

**The Clearing House Association L.L.C.
Enterprise Data Management Council
Financial Services Roundtable
Futures Industry Association
International Swaps and Derivatives Association, Inc.
Investment Company Institute
Managed Funds Association
Securities Industry and Financial Markets Association**

January 31, 2011

By Email and Overnight Mail

Mr. Lewis Alexander
Counselor to the Secretary
Office of Financial Research
U.S. Department of the Treasury
1500 Pennsylvania Ave. N.W.
Washington DC 20220

**Re: Statement on Legal Entity Identification for Financial
Contracts**

Dear Mr. Alexander,

The Clearing House Association L.L.C. (“TCH”), the Enterprise Data Management Council (“EDM Council”), the Financial Services Roundtable (“FSR”), the Futures Industry Association (“FIA”), International Swaps and Derivatives Association, Inc. (“ISDA”), the Investment Company Institute (“ICI”), Managed Funds Association (“MFA”), and the Securities Industry and Financial Markets Association (“SIFMA”) (collectively, “the trade associations” or “we”)¹ appreciate the opportunity to comment on the Department of the Treasury’s (the “Department”) Statement on Legal Entity Identification for Financial Contracts (the “LEI Statement”). The trade associations are strongly committed to working with the Department’s Office of Financial Research (“OFR”) and other financial regulators, both in the US and worldwide, to establish effective and efficient methods for developing a system of uniform legal entity identifiers (“LEIs”). A system of uniform LEIs will help the Department to carry out its mandate under the Dodd-Frank Act to measure and evaluate systemic risk in the financial system. We also believe that the creation of a unique identifier will provide financial services firms the ability to create new tools to measure and monitor risks. We are committed to working with the regulators to define a process and create a platform that will work for all parties in achieving this vitally important goal.

¹ Information about each of the trade associations that has signed this letter is contained in Appendix A.

The trade associations agree with the LEI Statement that a logical and necessary starting point is the creation of uniform LEIs that financial services firms can use to aggregate counterparty risk, and that regulators can then use to assess risk throughout the financial system. The trade associations are committed to work with their members, other industry participants and the Department to create an effective LEI standard, framework and process. To help achieve this goal, the trade associations have established an LEI Working Group which meets at least on a weekly basis. We have met with major vendors who have proposed different potential LEI proposals, and we are assisting those vendors to refine and improve those proposals. One of the trade associations, SIFMA, has hired a project manager to coordinate the development of an industry LEI proposal. The trade associations are willing to run a public Request for Information process so that each vendor can have confidence its potential LEI solution is fully and fairly considered.

The trade associations understand that, in part driven by the CFTC's Swap Data Recordkeeping and Reporting Requirements Proposal,² a process for assigning LEIs needs to be fully defined by July 2011. The recommended proposal should be capable of an initial implementation, in a relatively short period of time thereafter. We are committed to assisting the Department and the other US regulators in meeting this timetable. Our intention is to prepare a firm proposal for the Department's consideration, well in advance of July 2011, so that the regulators can incorporate it into their final rules, with the actual implementation occurring thereafter.

Our comments include the following observations. First, we believe the Department should coordinate with all the major domestic and global financial services regulators so that there is only one LEI standard. Second, while we are not yet ready to make final recommendations about an LEI process, we have some preliminary observations.

- (A) The entity responsible for the LEI process (the "LEI issuer") should be a non-profit with a stable funding source and an open and transparent process.
- (B) The Department should clearly define who is responsible for obtaining an LEI, and preliminarily we see benefits to a self-registration model in which legal entities would register a limited amount of information about themselves and then would certify that information periodically, or upon changes.
- (C) We agree in concept with the LEI characteristics contained in the cross-regulatory whitepaper entitled "Creating a Linchpin for Financial Data: The Need for a Legal Entity Identifier" (Dec. 10, 2010) (the "Linchpin Report"),³ especially that the LEI be neutral.

² 17 C.F.R. Part 45, 75 Fed. Reg. 76574 (Dec. 8, 2010).

³ Available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1723298.

- (D) The data elements for the LEI process should be considered carefully, especially how to include individuals and how to define and track ownership.
- (E) Last, we believe it is important to have a carefully thought out strategy to phase in the use of LEIs.

Our comments below provide more details and are intended to assist the Department in assuring that this project effectively achieves the important goals of the Dodd-Frank Act.

