

January 31, 2011

Office of Financial Research
United States Department of the Treasury
Office of Domestic Finance
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Office of Financial Research Statement of Policy with Request for Comment: Statement on Legal Entity Identification for Financial Contracts

Dear Sir or Madam:

The American Bankers Association (ABA)¹ appreciates the opportunity to comment on the Office of Financial Research's (OFR) proposed Policy Statement on Legal Entity Identification for Financial Contracts². The OFR, in its efforts to support the Financial Stability Oversight Council by identifying connections among market participants and monitoring systemic risk, has published the proposal "to standardize how parties to financial contracts are identified in the data it collects on behalf of the Council."

ABA generally supports many of the OFR's proposed provisions relating to characteristics of the legal entity identifier (LEI), the institutional arrangements for issuing LEIs, and developing, maintaining, and publishing LEI reference data. However ABA has some concerns relating to each major component, seeks clarification of several aspects of each component, and raises several additional issues for consideration that were not included in the OFR's proposed Statement of Policy. In several instances, ABA recommends that the OFR allow the industry that will implement this broad Statement of Policy to develop the necessary tools to implement efficiently and effectively the proposed LEI identification system, rather than prescribe specific items or expressly prohibit certain practices in the Statement of Policy that are best left to industry to determine. ABA also stresses that the LEI must be or will be an international standard for unique identification of legal entities that participate in financial contracts in order for the LEI system to be effective.

ABA offers the following comments and recommendations regarding the major components of the proposed LEI Statement of Policy:

¹ The ABA represents banks of all sizes and charters and is the voice for the nation's \$13 trillion banking industry and its 2 million employees. The majority of ABA's members are banks with less than \$165 million in assets. Learn more at www.aba.com.

² Office of Financial Research Statement of Policy with Request for Comment Regarding the Statement on Legal Entity Identification for Financial Contracts. See 75 *Fed. Reg.* 74146 (November 30, 2010).

A. Characteristics of the LEI:

ABA supports each of the OFR's proposed characteristics of the LEI, with the following comments/clarifications.

ABA seeks clarification of the meaning of the term "life of an entity" in the third proposed characteristic that would require an LEI to "persist over the 'life of an entity' regardless of corporate actions or other business or structural changes." ABA urges the OFR to offer some scenarios that would help to clarify the meaning of this term. For example, how would an LEI be treated when there are changes to an entity because of a spinoff, merger, or change in corporate name, to cite a few examples? Also in the third characteristic, ABA recommends that the OFR include a requirement to flag a record when a legal entity is no longer active.

ABA urges the OFR to clarify the sixth characteristic to state that any legal entity that needs an LEI should be eligible to get an LEI no matter what business is covered. Also, ABA emphasizes that the OFR's proposed list of the types of "eligible markets participants" for which an LEI would be available should not limit in any manner the entities that need an LEI. This would be consistent with the intent of the LEI program to be inclusive and universal.

ABA also emphasizes that the eleventh characteristic must be or will be an international standard for unique identification of legal entities in the financial sector.

ABA urges the OFR to clarify/define key terms in this proposal, including "financial contract", "legal entity", "counterparty", and "eligible markets participants." There needs to be clarity of the key definitions, even if they incorporate definitions from the Dodd-Frank Act³ (DFA) statute, so financial institutions and legal entities have meaningful guidance and certainty on what they will be required to do and to enable institutions to identify their firm's exposures. This corresponds with the need for the terms to be easy to understand and simple to administer, again to enhance the inclusive and universal coverage of the LEI program.

ABA also urges the OFR to add to the third proposed characteristic a statement that the LEI should identify the linkage, and reflect changes to the linkage, between a parent legal entity and a subordinate legal entity (*e.g.*, a subsidiary or affiliate). This additional linkage is particularly important to identify when there is a change in the relationship between the parent legal entity and the subordinate legal entity, such as when a subsidiary is sold intact to a third party.

ABA also recommends that the subordinate legal entity that remains intact should retain its LEI, and merely the linkage to the prior parent legal entity would change to the new parent.

B. Institutional Arrangements for Issuing LEIs:

ABA supports each of the OFR's proposed provisions of this section, except as noted below.

³ Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203 (July 21, 2010).

ABA makes no recommendation on whether the entity that will issue LEIs should be organized and operated as a not-for-profit body. However, ABA recommends that whether the entity is a not-for-profit or a for-profit body, it is critical that the entity must be sustainable and economically viable.

After the first sentence of the third paragraph (which states: “Issuance of LEIs must be timely and non-discriminatory.”), ABA urges the OFR to include the following: “Industry shall develop LEI standards and processing models to register LEI in the international community.”

ABA opposes the provision of the OFR’s proposed sixth paragraph, which prohibits imposing fees on LEI end-users for the cost recovery of issuing identifiers and maintaining their reliability. In lieu of this prohibition, the OFR should revise the sixth paragraph to state: “The entity responsible for issuing, distributing, and maintaining the reliability of the LEIs to the international community should be permitted to recover reasonable and readily identifiable costs incurred in the issuance, distribution, and maintenance of the LEIs.” **ABA believes the final Statement of Policy should not mandate that end-users are exempt from the cost of registering, obtaining, and using LEI.** ABA recommends that the OFR leave the determination of the reasonable cost recovery approach to the industry to determine as part of the overall proposal.

