA) represents the common interests of the world's leading financial and capital market participants, and speaks for the industry on the most important global market issues. GFMA's mission is to provide a forum for global systemically important banks to develop policies and strategies on issues of global concern within the regulatory environment.

GFMA brings together three of the world's leading financial trade associations to address the increasingly important global regulatory agenda and to promote coordinated advocacy efforts. The Association for Financial Markets in Europe (AFME) in London and Brussels, the Asia Securities Industry & Financial Markets Association (ASIFMA) in Hong Kong and the Securities Industry and Financial Markets Association (SIFMA) in New York and Washington are, respectively, the European, Asian and North American members of GFMA

³http://www2.isda.org/attachment/ODAyOQ==/LEI%20ROC_Foreign%20Branch%20CP_Assoc%20FINAL.pdf



with respect to derivatives transaction reporting – a goal we believe is aligned with that of the LEI ROC and the GLEIF.

Although foreign branch LEIs are intended for broad market use, we believe their first significant application will be for the identification of branches in derivatives transaction reporting. As discussed more specifically in the Joint Association Letter, branch IDs are either already required or will be required to be reported as part of derivatives transaction data in a number of jurisdictions. The branch identification method specified in the relevant regulations is currently inconsistent, and we trust that global regulators will update their trade reporting regulations to specify use of foreign branch LEIs once the standard is finalized, local operating units (LOUs) are capable of issuing them, and derivatives market participants have had sufficient time to obtain their foreign branch LEIs from an LOU.

However, we are concerned that without clear and consistent guidance across global derivatives transaction reporting regulations regarding the use of foreign branch LEIs, there is a significant potential for inconsistent use of the standard within and across jurisdictions. We also believe that further guidance is needed from the GLEIF regarding the correlation between foreign branch LEIs and the existing derivatives market practice for specification of branches. Any inconsistencies in application of the foreign branch LEIs, whether intentional or unintentional, will impair rather than improve the prospects for meaningful global data aggregation and analysis.

First, we recommend that members of the LEI ROC and other global regulators that require branch identification in their transaction reporting regulation be explicit and consistent with respect to the following points regarding counterparty and branch identification for multi-branch entities when using foreign branch LEIs:

- Only the LEI issued for the head office legal entity should be used to identify the counterparty to a derivatives transaction.
- A requirement to identify the branch of the counterparty through which a derivatives transaction was conducted should apply only in the event a transaction was entered into via an international branch of a multi-branch counterparty, thus exempting from any branch identification requirement any transactions which were entered into either (i) by a counterparty which is not a multi-branch entity or (ii) a branch of a multi-branch counterparty located in any city in the country which is its home jurisdiction.
- If applicable, the foreign branch LEI should be reported in a separate data field explicitly designated for foreign branch identification.

Although these points may seem obvious, existing challenges with global data harmonization for transaction reporting demonstrate that consistency and specificity in global trade reporting regulations regarding data requirements are paramount to preventing differing interpretations and reporting practices regarding data fields between jurisdictions and even by reporting entities and trade repositories within a jurisdiction. We urge the LEI ROC to communicate these points with its constituency to help drive a high level of consistency and avoid differing interpretations between jurisdictions.

Second, in condition #1 the Policy Document is clear that foreign branch LEIs should follow a “one country-one LEI” approach in which only one LEI should be issued for each country outside of the home jurisdiction in which a legal entity has a branch(es) or office(s). However, this approach does not tie out



with the manner in which branches are specified for derivatives transactions nor coincide in all cases with the reasons for which a regulatory may wish to have foreign branches specified.

The majority of non-centrally cleared derivatives transactions are subject to an ISDA Master Agreement. Under an ISDA Master Agreement, each party specifies whether or not it is legally a multi-branch entity and if so, specifies its established branches based on a list of domestic and foreign cities, with each specified city being a branch through which the multi-branch party may enter into its derivatives transactions. On the confirmation for the transaction, the relevant domestic or foreign city may be specified in accordance with the ISDA Master Agreement. Based on the “one country-one LEI” approach, two things are clear:

1. A foreign branch ID would not be capable of being reported for a domestic branch regardless of whether one was specified on the relevant confirmation; and
2. Each foreign branch LEI may correspond to multiple branches through which a counterparty may enter into a derivatives transaction within a country.

Our recommendations for global regulators specified in the preceding section are based on an assumption that regulators understand and accept these limitations which must necessarily form the basis of any corresponding trade reporting requirements for branch identification.

The primary reason that regulators require branch identification in trade reporting is to assess the cross-border impact of transactions involving a party from a foreign jurisdiction that enters into transactions via a branch located within the regulator’s jurisdiction. However, based on the “one country-one LEI” approach this insight may not be fully available for regulators in countries with multiple regulatory jurisdictions. Canada is the most obvious example where the availability of a single foreign branch LEI would not provide additional clarity to securities regulators in one of the thirteen provinces or territories regarding the use of a branch in its jurisdiction.

We request that the GLIEF acknowledge in its guidance that the level at which a foreign branch LEI is issued may not correspond to the division of regulatory authority within a jurisdiction, but nonetheless recommend the adoption of foreign branch LEIs as the global standard for branch identification. We further ask the GLEIF to encourage regulators to issue rule amendments and guidance in their jurisdictions that corresponds with the availability of a single foreign branch LEI for each country and ask regulators to work with the standard based on those parameters rather than implementing any additional jurisdiction-specific requirements for branch identification.

In summary, we request that the guidelines issued by the GLIEF be clear and explicit, to help different jurisdictions to implement branch LEI recommendations in a consistent, standardized manner that promotes broad use of foreign branch LEIs. One suggestion would be to issue a publically available Frequently Asked Questions (“FAQ”) document which can be updated periodically by the LEI ROC and GLEIF as needed.

In addition to our recommendations above regarding clear and consistent guidelines for the use of foreign branch LEIs, the Associations ask that the LEI ROC ensures it gives the GLEIF and LOUs sufficient time to implement the framework for branches once the LEI ROC accepts the GLEIFs proposed approach. If the framework is drafted in a hurry, we risk ending up with a system that is not practical and useable. Consequently, we recommend that the LEI ROC consult with the GLEIF and the LOUs before it sets its implementation deadline to ensure adequate time is provided.

The Associations remain committed to helping our members and the industry prepare for use of the LEI, and would like to thank the LEI ROC and the GLEIF for your consideration of the comments provided in this letter regarding foreign branch identification within the GLEIS. Please let us know if you would like to discuss the content of this letter or if we can provide any further information that may be helpful.

Sincerely,



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