



10th March 2021

Mr Craig McBurnie
Senior Analyst, Market Infrastructure
Australian Securities and Investments Commission
Level 5, 100 Market Street, Sydney, NSW 2000
By Email (PDF documents): otcd@asic.gov.au

Dear Mr McBurnie

Response to ASIC Consultation Paper 334

APIR Systems Limited (APIR), LEI code 261700K5E45DJCF5Z735, welcomes the opportunity to provide the attached submission in response to ASIC's *Consultation Paper 334 - Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation*.

APIR is a participant (Registration Agent) in the Global Legal Entity Identifier System (GLEIS) and is currently supporting Australian entities to obtain and maintain their LEIs, so we consider it appropriate that we offer relevant comments on the changes proposed in the consultation paper.

We trust this submission is of assistance.

Yours sincerely

Chris Donohoe
Chief Executive Officer
APIR Systems Limited



Introduction

APIR is an independent, privately owned utility that provides a critical component of the Australian wealth management industry's infrastructure.

Since 1993, APIR has been identifying, coding and managing reference data for unlisted financial products and the issuers of those products. During that time, we have identified over 30,000 unlisted financial products of which nearly 15,000 are actively trading in today's market.

The "APIR Code" is universal across the Australian wealth management industry, being used by all the distribution platforms, custodians and fund administrators. Our supporting data services are used by leading research houses, data houses, major software developers and financial planning desktops.

APIR is also the issuer of International Securities Identification Numbers (ISIN) for unlisted managed investment schemes and superannuation funds in Australia.

Additionally, in partnership with RapidLEI, the world's fastest growing issuer of Legal Entity Identifiers (LEIs), APIR is the leading Australian based Registration Agent approved by the Global Legal Entity Identifier Foundation (GLEIF). Through our partnership we have assisted thousands of Australian companies, SMSFs, trusts and funds efficiently register, renew and maintain their LEI and reference data.

APIR is providing this submission in response to ASIC's *Consultation Paper 344 - Proposed changes to simplify the ASIC Derivative Transaction Rules (Reporting): First consultation*, in its capacity as a specialist identification utility and as a GLEIF approved Registration Agent.

As a Registration Agent, APIR assists Australian businesses obtain and renew LEIs every day; this includes validating the entity's supporting documentation and reference data when an LEI is issued and importantly, when it is renewed.

As part of a global network responsible for the LEI system, we are also aware of the progress made by regulators around the world in adopting the LEI as the standard identifier and of the scale achieved by the GLEIS over recent years. Both should give ASIC confidence in its proposal to mandate the LEI as the only identifier to be used in OTC derivative reporting.

Based on our experience APIR welcomes and strongly agree with ASIC's proposal to:

- make a duly renewed LEI the only allowable entity identifier in OTC derivative transaction reporting for all eligible relevant entities; and
- to repeal section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844.



APIR believe the implementation of the proposed changes will improve the effectiveness of the LEI in OTC derivative reporting, but in particular the proposal to mandate a “duly renewed LEI” will ensure that the LEI and its accompanying reference data is valid and accurate.

Our submission specifically and directly responds to questions F1 and F2 of Section F - The Legal Entity Identifier (LEI) of Consultation Paper 334. In addition, we would take this opportunity to note that the paper also refers to an “identifier” in various tables in the paper and the Attachment document.

We offer some suggestions regarding this under “Further Comments” at the end of our submission.



Specific Responses to F1 and F2

F1 We propose to amend the ASIC Rules to:

(a) require that entity identifiers must be valid and duly renewed LEIs (other than for entities that are natural persons not acting in a business capacity); and

(b) require that transactions that have been reported with entity identifiers that are not valid and duly renewed LEIs have their transaction information updated to include a valid and duly renewed LEI.

F1Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

(a) APIR agrees with this proposal.

As a participant in both Australian and global identification systems for over 20 years, including the GLEIS since 2015, APIR has developed a deep understanding of the importance of accurately and precisely defining key components of an identifier and its reference data. We also understand that this data must be accurate and current to be of value, and that this can only be achieved if the data is maintained over time. An annual renewal/verification process is essential to achieve this for any identification framework.

Furthermore, APIR believes that valid and duly renewed LEIs as proposed by ASIC will improve trade repository data and therefore improve financial market integrity and policy decisions; that will ultimately lead to better consumer outcomes.

Therefore, with respect to the LEI, we believe that the unequivocal definition of a “duly renewed LEI” proposed by ASIC is critical in determining its long-term effectiveness when used in reporting to trade repositories and other use cases for the following reasons:

1. Currency and accuracy of reference data

APIR agrees with specifying a “duly renewed LEI” because a renewed LEI has a specific meaning under the GLEIS standards. It means that the LEI is valid and has been reviewed at least every twelve months.



It means that the LEI record contains reference data that has been verified according to the terms of any of the accredited Local Operating Units (LOU) of the GLEIS. This in turn, means that stakeholders can have a high level of trust in the quality of the reference data behind the LEI record. This is achieved because the LEI renewal process:

- is required annually and must be completed by an authorised officer of the entity
- mandates that the owner of the LEI confirm the currency and accuracy of the reference data
- requires the issuer of the LEI (the LOU/Registration Agent) to validate the reference data against a GLEIF approved jurisdictional register, including the ABN Register in Australia and/or supporting documentation provided by the entity
- applies the same rules globally, ensuring that a renewed LEI means the same thing to all stakeholders, including Regulators and Trade Repositories, irrespective of their jurisdiction.

