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Secretary, Securities and Exchange Commission  
100 F Street, NE  
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May 18, 2015

This comment letter discusses some potential misunderstandings embodied in the Final Rule SBSR<sup>1</sup>, updates the current state of the LEI implementation and recommends some immediate and longer term actions in recognition of these misunderstandings and the reported implementation difficulties in the use of the LEI and other UICs (Unique Identity Codes) for swaps data reporting.

Firstly, the Commission must be aware that there are now billions of swaps transactions in some 25 Swaps Data Repositories around the globe, including four in the US, and no way of either accessing this data or aggregating them by automated means for risk analysis. In the US this is a problem the CFTC is dealing with. It will surely become the problem of the Commission if it doesn't either extend the final date of the SBSR rule or face issuing continuous 'exemptive relief letters' as the CFTC has been doing for some time.

The Commission's earliest interest in the legal entity identifier (the "LEI") was to be as the unambiguous and unique identifier for participants in swaps markets. This was further expanded upon by the Financial Stability Board (FSB) to be the globally unique key to entry into the financial system for all financial market participants in all financial markets globally. The LEI and its 'business card' data was to be registered in the global legal entity identifier system (the "GLEIS") when entered by a valid self-registrant.

In identifying a valid LEI self-registrant the Final Rule SBSR appears to rely on a misstatement of fact as to who can approve registrants for a LEI, wherein it allows for registration of an LEI by a third party without permission by that LEI registrant. The rule states that the Commission believes:

“....a participant, when it acts as guarantor of a direct counterparty to a security-based swap that is subject to Rule 908(b), is required to obtain an LEI from or through the GLEIS if the direct

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<sup>1</sup> Securities and Exchange Commission 17 CFR Part 242 Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information; Final Rule, Federal Register / Vol. 80, No. 53 / Thursday, March 19, 2015 / Rules and Regulations, Section X - Rule 903 Use of Codes, <http://www.gpo.gov/fdsys/pkg/FR-2015-03-19/pdf/2015-03124.pdf>, pages 14630-14635

counterparty does not already have an LEI and **if the system permits third-party registration without a requirement to obtain prior permission of the direct counterparty.**

The justification for this statement is found in Final SBSR Rule at footnote 629:

“The Commission understands that the GLEIS permits one firm to register a second firm when the first firm has a controlling interest over the second. See <https://www.gmeiutility.org/frequentlyAskedQuestions.jsp> (Who can register an entity for the LEI?).”

This is in direct contradiction of the GLEIS rule as described by the Regulatory Oversight Committee (the “ROC”) that assumed responsibility for the GLEIS on behalf of the FSB– see ROC FAQ at <http://www.leiroc.org/fag/index.htm> :

“Who can obtain an LEI for an entity? The permission of the LEI registrant to perform an LEI registration on its behalf by a third party is considered to satisfy the requirements of self-registration **only if the registrant has provided explicit permission for such a registration to be performed.**”

A further contradiction is found in Final Rule SBSR, wherein the Commission accepts prima-facie the use of mapping of multiple LEIs (referred to as one of a number of UICs – Unique Identity Codes) as preferable to participants assigning LEIs (UICs) themselves:

“The Commission acknowledges that, under final Rule 903(a), different registered SDRs could, in theory, assign different UICs to the same person, unit of a person, or product. Inconsistent UICs could require the Commission and other relevant authorities to map the UICs assigned by one registered SDR to the corresponding UICs assigned by other registered SDRs to obtain a complete picture of the market activity pertaining to a particular person or business unit. **Although mapping may present certain challenges, the Commission believes that this approach is better than the likely alternative of having market participants assign UICs to identify persons, units of persons, or products according to their own methodologies.**”

However, the Commission has disregarded the fact that this method of market participants’ self-assignment of codes has been the cornerstone of the two most successful global identification systems, the Internet and the commercial barcode identification schemes. Organizing a coding standard around self-assignment by financial market participants using standard protocols, not as the Commission suggests, the alternative of using market participants own methodologies, was recommended to the Commission in our submission when the Commission first asked for comments on the UICs<sup>2</sup>.

In a subsequent submission to the FSB<sup>3</sup> we further refined the self-assignment technique to assure authenticity and accuracy by having approved auditors certify the registration of the LEI at source in

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<sup>2</sup> Letter from Robert Carpenter, President and Chief Executive Officer, GS1 U.S., Miguel A. Lopera, Chief Executive Officer, GS1 Global, and Allan D. Grody, President, Financial Inter Group, to Elizabeth Murphy, Secretary, Commission, dated February 14, 2011 (“GS1 Letter”) and “GS1 & Financial InterGroup Response to Securities & Exchange Commission” (“GS1 Proposal”) at <http://www.sec.gov/comments/s7-34-10/s73410-57.pdf>

<sup>3</sup> Grody, A.D., Hughes, P.J, Reininger, D., Final Report on Global Identification Standards for Counterparties and Other Financial Market Participants, Journal of Risk Management in Financial Institutions - Special Issue on Counterparty Risk, Vol. 5, No. 2., Jan 20, 2013, updated March 10, 2015 at <http://ssrn.com/abstract=2016874>

conjunction with the self-registrant to assure both high quality of submitted data and authenticity of the registrant. It was also proposed that no LEI be registered without also identifying a controlling parent entity. No parent entity, no LEI, no entry into the financial system. This method was also foreseen as an efficient way to organize hierarchical relationships so that systemic risk objectives could be facilitated. It should be noted that the ROC has still to design a method of obtaining such hierarchical information, the “Lehman problem”, wherein 6000+ Lehman legal entities could not be identified as belonging to Lehman. This was and still is a major yet-to-be accomplished capability of the GLEIS.

