

MiFID II – an important step for the LEI

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Ladies and Gentlemen,

It is a pleasure to speak to such a selected audience today and I would like to thank the Banque de France for inviting me to its conference. I will speak to you about MiFID II and LEIs today. As technical as the LEI rules may appear, they are of fundamental importance to financial markets – and not only to regulators but to all investors.

I will focus my intervention on the implementation of the LEI rules in Europe, in particular with a focus on the new requirements envisaged by MiFID II.

In the next 15 minutes I will try to explain to you:

- The objectives of MiFID II and why LEIs are key;
- ESMA's assessment of the first months of implementation; as well as
- Next steps for the coming year.

Let me start with the **objectives of MiFID II**

Following the financial crisis, increasing transparency in financial markets became one of the key objectives of broader regulatory reform around the globe. MiFID II is one of the key pillars of these reforms for the EU financial markets and aims at improving transparency both for investors and regulators alike. To increase transparency, MiFID II established a brand-new reporting regime, which led to a significant amount of data being reported to regulators.

ESMA has built a system that receives roughly seven million records on financial instrument reference data per day. The system collects this information to support the national



supervisors' surveillance activities as well as for the transparency regime and the coordination of suspensions.

In addition, each national supervisor in the EU has built its own system to receive transaction data. This data needs to be combined with the reference data that ESMA receives. The transaction data contains information about each transaction including the LEI of the investment firms carrying out the transaction as well as their clients. Among these millions of data records, LEIs are not only helpful in matching and aggregating market data coming from different reporting flows, they are essential.

How do the rules around the LEI bring these key benefits to the European regulators and contribute to achieving the objectives of MIFID II?

First, the LEI is the only data element allowing a unique and persistent identification of clients of financial institutions. This identification is crucial to supporting regulators' activities in the area of market abuse supervision.

Second, the LEI of the issuer is essential to determine which national authority is responsible for supervising relevant instruments such as bonds and related derivatives. For these instruments, MiFID II says that the responsible supervisor should be the one where the issuer is located even if the instrument is traded elsewhere. For example, where a bond issued by a French issuer is traded in London, the UK Financial Conduct Authority (FCA) receiving the transaction data would need to transfer it to the French Autorite des Marches Financiers (AMF) here in Paris. The information about the location of the issuer is only available in the LEI database. The lack of an LEI for a given financial instrument would mean that it would not be possible to establish which authority is responsible for supervising that instrument. In other words, the LEI code is the primary key that allows the 28 national supervisors to effectively exchange the transaction data between themselves.

Third, the LEI is needed to support our work on transparency, and in particular in the context of ESMA's transparency calculations, which determine whether or not orders and/or transactions in financial instruments are subject to real-time transparency. In order to ensure that we classify an instrument correctly, and hence apply the correct transparency regime, we rely for some asset classes on the LEI. For instance, we use the LEI to identify the underlying reference entity for single name Credit Default Swaps (CSDs) and to identify the issuers of the underlying bond for bond futures. The LEI of the issuer is also used for the purpose of determining whether a derivative should be included in a suspension from trading, i.e. all

instruments having the same issuer and/or the same underlying issuer may be subject to suspension.

Lastly, the LEI is also needed to supervise the correct reporting by financial services firms and to monitor positions in commodities derivatives under the MiFID II position limits and position managements controls regime.

For all these reasons, MiFID II introduces far-reaching LEI requirements. Specifically, the MIFID II rules have an impact on any entity issuing financial instruments traded on European trading venues. These are not only financial entities, but also corporates. EU investment firms and trading venues are obliged to report the LEI of all issuers regardless of where they are based and regardless of whether the entity is subject to LEI requirements in its own jurisdiction. This is logical, as all these entities are present in the EU financial markets and therefore the information needs to be collected for the reasons I just mentioned.

The MiFID II rules also mean that all clients of EU investment firms need to have an LEI. This has become known as the “no-LEI-no-TRADE” rule which prohibits EU firms to act on the instructions of a client who does not have an LEI. This means that the LEI code becomes a precondition for clients wishing to access the EU markets. Again this is important because it is only with this information being available that supervisors can conduct their market surveillance activity effectively.

There was a lot of concern expressed by market participants around the LEI and MiFID II implementation at the end of last year. **With MiFID II having been in place for nearly six months, I believe that now is a good time to reflect on how things have gone and assess implementation.**

While some market participants were concerned that the requirements introduced by MiFID II would disrupt the markets, this is not what we have observed so far. - We hope that this positive European experience will encourage other regulators across the globe to take steps to further mandate the LEI.

The uptake in LEI issuance has been extraordinary, especially ahead of the MiFID II go-live. Overall, the total number of LEI issued globally has doubled from 550,000 LEIs in August 2017 to 1,097,000 LEIs in February 2018. During the three months preceding the introduction of MiFID II, more than 100 000 LEIs were issued by month, while the average number of LEIs issued per month in 2016 was of 5.600 LEIs.