2. Improving lapse rates

The GLEIS allows LEI records to be managed using a number of status indicators such as issued, renewed, retired and lapsed. These are all legitimate classifications within the GLEIS.

However, globally the lapse status has been subject to some confusion about when it should apply. This has resulted in what GLEIF considers to be artificially high lapse rates and reducing them has been, and remains, an ongoing objective for GLEIF.

In conjunction with GLEIF's ongoing action, there is no doubt that regulators that mandate a valid (duly renewed) LEI make a significant contribution to resolving this issue, and that benefits all regulators and market participants globally.

With over 39% of LEIs issued to Australian entities now lapsed, Australia is well above the global average of 32%. In our view, ASIC mandating a duly renewed LEI will result in a reduction in lapse rates in Australia as it will remove confusion about what constitutes a valid LEI for trade reporting.



3. Harmonising legislation with other jurisdictions

APIR notes ASIC's intent to align, where practical, its regulations with that of other jurisdictions and in particular with the latest ESMA updates (refer ASIC note dated (27/01/2021). This reflects the intent of the Financial Stability Board (FSB) to improve transparency in derivative markets by implementing a number of harmonised transacting and reporting initiatives including the implementation of a global identification framework, being the LEI.

Since the GLEIF became operational in 2013, significant progress has been made in achieving this objective including:

- the issue of over 1.8 million LEIs
- adoption in some form by twenty jurisdictions (GLEIF as of October 2020) including the EU, the US, China, Russia, Canada, Switzerland, Singapore, Hong Kong and Australia
- approval in over 160 separate pieces of legislation/regulation of which the LEI is a required element in over 120 of these
- adoption across financial services applications other than derivatives transaction reporting. For example, lending, payments, and KYC
- increasing use in digital certificates and digital authorisation systems.

With respect to OTC Derivative reporting, a duly renewed LEI is a required element under the EU's MiFID11/MFIR; various pieces of legislation in the US including the Securities Exchange Act, the Dodd Frank Act, the Investment Company Act and the Investment Advisers Act; In Canada the Investment Industry Regulatory Organization of Canada (IIROC) and Derivative Acts of Alberta, Ontario, Quebec and British Columbia; Singapore's Securities and Futures Act; Switzerland's Financial Market Infrastructure Act (FMIA) and Hong Kong's OTC derivatives regulatory regime.

ASIC's mandating that an LEI be duly renewed is a significant step in harmonising Australian regulations with those of other jurisdictions.

4. Expanded use of the LEI globally

Whilst initially developed by the G20 for use in trade depository reporting, the use case of the LEI globally has expanded significantly in different jurisdictions.



As mentioned above, the LEI is now extensively used across the financial services and other industries for a diverse range of applications ranging from payments in the United Kingdom to corporate borrowing in India. The LEI is now a key component used during the AML/KYC process when identifying & onboarding new corporate clients and is being imbedded into digital certificates and digital authorisation systems.

The basis for the usage of the LEI is centred around the trust that can be established through the rigorous annual renewal process that must be undertaken by the issuing LOU.

We believe that the amendments to the ASIC Rules to require that entity identifiers must be valid and duly renewed LEIs sets market best practice for the expanded use of LEIs within the Australian landscape.

(b) APIR agrees with part (b) of the proposal.

Updating previously reported transactions that do not have a valid and duly renewed LEI with a duly renewed LEI, will enhance the consistency and usability of transactional data available in Trade Repositories.

F1Q2 Do you consider that you will have particular interpretation or implementation issues with the proposed LEI requirements? In your response, please give detailed reasons for your answer.

APIR does not have any interpretation or implementation issues with the proposed LEI requirements. We believe that mandating a valid and duly renewed LEI removes the need for interpretation and simplifies implementation.

F2 We propose to repeal section 6 'Exemption 2 (Entity Information)' and section 6B 'Exemption 2B (Joint Counterparties)' of ASIC Corporations (Derivative Transaction Reporting Exemption) Instrument 2015/844 in relation to reporting entities other than reporting entities that are foreign subsidiaries of Australian reporting entities.

F2Q1 Do you agree with this proposal? In your response, please give detailed reasons for your answer.

APIR agrees with this proposal.

APIR believe that the removal of this exemption will eliminate confusion while standardising the use of the LEI across trade reporting and therefore strengthening the integrity of the data collected.



Further Comments

APIR notes that the Consultation Paper references tables that contain data elements that will be impacted by the proposal. Specifically, we note that Section E4 references Table 11 and that Section E19 references Table 27. Each of these tables contain data elements for identifiers of entities such as counterparties.

As the proposal is to mandate a duly renewed LEI as the identifier for counterparties, APIR would encourage ASIC to specifically refer to these data elements as the LEI.

In principle we would recommend that where the intent is that the identifier that is required is the LEI, it should be referred to as the LEI rather than as an identifier.