In light of the most recent fraud in the use of identity information, a false filing of a takeover bid of Avon Inc. in the SEC’s Edgar data base, had such protocol been in-place the filers of the false Avon takeover bid would never have received a LEI and, hence, could not have entered the financial system to make a false filing.

The Commission’s choice to allow multiple LEIs assigned by multiple SDRs and their subsequent need to be mapped together will perpetuate processing inefficiencies, continue to be a source of operational risk and a significant contributor to higher infrastructure costs, and be a significant impediment to straight through processing. It would certainly impeded the Commissions longer term objectives of observing financial transaction risk in real-time.

Further, the GLEIS and its LEI, a most significant accomplishment of regulatory consensus, is still a work in progress. It must be understood in context of the GLEIS’s yet-to-be-made-operational status before unbridled endorsement is warranted. For example there is currently no scrubbed data base of all issued LEIs that can be referenced to validate a LEI; the LEI registrations must be self-certified annually with some 50,000 + LEIs already falling into a ‘lapsed’ status meaning they have not been re-certified; the means to efficiently update the LEIs for such corporate events as mergers, acquisitions, spin-offs, etc. is still not defined; and there is no means to anonymize LEIs where sovereign privacy laws dictate such anonymity.

Finally, the other UICs, specifically the Unique Product Identifier (UPI) and Unique Transaction Identifier (UTI) have not been standardized, nor standard data elements defined for submission of swaps transactions. This even though regulators across the globe have initiated reporting of swaps transactions, with the CFTC setting the precedent almost three years ago. The result is billions of swaps transactions in SDRs around the globe, including four in the US, and no way of either accessing this data or aggregating them by automated means for risk analysis.

*“Well we’ve got 25 of these beasts [repositories] today and they don’t talk to each other, so a basic fundamental trawl of transparency is actually missing, and we in IOSCO have a role to get this done. We need standard product and legal identifier(s), but this [current situation] is not a good thing”*

**David Wright.**  
**Secretary General of the**  
**International Organization of Securities Commissions (IOSCO)**  
**“Regulators warn over-the-counter derivatives are out of control”**  
**As reported in EurActiv.com**  
April 14, 2015

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Other regulators, the regulators who have opined more recently, including the Federal Reserve and the European Insurance and Occupational Pension Authority (EIOPA), have only tentatively endorsed the LEI, preferring to wait till the GLEIS is fully operational.

*“The Global LEI System (GLEIS) is not yet fully operational but a number of entities, sponsored by national authorities, have already started to issue LEI- like identifiers (pre-LEIs) in order to satisfy local reporting requirements.... It is highlighted that LEI codes do not yet technically exist. Currently all LEIs are pre-LEIs until the Central Operating Unit sanctions them.”*

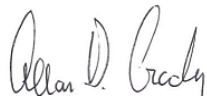
**European Insurance and Occupational Pension Association (EIOPA)**  
**Final Report on Public Consultation**  
**Proposal for Guidelines on the use of the Legal Entity Identifier (LEI)**  
Sept. 11, 2014

*“...The Federal Reserve is only proposing requiring the reporting of an LEI if one has already been issued for the reportable entity at the time of collection. At this time, the Federal Reserve is not requiring an LEI to be obtained for the sole purpose of reporting the LEI on the FR Y-6, FR Y-7, and FR Y-10.”*

**The Board of Governors of the Federal Reserve System**  
**Press Release**  
March 16, 2015

Finally, it should be noted that the structure and assignment protocols of the LEI have already been changed three times. The CFTC has yet to comment on its consultative paper on final rules for swaps data reporting.<sup>4</sup> The ROC has yet to develop the methods and systems for organizing legal entities into its hierarchical structures for data aggregation for systemic risk analysis. It seems, therefore, that the Commission, being the last major regulator to opine on what we have taken to call the Barcodes of Finance<sup>5</sup> ( the UIC’s to use the Commission’s term), is in a position to suggest a pause, to let science take precedence over politics.

Respectfully submitted,



Allan D. Grody  
President,  
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<sup>4</sup> CFTC Review of Swap Data Recordkeeping and Reporting Requirements, March 26, 2014, <http://www.cftc.gov/ucm/groups/public/@lrfederalregister/documents/file/2014-06426a.pdf>

<sup>5</sup> Grody, A.D., Hughes, P.J, Risk, Data and the Barcodes of Finance, April 21, 2015  
<http://papers.ssrn.com/abstract=2544356>