While very positive for the global LEI system, this sudden and substantial increase in LEI issuance had an impact on the operations of the entities responsible for the issuance of the LEI code, as well as the reporting entities responsible for obtaining the LEI. In particular, to streamline the process many investment firms chose to include the LEI within their client onboarding infrastructures. This positive practice was facilitated by the Global LEI Foundation, which introduced the option for investment firms to become “registration agent” for their clients. This option enabled investment firms to assist their clients in obtaining the LEI. At the same time, both the LOUs and the investment firms faced the challenge of having to process bulk requests in a limited period of time, which created bottlenecks.

It is for these reasons that a few weeks ahead of the MiFID II go-live date, ESMA provided for a six-month period to support the smooth introduction of the LEI requirements. This period was granted to a limited sub-set of entities under specific conditions. In particular, it contained strict guidance on what investment firms had to do in order to remain compliant with the “no-LEI-no-TRADE” rule by clarifying that investment firms could trade with a client without the LEI only if they had obtained from this client all the documentation necessary to apply for an LEI code on his behalf.

Since the publication of the statement, ESMA and the national supervisors have been closely monitoring the use of LEIs for the purpose of MiFID II compliance and have observed a stable and substantial increase in its use: out of a total of 3 million EU instruments that were published in February 2018, only 1.4% were published without the correct LEI pertaining to the issuer of the financial instrument. At the end of April, the number decreased even further: only 0.6% of the EU instruments were still missing the correct LEI. So in the space of two months, the number of EU instruments for which the LEI of the issuer was missing dropped significantly. At the same time, the initial technical limitations due to the bulk processing have disappeared. These positive developments have led ESMA to recently confirm the end of the six-month ‘transition’ period, which runs until the 2nd July, inclusive. Despite these positive trends, we have to acknowledge that there are some areas for improvement to ensure that the LEI requirements deliver on the MiFID II objectives and these issues are high on our agenda for the coming months.

With the end of the six-month period, our activities with respect to the LEI are shifting from pure monitoring to ongoing supervisory actions. We are now working with the national supervisors to identify the necessary measures to actively supervise the compliance with the MiFID reporting rules. To ensure a high degree of supervisory convergence, the national

supervisors have agreed to develop a common supervisory action plan focused on the LEI requirements in particular.

At the same time, we know that many of the remaining issues around LEI compliance can be found in non-EU jurisdictions. We have been actively engaging with market stakeholders and non-EU regulators to raise awareness about the EU requirements. We continue our educational campaigns to explain how the LEI system works and provide information about how to get an LEI. Moreover ESMA remains fully committed to the important international work on LEI. Given the wide use in various EU regulations, we believe that it is crucial for the international community to safeguard the quality of the LEI system by preserving the key feature of the LEI, which is to provide unique and consistent identification of legal entities.

Looking ahead to a few of **ESMA's priorities in this area for next year**, I would like to mention two important pieces of legislation, which are expected to go-live in the summer of 2019: the Prospectus Regulation (PR) and the Securities and Financing Transactions Regulation (SFTR).

I will start with the prospectus regulation as it introduces rules on the identification of issuers of securities that are rather complementary to the MiFID II requirements. While under MiFID II it is the trading venue which is responsible for obtaining the LEI code of the issuer, the prospectus regulation and related LEI obligation directly applies to the issuer. From 21st July 2019, issuers will be required to include their LEI in prospectuses, the obligation applies regardless of whether the given issuer already has an LEI or not. It covers all issuers of securities, which seek admission to trading on a regulated market and offer securities to the public as defined in the Prospectus Regulation. Similar to MiFID II, the rules will apply to both EU and non-EU issuers.

In addition, the SFTR will mandate the LEI code for parties involved in securities financing transactions and their beneficiaries. The SFTR rules share many commonalities with the already existing EMIR reporting requirements. Under both regimes, the entities involved in such transactions must be identified with an LEI; these entities are the counterparties; the beneficiaries; the brokers; the CCPs and clearing members. In addition, under SFTR, the use of LEIs is further extended to the agent lender, the tri-party collateral provider, the CSD participant and the issuers of the securities. Overall, there are more than 20 fields where an LEI is required as entity identifier under the SFTR. This wide-spread use of LEI will also facilitate the EU and global aggregation of SFT data.

To conclude, I would like to emphasise that, while it requires some efforts at the beginning, the consistent use of the LEI across the various EU requirements also generates tangible benefits to the industry by reducing operational complexities, and, ultimately, decreasing compliance costs. Many stakeholders are now calling for the LEI to be the standard pan-European identifier that can be used for all regulatory purposes.

We fully acknowledge that there is a need for both the industry and the regulators to build on the progress achieved so far to further enhance data harmonisation through the LEI across the EU and beyond. Equally, we consider that international data standards should always be prioritised over local or proprietary solutions in order to foster this important objective.

I hope that we can continue to count on good cooperation with the stakeholders assembled here today as we face these and other challenges in the year ahead.

Many thanks for your attention and I am looking forward to an interesting panel discussion.