I. The Department Should Coordinate so that There is Only One LEI Program for All the Major Financial Services Regulators, in the US and Worldwide

As the Department is aware, there are several regulatory initiatives underway in addition to the OFR's efforts that would require similar data about the counterparties of U.S. financial institutions. The U.S. Securities and Exchange Commission has already proposed a Large-Trader Reporting System (LTRS),⁴ as well as a Consolidated Audit Trail System (CATS).⁵ Similarly, the CFTC has proposed the swap data recordkeeping rules and swap data repository rules, both of which would require information about the legal entities to swap transactions, and has proposed rules on account ownership and control that include a unique LEI.⁶

Our member firms hope that the regulatory community does not miss this opportunity to achieve a single, industry-wide LEI standard for all regulators. It would be wasteful to incur the cost and manpower burdens of allowing individual regulators to establish multiple LEIs for the same entities. Moreover, any process that requires "mapping" of one set of LEIs to another will require a tremendous amount of time and effort and will introduce a substantial risk of errors which can be entirely avoided with a single, authoritative repository of LEIs.

Even more importantly, it is vital that the regulators rely on the same identifiers. As the May 6, 2010 "flash crash" demonstrated, because the markets they oversee are linked, the SEC and CFTC need to use the same identifiers to be able to analyze data effectively. Similarly, if the OFR is using different data to identify legal entities from that used by the SEC, CFTC or other agencies, it will increase the possibility that the financial regulatory community will miss potential sources of systemic risk that would be apparent if they were all using a single LEI. The trade associations strongly believe that the gains in efficiency and effectiveness of a comprehensive set of standards across all U.S. financial

⁴ Exchange Act Rel. No. 61908 (Apr. 14, 2010).

⁵ Exchange Act Rel. No. 62174 (May 26, 2010).

⁶ 17 C.F.R. Part 49, 75 Fed. Reg. 80897 (Dec. 23, 2010).

services regulators is well worth the extra time and effort required by this coordination process. We applaud the LEI coordination effort reflected by the Linchpin Report. We have been very heartened in our discussions with the U.S. financial services regulators to see that they are committed to a single, consistent and coordinated LEI effort. The regulatory community should strive to make this new systemic risk monitoring system as effective as possible.

Beyond the United States, we understand there is discussion in the EU about similar LEI requirements to assist regulators in tracking systemic risk and preventing market abuse, although no formal proposals have been issued. For all of the reasons discussed above, the trade associations urge the Department, along with other US regulatory agencies, to take the lead in coordinating with foreign securities regulators. Global cooperation will be necessary to establish an effective LEI program, because the types of legal entities vary across different international jurisdictions, and international expertise is necessary for the system to be accurate and comprehensive. We believe a global LEI program and standards will only be effective if it is adopted by and incorporates feedback from the major securities regulators in Europe and Asia. We have been pleased in our discussions with the US financial services regulators to learn that they are committed to a globally consistent and coordinated LEI effort. We believe the Department and the other US regulatory agencies (rather than the private sector) will have to take the lead in convincing international regulators to join this effort.

We also urge the Department to be as clear as possible in its proposed rules about the scope of LEI requirements. The trade associations support the broadest scope of coverage: all affiliates, whether on or off-shore, of US-based parent companies and foreign parent companies that have US financial institution subsidiaries.⁷ It will be very difficult to achieve that scope (and the Department may not have authority to require it) without the active cooperation and encouragement of the major foreign financial services regulators. For this reason, it is vital to the success of the project that the Department coordinates with foreign regulators from the outset.

II. Preliminary Views on an Effective LEI Process

The trade associations continue to work with different potential vendors to understand their views on an effective LEI process and to help them formulate proposals to design and implement such a process. To assist the Department in moving the LEI project

⁷ As discussed below, the roll-out strategy for an international LEI process remains to be defined, and we are not yet prepared to state that all international jurisdictions and entities should be covered on day one.

forward, we set forth some preliminary views on several of the key issues raised in the LEI Statement and the Linchpin Report.

A. The Governance of the LEI Process

The governance structure for an LEI issuer must be clearly defined at the outset of the project. We support the position in the Linchpin Report that the LEI issuer should be a not-for-profit institution. If the LEI issuer is a for-profit entity (or is part of a for-profit entity), there may be a conflict between the desire to maximize profits and the merits of the LEI program itself. We agree with the Department that the international acceptance of an LEI issuer is unlikely to be successful unless the entity managing the LEI database is a not-for-profit institution.