C. Institutional Arrangements for Developing, Maintaining, and Publishing LEI Reference Data:

ABA supports each of the OFR’s proposed provisions of this section, except as noted below.

The OFR’s four proposed minimum LEI reference data elements in the second paragraph – i.e., (1) name, (2) location, (3) electronic address, and (4) legal status—provide a good starting point for identifying legal entities. ABA recommends that the OFR should allow the industry to come back with a proposal for the key minimum LEI reference data elements as part of the overall industry recommendation for an LEI standard and process. Consideration should also be given to necessary data elements to facilitate automated matching. Much more work needs to be done to identify the right key minimum elements and their definitions. For example, what is meant by location? Would it mean a country, address, or some other means of identifying a location?

ABA recommends that the OFR define the term “robust” in the fourth paragraph where it requires that “[t]he entity must have a ‘robust’ quality assurance process.” ABA also recommends that when defining “robust” the OFR should clarify that the term “robust” means that the provider responsible for producing and publishing the LEI reference data will be a trusted source of data.

While the OFR’s proposed last sentence of the fourth paragraph lists components that the quality assurance process should include is a good start, ABA recommends that the OFR allow industry to determine the best quality assurance processes and practices that should be used.

ABA opposes the last portion of OFR’s proposed fifth paragraph, which prohibits imposing fees on users of LEI reference data for the cost recovery of developing, maintaining, and publishing

LEI reference data. In lieu of the proposed prohibition, the OFR should revise the fifth paragraph to state: “The entity responsible for developing, maintaining and publishing LEI reference data to the international community should be permitted to recover reasonable and readily identifiable costs incurred in developing, maintaining, and publishing the LEI reference data.” **As noted above, ABA believes the final Statement of Policy should not mandate that those who use the reference data are exempt from the fees associated with its use.** ABA recommends that the OFR leave the determination of the reasonable cost recovery approach to the industry to determine as part of the overall proposal.

ABA makes no recommendation on whether the entity that will produce and publish the LEI reference data should be operated as a not-for-profit body. However, ABA recommends that whether the entity is a not-for-profit or a for-profit body, it is critical that the entity must be sustainable and economically viable.

ABA has concerns with the following items relating to both Sections B and C of the proposal relating to Institutional Arrangements for entities that issue LEIs and develop, maintain, and publish LEI reference data:

- ABA urges the OFR to clarify the meaning of “balanced representation” for the proposed requirements that such entities “have a formally documented governance structure with ‘balanced representation’ for relevant stakeholders.”
- ABA recommends that the OFR’s use of the term “adequately” be deleted from the proposed requirement that “... the entity’s processes ... be ‘adequately’ governed and auditable.” The term is confusing and unnecessary. ABA also recommends that the OFR state that the processes must be auditable “by an independent third party.”
- ABA also recommends that the OFR add to the end of each proposed requirement relating to: “[T]he security and reliability of all IT systems involved in ... [should][must] meet or exceed industry standards for a real-time, high availability market service ...” the following: “, based on market need.” This would qualify and place in context the previous requirement of “real-time” responses.
- ABA also urges the OFR to clarify in its proposal that cost recovery relating to LEIs and LEI reference data may be accomplished through “other fees”.

ABA recommends that the OFR:

- Add a principle to Sections B and C that states that the “Institutional arrangements need to be mindful that any attributes disclosed as part of the process could be subject to the laws of local jurisdictions.”
- Expand Section D to urge the CFTC and the SEC to give strong consideration to using the same system as the OFR-mandated LEI and institutional arrangements, in order to have harmony and efficiency of the systems.

- Ensure that technology methods used for accessing data be flexible, and that sufficient time be given to allow institutions to prepare their systems and support the new requirements. Not every institution is able to move at the same pace, so the provider will need to support multiple methods for accessing this data.
- Confirm that the implementation of the LEI will apply prospectively only. It would be enormously burdensome with correspondingly little benefit to require the industry to convert legacy data on their systems.
- Permit affected entities the time needed to test and validate reporting before the system becomes mandatory. However, for efficiency purposes, ABA recommends that while a reasonable transition period for using LEIs for active trades should be provided (*e.g.*, two years), there also should be a deadline as to when all active trades are required to include an LEI before implementing this new system.
- The OFR's proposal does not address what happens if a legal entity does not have a legal entity identifier, once it is required. ABA urges the OFR to clarify this issue in order to provide certainty.

ABA appreciates the opportunity to comment on this proposed rulemaking. Please contact the undersigned at (202) 663-5331 or kmctighe@aba.com if you have any questions. Thank you for considering our comments and recommendations.

Sincerely,



Kathleen P. McTighe
Senior Counsel