The trade associations also note that it will be very important to define a stable and adequate funding source for the LEI process which does not create any adverse incentives hindering use of LEIs. While the LEI Statement suggests that the reference data “be available to the public without fees,” we urge the Department to withhold any such judgment about the funding for the LEI process until it receives a fully developed proposal. The proposed funding mechanisms will be a critical factor in considering the models proposed by each candidate for the LEI process. We are not convinced that a limited user fee for legitimate cost-recovery purposes necessarily would be inconsistent with the statutory mandate that LEI data be “freely available.”

The trade associations believe that at a minimum the governance structure should allow participation by the financial services industry and public representatives, to assure that all affected constituencies are fairly represented. We note that the governance structure for the initial LEI standard-setting process and that for the ongoing LEI issuance and quality assurance for LEIs may be different.⁸

The trade associations believe that the LEI issuer should have a standard-setting process that is open and transparent, and all interested parties should be able to participate in that process, both initially and on an ongoing basis. The standard-setting process should strive for consensus, due process, conflict resolution and strong quality assurance, including a means for market participants to challenge potentially erroneous data. The

⁸ We believe it is critical that there be a single global LEI standard established and governed by a single entity and that the standard be interoperable. One issue that will have to be defined is whether there is a single global LEI issuer, or multiple LEI issuers, either competing within a particular jurisdiction, or as a network of regional organizations coordinated by a central entity. Preliminarily we believe that it is preferable to have fewer rather than many LEI issuers.

details of that process remain to be defined. We bring to the Department's attention the American National Standards Institute (ANSI) Essential Requirements, which represent an accepted industry benchmark for the process of developing standards such as those for LEI identifiers.⁹

The Linchpin Report suggests, and we agree, that LEIs should be available on a same-day basis.¹⁰ The promptness with which a potential LEI issuer can issue LEIs and update its database will be among the criteria on which we would evaluate potential candidates to serve as the LEI issuer. The LEI issuer should have robust business continuity and disaster preparedness requirements. If legal entities are not able to participate in some financial transactions (such as swaps) until they obtain an LEI, it would be unacceptable for the LEI issuer to be "down" for any substantial amount of time. Similarly, the LEI issuer should have multiple, reliable means of access, including web-based access, both for legal entities to apply for new LEIs, and for financial services firms to be able to access the underlying data submitted to accompany the LEI (discussed further below). Reliable access is critical to the utility of the LEI data.

B. The Responsibility for Obtaining LEIs Should Be Clearly Defined

It will be important to define clearly who is responsible for obtaining an LEI and under what circumstances. The Linchpin Report (at 15) contemplates that the responsibility to begin the LEI application process would be placed on the entities themselves.¹¹ The trade associations preliminarily believe there are clear advantages to a self-registration model, with some audit/data quality review by the LEI issuer.¹² We recognize that there may be

⁹ See ANSI, Essential Requirements: Due process requirements for American National Standards (2010) (available at <http://publicaa.ansi.org/sites/apdl/Documents/Standards%20Activities/American%20National%20Standards/Procedures,%20Guides,%20and%20Forms/2008%20ANSI%20Essential%20Requirements/2008%20ANSI%20Essential%20Requirements%20031108.pdf>).

¹⁰ We agree with the Linchpin Report that firms should not be required to discontinue use of other unique identifiers they use for clients. Forcing firms to discontinue use of their existing internal identifiers would be a much more significant systems challenge, and would require much more time to implement, than simply requiring firms to track externally assigned LEIs.

¹¹ We note that the SEC's large trader reporting system similarly places the filing obligation on the large trader, not on the financial institution. Exchange Act Rel. No. 61908 (Apr. 14, 2010). As with the SEC proposal, a secondary burden could be assigned to financial services firms to notify client entities when it appears they may have triggered the obligation to obtain an LEI.

¹² Of course, it may be appropriate for a financial institution to offer assistance in the LEI process as a service to its clients. In such a circumstance, it will be necessary to define how the burden of compliance will be allocated between the financial institution and its client, both initially, and in

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some instances in which it is necessary to employ a hybrid model relying in part on financial services firms; however, the legal entity itself has the best access to the information that will be required (such as its parent and ultimate ownership), and to provide evidence of its incorporation or organization. Similarly, the legal entity itself will be best positioned to update any changes to its status.

As the Linchpin Report indicates, it will be important to create appropriate incentives to encourage legal entities to apply for LEIs, to certify the accuracy of its LEI information on some periodic basis (such as annually), and to assure that a single entity does not attempt to obtain multiple identifiers. Again, this incentive structure can only work if there is substantial international consensus around the LEI process, and if requirements are adopted in the major foreign financial centers that parallel any U.S. requirements concerning the need to obtain and update LEIs. Finally, we believe it is important to establish a clear understanding about the extent to which the LEI issuer will be responsible for quality assurance: to what extent will it confirm the accuracy of some or all of the information supplied by legal entities.

C. LEIs Should Be Neutral

The trade associations agree with the Linchpin Report (at 10) that using so-called intelligent LEIs “violates basic data management principles and best practices regarding unique identification symbology.” Neutral LEIs, which do not attempt to embed meaning or information, are a critical element of a successful LEI system. As the Linchpin Report recognizes, if an LEI attempts to incorporate meaningful information, then the LEI must be changed whenever the underlying information changes, for example if the entity changes its name, ownership, legal domicile, or other characteristics. Changing the LEI for an entity creates risks that not all market participants will learn of and implement the change correctly, thereby compromising its effectiveness. A neutral LEI can be unique and persistent, and we believe these are essential characteristics.

The trade associations also agree in concept with the other characteristics for an LEI discussed in the Linchpin Report: the LEI should be singular and unique, have persistence, be extensible, be reliable, be interoperable and publicly available, and have strong quality assurance processes. We will use these principles to evaluate the proposals of the various solutions providers.

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terms of updating the client’s information. We believe that where possible, it is most appropriate that the compliance burden remain with the legal entity, rather than on the financial institution.

D. The Data Elements Necessary for an LEI Must Be Defined

The trade associations agree with the Linchpin Report that the number of data elements be kept to the minimum necessary to assure the uniqueness of each legal entity. The greater the number of data elements, the more possibility there will be for mistakes, for delays in the application process, and for errors caused by a failure to update. We will not attempt to address all the relevant data elements in this letter, but we do have certain observations concerning this issue.

The Department's Statement of Policy only refers to requiring LEIs for entities, and not individuals. The Linchpin Report (at 9) refers to individuals as possibly being required to obtain LEIs, and the CFTC's proposed swap data requirements could apply to individuals. Obviously, if the LEI program does include individuals, then the data elements for an LEI application would have to be modified substantially from what would be appropriate for institutions. While we see some potential benefits for assigning LEIs to some individuals in some circumstances, it may be appropriate to address individuals separately from institutions, both in terms of establishing requirements and implementing those requirements. At a minimum, substantial personal privacy concerns, including the effect of U.S. and international privacy laws and regulations, and other operational complexities would have to be addressed before information about individuals could be included in a "freely available" LEI database.¹³ We intend to address the issue of individuals in the coming proposal, but it may be necessary to discuss this issue with the Department and the other agencies in advance of a formal proposal.

The LEI process will have to define the standards for reporting and tracking the ownership hierarchy for an entity. The trade associations support the Department's view that for risk management purposes, it is highly desirable to know not only an entity's immediate owner, but also its ultimate parent owner.¹⁴ We believe that a bright-line, objective test for ownership, rather than a subjective or facts-and-circumstances test, will have the greatest chance for success. As discussed above, the information about ownership, and updates to that information, are uniquely within the possession of the entity itself.¹⁵

¹³ Similar privacy and confidentiality concerns will need to be addressed in the context of pooled investment vehicles and institutional investors.

¹⁴ The extent to which the ownership hierarchy information should be "freely available" would also have to be defined, because this information may raise business confidentiality issues not present for most other LEI data elements.

¹⁵ The relationship database will also have to define how to address pooled investment vehicles, which typically are separate legal entities managed by an investment adviser but not majority

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E. A Carefully Constructed Process Is Necessary for the Introduction of LEIs

Although the trade associations are not yet ready to recommend a specific roll-out strategy for LEIs, we preliminarily believe that a phased approach is appropriate. We urge the Department and the other federal regulators to consider an implementation that occurs over time. For example, it may be appropriate to limit the initial roll-out to the most “systemically significant” entities; to entities in those jurisdictions where the data elements have been defined and approved; to entities that trade certain specific products (e.g. products subject to the CFTC swap data repository proposal); or to have separate tracks for the assignment of LEIs to institutions and to individuals. The amount of information collected about entities (such as ultimate parent ownership) also could be phased in over time. Moreover, the implementation process will present substantial operational and technical complexities for the financial services firms that must track the LEIs of their clients, and the scope of the initial LEI requirements will affect the time it will take for those firms to implement those requirements. In an effort of this magnitude, we believe that some unanticipated issues during the implementation phase are inevitable, so it is likely to be preferable to implement the process in stages. Once there has been a successful proof of concept, then the Department can implement the requirements to a broader universe of legal entities.

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owned by that adviser. In addition, registered investment companies (which typically are organized as corporations or business trusts) often comprise multiple, separate funds or series. It will be necessary to determine whether to assign an LEI to each individual fund or series.

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The trade associations appreciate the opportunity to submit this comment letter on these important issues. We would be happy to meet with the Department staff to discuss the issues in this letter. Please contact the undersigned if you have any questions or would like to discuss these issues further.

Sincerely yours,

The Clearing House Association L.L.C.

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Appendix A - Information About the Trade Associations

Established in 1853, The Clearing House is the nation's oldest banking association and payments company. It is owned by the world's largest commercial banks, which collectively employ 1.4 million people in the United States and hold more than half of all U.S. deposits. The Clearing House Association L.L.C. is a nonpartisan advocacy organization representing—through regulatory comment letters, amicus briefs and white papers—the interests of its owner banks on a variety of systemically important banking issues. Its affiliate, The Clearing House Payments Company L.L.C., provides payment, clearing, and settlement services to its member banks and other financial institutions, clearing almost \$2 trillion daily and representing nearly half of the automated-clearing-house, funds transfer, and check-image payments made in the U.S. See The Clearing House's web page at www.theclearinghouse.org.

The EDM Council is a non-profit trade association of financial institutions, data originators, financial industry vendors and market authorities organized to address the requirements for managing data content as an operational priority. The Council focuses on standards for identification of instruments and entities, the development of a common semantic framework for describing the contractual structure of financial contracts and best practices associated with EDM implementation.

The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America's economic engine, accounting directly for \$74.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

The Futures Industry Association is a principal spokesman for the commodity futures and options industry. FIA's regular membership is comprised of approximately 30 of the largest futures commission merchants in the United States. Among its associate members are representatives from virtually all other segments of the futures industry, both national and international. Reflecting the scope and diversity of its membership, FIA estimates that its members effect more than eighty percent of all customer transactions executed on United States designated contract markets. For more information, visit www.futuresindustry.org.¹⁶

¹⁶ The FIA supports the work of the organizations identified in this letter; however, futures and options markets are already subject to extensive reporting requirements. In order to better support Legal Entity Identification for Financial Contracts we need to view it in the context of the current reporting regime and the proposed reporting regime for swaps. FIA strongly supports a consistent use of identifiers across products.

The International Swaps and Derivatives Association, or ISDA, was chartered in 1985 and has over 800 member institutions from 54 countries on six continents. ISDA's members include most of the world's major institutions that deal in privately negotiated derivatives, as well as many of the businesses, governmental entities and other end users that rely on over-the-counter derivatives to manage efficiently the risks inherent in their core economic activities. For more information, visit www.isda.org.

The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding and otherwise advance the interest of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$12.31 trillion and serve almost 90 million shareholders.

The Managed Funds Association is the voice of the global alternative investment industry. Its members are professionals in hedge funds, funds of funds and managed futures funds, as well as industry service providers. Established in 1991, MFA is the primary source of information for policy makers and the media and the leading advocate for sound business practices and industry growth. MFA members include the vast majority of the largest hedge fund groups in the world who manage a substantial portion of the approximately \$1.9 trillion invested in absolute return strategies. MFA is headquartered in Washington, D.C., with an office in New York.

The Securities Industry and Financial Markets Association (SIFMA) brings together the shared interests of hundreds of securities firms, banks and asset managers. SIFMA's mission is to develop policies and practices which strengthen financial markets and which encourage capital availability, job creation and economic growth while building trust and confidence in the financial industry. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA).